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LITERACY Initiatives Commission	425
LONG-RANGE Capital Planning Commission	428

Agency	Title
Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for **NURSING** Home Administrators) - *See* Title 490	
LOTTERY Commission, Oklahoma	429
Board of Trustees for the **MCCURTAIN** County Higher Education Program	430
Commission on **MARGINALLY** Producing Oil and Gas Wells	432
State Board of **MEDICAL** Licensure and Supervision	435
MEDICAL Technology and Research Authority of Oklahoma	440
Board of **MEDICOLEGAL** Investigations	445
Department of **MENTAL** Health and Substance Abuse Services	450
MERIT Protection Commission	455
MILITARY Planning Commission, Oklahoma Strategic	457
Department of **MINES**	460
Oklahoma **MOTOR** Vehicle Commission	465
Board of Regents of **MURRAY** State College	470
Oklahoma State Bureau of **NARCOTICS** and Dangerous Drugs Control	475
Board of Regents of **NORTHERN** Oklahoma College	480
Oklahoma Board of **NURSING**	485
Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for **NURSING** Home Administrators)	490
Board of Regents of **OKLAHOMA** City Community College	495
Board of Regents of **OKLAHOMA** Colleges	500
Board of Examiners in **OPTOMETRY**	505
State Board of **OSTEOPATHIC** Examiners	510
PARDON and Parole Board	515
Oklahoma **PEANUT** Commission	520
Oklahoma State **PENSION** Commission	525
State Board of Examiners of **PERFUSIONISTS**	527
Office of **PERSONNEL** Management	530
Oklahoma State Board of **PHARMACY**	535
PHYSICIAN Manpower Training Commission	540
Board of **PODIATRIC** Medical Examiners	545
Oklahoma **POLICE** Pension and Retirement System	550
State Department of **POLLUTION** Control *(abolished 1-1-93)*	555
POLYGRAPH Examiners Board	560
Oklahoma Board of **PRIVATE** Vocational Schools	565
State Board for **PROPERTY** and Casualty Rates *(abolished 7-1-06; see also Title 365)*	570
State Board of Examiners of **PSYCHOLOGISTS**	575
Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
PUBLIC Employees Relations Board	585
Oklahoma **PUBLIC** Employees Retirement System	590
Department of **PUBLIC** Safety	595
REAL Estate Appraiser Board	600
Oklahoma **REAL** Estate Commission	605
Board of Regents of **REDLANDS** Community College	607
State **REGENTS** for Higher Education	610
State Department of **REHABILITATION** Services	612
Board of Regents of **ROGERS** State College	615
Board of Regents of **ROSE** State College	620
Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
SCENIC Rivers Commission	630
Oklahoma Commission on **SCHOOL** and County Funds Management	635
Advisory Task Force on the Sale of **SCHOOL** Lands *(functions concluded 2-92)*	640
The Oklahoma School of **SCIENCE** and Mathematics	645
Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH–LANGUAGE** Pathology and Audiology	690
STATE Employee Charitable Contributions, Oversight Committee for (*Formerly*: **STATE** Agency Review Committee)	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) – *See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority (*Name changed to* Oklahoma **TURNPIKE** Authority *11-1-05*) - *See* Title 731	
Oklahoma **TURNPIKE** Authority (*Formerly:* Oklahoma **TRANSPORTATION** Authority AND Oklahoma **TURNPIKE** Authority) - *See* also Title 745	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College	740
Oklahoma **TURNPIKE** Authority (*Name changed to* Oklahoma **TRANSPORATION** Authority *11-1-99 - no rules enacted in this Title - See* Title 731)	745
Board of Trustees for the **UNIVERSITY** Center at Tulsa	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College	790
Oklahoma **WHEAT** Commission	795
Department of **WILDLIFE** Conservation	800
WILL Rogers and J.M. Davis Memorials Commission	805

Submissions for Review

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

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

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

[OAR Docket #08-658]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
245:2-1-18 [AMENDED]
SUBMITTED TO GOVERNOR:
March 17, 2008
SUBMITTED TO HOUSE:
March 17, 2008
SUBMITTED TO SENATE:
March 17, 2008

[OAR Docket #08-658; filed 4-15-08]

TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 2. OPERATIONS

[OAR Docket #08-682]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Chapter 2. Operations [NEW]
SUBMITTED TO GOVERNOR:
March 28, 2008
SUBMITTED TO HOUSE:
March 31, 2008
SUBMITTED TO SENATE:
March 31, 2008

[OAR Docket #08-682; filed 4-21-08]

TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 4. OTHER FIREFIGHTER TRAINING INCENTIVE PROGRAMS

[OAR Docket #08-683]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Chapter 4. Other Firefighter Training Incentive Programs [NEW]
SUBMITTED TO GOVERNOR:
March 28, 2008
SUBMITTED TO HOUSE:
March 31, 2008
SUBMITTED TO SENATE:
March 31, 2008

[OAR Docket #08-683; filed 4-21-08]

TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 6. FIREFIGHTER TRAINING RECOGNITION PROGRAMS

[OAR Docket #08-684]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Chapter 6. Firefighter Training Recognition Programs [NEW]
SUBMITTED TO GOVERNOR:
March 28, 2008
SUBMITTED TO HOUSE:
March 31, 2008
SUBMITTED TO SENATE:
March 31, 2008

[OAR Docket #08-684; filed 4-21-08]

Gubernatorial Approvals

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

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

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 15. LICENSURE AND REGULATION OF ACCOUNTANCY

[OAR Docket #08-666]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
10:15-1-2. [AMENDED]
Subchapter 3. Requirements to Practice Public Accountancy
10:15-3-4. [AMENDED]
10:15-3-5. [NEW]
Subchapter 18. Computer-Based Examination
10:15-18-1. [AMENDED]
10:15-18-4. [AMENDED]
Subchapter 21. Reciprocity
10:15-21-1. [AMENDED]
Subchapter 22. Substantial Equivalency
10:15-22-2. [NEW]
Subchapter 24. Return of Certificate or License [NEW]
10:15-24-1. [NEW]
10:15-24-2. [NEW]
Subchapter 25. Permits
10:15-25-2. [AMENDED]
10:15-25-3. [AMENDED]
10:15-25-5. [AMENDED]
Subchapter 27. Fees
10:15-27-14. [AMENDED]
Subchapter 30. Continuing Professional Education
10:15-30-2. [AMENDED]
10:15-30-3. [AMENDED]
10:15-30-5. [AMENDED]
10:15-30-6. [AMENDED]
10:15-30-9. [AMENDED]
Subchapter 33. Peer Review
10:15-33-2. [AMENDED]
10:15-33-3.1. [REVOKED]
10:15-33-4. [AMENDED]
10:15-33-5. [AMENDED]
10:15-33-6. [AMENDED]
10:15-33-7. [AMENDED]
Subchapter 37. Enforcement Procedures
10:15-37-7. [AMENDED]
Subchapter 39. Rules of Professional Conduct
10:15-39-1. [AMENDED]
GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-666; filed 4-17-08]

TITLE 85. STATE BANKING DEPARTMENT
CHAPTER 1. REQUIRED RULES

[OAR Docket #08-697]

RULEMAKING ACTION:
Gubernatorial approval of Permanent Rules
RULES:
Subchapter 1. General Provisions
85:1-1-1. Purpose [AMENDED]
85:1-1-2. Definitions [AMENDED]
85:1-1-4. Operation <u>and location of the Board and Department</u> [AMENDED]
85:1-1-5. Communication with the Board and Commissioner [AMENDED]
85:1-1-6. Requests for information [NEW]
Subchapter 3. Procedural Rules
85:1-3-1. Records and transcripts [AMENDED]
85:1-3-2. Service of pleadings [AMENDED]
85:1-3-3. Commencement of a proceeding; intervention; consolidation [AMENDED]
85:1-3-7. Production of documents [AMENDED]
85:1-3-9. Examiner testimony [AMENDED]
85:1-3-10. Examination reports - confidentiality [AMENDED]
85:1-3-11. Pre-hearing conference [AMENDED]
85:1-3-12. Witness and subpoenas [AMENDED]
85:1-3-14. Order of proof [AMENDED]
85:1-3-19. Complaint procedure [NEW]
85:1-3-20. Petitions for rulemaking [NEW]
85:1-3-21. Declaratory rulings [NEW]
GUBERNATORIAL APPROVAL:
March 14, 2008

[OAR Docket #08-697; filed 4-22-08]

TITLE 85. STATE BANKING DEPARTMENT CHAPTER 10. SUPERVISION, REGULATION AND ADMINISTRATION OF BANKS, TRUST COMPANIES, AND THE OKLAHOMA BANKING CODE

[OAR Docket #08-698]

RULEMAKING ACTION:

Gubernatorial approval of Permanent Rules

RULES:

Subchapter 1. General Provisions and Definitions
85:10-1-1. Purpose [AMENDED]
85:10-1-2. Definitions [AMENDED]
Subchapter 3. Departmental Requirements
85:10-3-1. Report of condition [AMENDED]
85:10-3-2. Report of change of controlling interest [AMENDED]
85:10-3-3. Report of change of chief executive officer or director [AMENDED]
85:10-3-4. Report of change of director [REVOKED]
85:10-3-10. Increase/decrease in capital stock [AMENDED]
85:10-3-11. Change in number or par value of shares [AMENDED]
85:10-3-12. Change in name - procedures and requirements [AMENDED]
85:10-3-14. Applying for trust powers [AMENDED]
85:10-3-15. Abandonment of trust powers [AMENDED]
85:10-3-16. Issuance of debentures or capital notes [AMENDED]
85:10-3-17. Merger/conversion - national bank or savings association to a state ~~bank~~ charter [AMENDED]
85:10-3-18. Records and retention [AMENDED]
85:10-3-19. Reserve requirements [REVOKED]
85:10-3-20. Registration of bank or trust related activities [AMENDED]
85:10-3-21. Fees [AMENDED]
85:10-3-22. Organizational expenses [AMENDED]
85:10-3-23. Suspicious Activity Reports [AMENDED]
Subchapter 5. Requirements, Standards and Procedures for an Internal Control Program
85:10-5-1. Internal controls [AMENDED]
85:10-5-2. Internal control program [AMENDED]
85:10-5-3. Minimum control elements for bank internal control program [AMENDED]
85:10-5-3.1. Internal control program for fiduciary activities of trust departments and trust companies [AMENDED]
85:10-5-4. Reports [AMENDED]
85:10-5-5. Review and appointments [AMENDED]
Subchapter 7. Director's Examinations
85:10-7-1. Examination procedures [AMENDED]
85:10-7-2. Scope of examination [AMENDED]
85:10-7-3. Minimum examination procedures [AMENDED]
85:10-7-4. Trust companies [REVOKED]
85:10-7-5. Performance of an audit in lieu of examination [NEW]
Subchapter 9. New Banks, Branches, and Other Facilities
85:10-9-1. Application for a new bank or trust company [AMENDED]
85:10-9-2. Application to establish or relocate a branch ~~or a detached facility~~ [AMENDED]
85:10-9-3. Military banking facilities [REVOKED]
85:10-9-4. Consumer banking electronic facility [REVOKED]
85:10-9-6. Branch~~/detached facility~~ closing [AMENDED]
85:10-9-7. Loan production office/deposit origination office [AMENDED]
Subchapter 11. Substantive Guidelines and Restrictions
85:10-11-1. Pledging requirements for banks and trust companies [AMENDED]
85:10-11-2. Investment securities [AMENDED]
85:10-11-3. Real estate lending [AMENDED]
85:10-11-4. Safe deposit boxes [AMENDED]
85:10-11-5. Interest on deposits [AMENDED]
85:10-11-6. Loans and investments in other banks [AMENDED]
85:10-11-7. Adjustable rate mortgage loans, graduated payment adjustable mortgage loans and reserve annuity mortgage loans [AMENDED]
85:10-11-8. Interest rate futures transactions [AMENDED]
85:10-11-9. Operating subsidiaries [AMENDED]
85:10-11-9.1. Financial subsidiaries [AMENDED]
85:10-11-10. Lending limits [AMENDED]
85:10-11-11. ~~Split dollar insurance~~ Bank-owned life insurance [AMENDED]
85:10-11-12. Letter of credit; contingent liabilities [AMENDED]
85:10-11-13. Loan participations [AMENDED]
85:10-11-14. Repurchase agreements of banks with securities dealers and others [AMENDED]
85:10-11-15. Insurance [AMENDED]
85:10-11-16. Deposit and safekeeping agreements and fees [AMENDED]
85:10-11-17. Unsafe and unsound bank or trust practices [AMENDED]
85:10-11-18. Persons qualified to sell title insurance for trust companies [AMENDED]
85:10-11-19. Use of confusingly similar names [AMENDED]
85:10-11-20. Leasing [AMENDED]
Subchapter 13. Investor Protection
85:10-13-1. Prohibition against deceptive advertising [AMENDED]
85:10-13-2. Offering circular [AMENDED]
85:10-13-3. Advertising [AMENDED]
85:10-13-4. Complaint procedure for violations [AMENDED]

GUBERNATORIAL APPROVAL:
March 14, 2008

[OAR Docket #08-698; filed 4-22-08]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM

[OAR Docket #08-659]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Quality Jobs Program
150:65-1-2 [AMENDED]
150:65-1-3 [AMENDED]
150:65-1-4 [AMENDED]
GUBERNATORIAL APPROVAL:
April 8, 2008

[OAR Docket #08-659; filed 4-16-08]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 110. OKLAHOMA SPECIALIZED QUALITY INVESTMENT ACT

[OAR Docket #08-660]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
150:110-1-1 [AMENDED]
150:110-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 8, 2008

[OAR Docket #08-660; filed 4-16-08]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 130. OKLAHOMA QUALITY INVESTMENT ACT

[OAR Docket #08-661]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
150:130-1-1 [NEW]
150:130-1-2 [NEW]
150:130-1-3 [NEW]
150:130-1-4 [NEW]
150:130-1-5 [NEW]
150:130-1-6 [NEW]
150:130-1-7 [NEW]
150:130-1-8 [NEW]
GUBERNATORIAL APPROVAL:
April 8, 2008

[OAR Docket #08-661; filed 4-16-08]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 135. OKLAHOMA BIOENERGY CENTER ACT

[OAR Docket #08-662]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
150:135-1-1 [NEW]
150:135-1-2 [NEW]
150:135-1-3 [NEW]
150:135-1-4 [NEW]
150:135-1-5 [NEW]
150:135-1-6 [NEW]
150:135-1-7 [NEW]
150:135-1-8 [NEW]
150:135-1-9 [NEW]
GUBERNATORIAL APPROVAL:
April 8, 2008

[OAR Docket #08-662; filed 4-16-08]

TITLE 165. CORPORATION COMMISSION
CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #08-685]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
165:35-1-2. Definitions [AMENDED]
Subchapter 34. Competitive Procurement
165:35-34-1. Purpose of this Subchapter [AMENDED]
165:35-34-2. Confidential Information [AMENDED]
165:35-34-3. RFP Competitive Bidding Procurement Process [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-685; filed 4-21-08]

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

[OAR Docket #08-714]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Election Training
Part 1. The County Election Board
230:10-5-1. Statewide and regional workshops [AMENDED]
230:10-5-2. Reimbursement for workshops [AMENDED]
230:10-5-2.1. Training for trainers required [NEW]
Part 3. The Precinct Election Board
230:10-5-12. Precinct Official training [AMENDED]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-714; filed 4-24-08]

TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION

[OAR Docket #08-715]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Voter Outreach
Part 3. Distribution of Voter Registration Application Forms
230:15-3-27. Specifications for Oklahoma Voter Registration Application form [AMENDED]
Subchapter 5. Application for Voter Registration
Part 21. Voter Registration Application by Mail
230:15-5-84. Information required on voter registration application [AMENDED]
230:15-5-85. Other information requested on applications for voter registration [AMENDED]
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering applications for voter registration in OEMS [AMENDED]
Part 7. Acknowledgment of Voter Registration Applications
230:15-9-31. Rejected applications [AMENDED]
230:15-9-32. Types of rejection notices [AMENDED]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-715; filed 4-24-08]

TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #08-716]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 9. Processing Applications
230:30-9-3. Processing applications for absentee ballots [AMENDED]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
Subchapter 13. Federal Write-in Absentee Ballot
230:30-13-1. Voters permitted to use federal write-in absentee ballots [AMENDED]
230:30-13-2. Receiving and processing federal write-in absentee ballots [AMENDED]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-716; filed 4-24-08]

TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT

[OAR Docket #08-717]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. County Election Board Responsibilities
Part 1. Before the Filing Period
230:35-3-3. Assembling precinct supplies [AMENDED]
Part 9. Distributing Supplies and Ballots
230:35-3-71. Voting device not issued to precinct polling place [AMENDED]
Part 13. After the Polls Close
230:35-3-84. Assembly line required for receiving returns and materials from Inspectors [AMENDED]
230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters [AMENDED]
230:35-3-85.1. Election night recounts [AMENDED]
Part 19. Verifying and Counting Provisional Ballots
230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots [AMENDED]
Subchapter 5. Instructions for Precinct Election Officials
Part 5. Preparations on Election Day
230:35-5-31.1. Location and materials for provisional voting [AMENDED]
Part 15. After the Polls Close
230:35-5-75.3. Completing election night tasks [AMENDED]

Part 21. Voters Listed in Precinct Registry Who Have Problems With Eligibility
230:35-5-113.3. Identification Required voter [AMENDED]
Part 29. Violations of the Law
230:35-5-146. Action when laws are violated [AMENDED]
Part 34. Provisional Voting Procedures
230:35-5-176. Filling out a Provisional Ballot Voucher [AMENDED]
230:35-5-177. Provisional voting procedure [AMENDED]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-717; filed 4-24-08]

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

[OAR Docket #08-718]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 5. Municipal Elections
Part 9. Procedures
230:40-5-34. Conduct of municipal elections [AMENDED]
Part 17. Special Elections
230:40-5-77. Special elections for municipal offices [AMENDED]
Subchapter 7. School Elections
Part 5. Filing Period
230:40-7-16. Filing period
Part 9. Procedures
230:40-7-35. Precincts in school elections [AMENDED]
Subchapter 9. School Union Elections
Part 11. Discontinuation of Representation [NEW]
230:40-9-40. Election to discontinue representation [NEW]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-718; filed 4-24-08]

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

[OAR Docket #08-719]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 3. Recounts
Part 7. Recounts for Question Elections
230:45-3-40. Certification of question election [AMENDED]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-719; filed 4-24-08]

TITLE 230. STATE ELECTION BOARD CHAPTER 50. AUTOMATED SYSTEMS

[OAR Docket #08-720]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 9. Telephone Voting System
230:50-9-9. Counting telephone voting system ballots [AMENDED]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-720; filed 4-24-08]

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

[OAR Docket #08-707]

RULEMAKING ACTION:
Gubernatorial approval

RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 1. General Provisions
340:2-1-5 [AMENDED]
340:2-1-8 [AMENDED]
Part 3. Internal Human Resources
340:2-1-25 through 340:2-1-29 [AMENDED]
Part 7. Recruitment, Selection, and Placement
340:2-1-76 through 340:2-1-79 [AMENDED]
340:2-1-81 through 340:2-1-82 [AMENDED]
340:2-1-84 through 340:2-1-86 [AMENDED]
(Reference APA WF 07-38)

GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-707; filed 4-23-08]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

[OAR Docket #08-709]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Low Income Home Energy Assistance Program
340:20-1-3 through 340:20-1-4 [AMENDED]
340:20-1-7 through 340:20-1-8 [AMENDED]
340:20-1-11 [AMENDED]
340:20-1-13 [AMENDED]
340:20-1-15 [AMENDED]
340:20-1-17 [AMENDED]
(Reference APA WF 07-20 and 07-39)
GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-709; filed 4-23-08]

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

[OAR Docket #08-740]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Scope And Applicability
340:25-1-1.1 through 340:25-1-2.1 [AMENDED]
Subchapter 5. Operational Policies
Part 11. CSED System Security
340:25-5-75 [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110.1 [AMENDED]
340:25-5-114 [AMENDED]
340:25-5-117 [AMENDED]
340:25-5-123 through 340:25-5-124 [AMENDED]
340:25-5-124.2 through 340:25-5-124.3 [AMENDED]
Part 17. Past Support
340:25-5-140 [AMENDED]
Part 20. Medical Support
340:25-5-168 [AMENDED]
340:25-5-171 [AMENDED]
Part 21. Establishment
340:25-5-176 [AMENDED]
340:25-5-178 [AMENDED]
340:24-5-179.1 [AMENDED]
Part 22. Review and Modification
340:25-5-198.2 [AMENDED]
Part 23. Enforcement
340:25-5-200 [AMENDED]
340:25-5-212 [AMENDED]
Part 25. Federal Offset Programs
340:25-5-215 [AMENDED]
Part 27. State Tax Refund Offset Program
340:25-5-235 [AMENDED]
340:25-5-244 [AMENDED]
Part 33. Interstate and International Cases
340:25-5-270 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-350.3 through 340:25-5-351 [AMENDED]
(Reference APA WF 07-15 and 07-35)
GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-740; filed 4-25-08]

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

[OAR Docket #08-705]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 15. Overpayments and Fraud
Part 1. Overpayments
340:50-15-1 through 340:50-15-5 [AMENDED]
340:50-15-7 [AMENDED]
340:50-15-9 [AMENDED]
Part 3. Fraud
340:50-15-25 [AMENDED]
340:50-15-27 [AMENDED]
(Reference APA WF 07-40)
GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-705; filed 4-23-08]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 70. SOCIAL SERVICES

[OAR Docket #08-702]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 9. Health Related Services
340:70-9-3 through 340:70-9-4 [REVOKED]
(Reference APA WF 07-36)

GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-702; filed 4-23-08]

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

[OAR Docket #08-742]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-86 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-5 [AMENDED]
340:75-3-6.1 [AMENDED]
340:75-3-7.1 [AMENDED]
340:75-3-7.3 [AMENDED]
340:75-3-8 [AMENDED]
340:75-3-8.2 [AMENDED]
340:75-3-8.6 [AMENDED]
340:75-3-9.1 [AMENDED]
340:75-3-12 [AMENDED]
340:75-3-13 [AMENDED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]
Part 2. Development of Resources
340:75-7-12 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-38 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-51 through 340:75-7-53 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Part 25. Emergency Foster Care Program
340:75-7-262 [AMENDED]
Subchapter 10. Emergency Shelter Care
340:75-10-9 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-home Care
Part 7. Medical Services
340:75-13-79 [AMENDED]
Subchapter 15. Adoptions
Part 10. Adoptive Family Assessment and Preparation Process
340:75-15-88 [AMENDED]
(Reference APA WF 07-12, 07-22, 07-24, and 07-37)
GUBERNATORIAL APPROVAL:
April 11, 2008

[OAR Docket #08-742; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-744]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Description of Forms and Instructions
365:1-9-12. Agent and customer service representative appointment forms [AMENDED]
Subchapter 13. Electronic Filings [NEW]
365:1-13-1.Required electronic filings [NEW]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-744; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #08-745]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 5. Long-Term Care Insurance [NEW]
365:10-5-53. Contingent benefit upon lapse [NEW]
365:10-5-54. State long-term care insurance partnership program [NEW]
Part 19. Oklahoma Health Care Freedom of Choice Regulation
365:10-5-181. Good faith estimate by insurer [AMENDED]
Part 21. Extension and Termination of Coverage Under Group Accident and Health Policy Contracts of Hospital and Medical Services or Indemnity [NEW]
365:10-5-190. Purpose. [NEW]
365:10-5-191. Applicability and scope [NEW]
365:10-5-192. Definitions [NEW]
365:10-5-193. Periods for which coverage is extended [NEW]
365:10-5-194. When extension period begins [NEW]

365:10-5-195. Required notification to employee whose insurance is terminated [NEW]
Appendix HH. Partnership Program Notice [NEW]
Appendix II. Partnership Status Disclosure Notice [NEW]
Appendix JJ. Issuer Certification Form [NEW]
Appendix KK. Approved Long Term Care Partnership Program Policy Summary [NEW]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-745; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #08-746]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
Subchapter 7. Property and casualty competitive loss cost rating regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-746; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #08-747]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Producers, Brokers, and Limited Lines Producers
365:25-3-1. Insurance producers continuing education [AMENDED]
365:25-3-1.1. Application for Resident Producer License [NEW]
365:25-3-1.2. Provisional Producer License [NEW]
365:25-3-1.3. Approved Insurance Company Training Program [NEW]
365:25-3-3. Licensing of incorporated insurance agency [AMENDED]
365:25-3-12. Insurance consultants and surplus lines insurance brokers [AMENDED]
365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms [AMENDED]
365:25-3-14. Insurance adjusters continuing education [AMENDED]
365:25-3-16. Examination exemptions [AMENDED]
Subchapter 5. Bail Bondsmen
Part 5. General Provisions Pertaining To Bail Bondsmen
365:25-5-30. Definitions [AMENDED]
365:25-5-34. Professional bondsman deposits [AMENDED]
365:25-5-35. Bondsman license renewal [AMENDED]
365:25-5-43. Appointments [NEW]
Subchapter 7. Companies
Part 5. Oklahoma Insurance Holding Company System Regulatory Act
365:25-7-27.1. Subsidiaries of domestic insurers [AMENDED]
365:25-7-30. Extraordinary dividends and other distributions [AMENDED]
Part 7. Companies In Hazardous Financial Condition
365:25-7-40. Authority [AMENDED]
365:25-7-41. Purpose [AMENDED]
365:25-7-42. Standards for determining hazardous financial condition [AMENDED]
365:25-7-43. Commissioner's authority [AMENDED]
Part 13. Electronic Filings
365:25-7-76. Insurance Company Holding Company Act [NEW]
Subchapter 9. Prepaid Funeral Benefits
365:25-9-3. Forms [AMENDED]
Subchapter 27. Military Sales Practices Regulation [NEW]
365:25-27-1. Purpose [NEW]
365:25-27-2. Scope [NEW]
365:25-27.3. Authority [NEW]
365:25-27-4. Exemptions [NEW]
365:25-27-5. Definitions [NEW]
365:25-27-6. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation [NEW]
365:25-27-7. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location [NEW]
365:25-27-8. Severability [NEW]
Appendix C. Application for Original Permit [REVOKED]
Appendix I. Application for Renewal of Permit [REVOKED]
Appendix T. Insurance Company Training Program Affidavit [NEW]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-747; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #08-748]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Producers, Brokers, and Limited Lines Producers
365:25-3-1.4. Producer training requirements for long-term care insurance [NEW]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-748; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN, COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE SETTLEMENTS PROVIDERS AND BROKERS

[OAR Docket #08-749]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Producers, Brokers, and Limited Lines Producers
365:25-3-18. Compensation and education for sale of Medicare Advantage or Medicare private fee for service products and plans [NEW]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-749; filed 4-25-08]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATIONS (HMO)

[OAR Docket #08-750]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Financial
Part 3. Holding Company System
365:40-3-13. Transactions with affiliates [AMENDED]
GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-750; filed 4-25-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #08-667]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Risk Management
Part 1. Drug Policy
377:3-11-5. Substance screening [AMENDED]
377:3-11-9. Consequences of refusal [AMENDED]
Subchapter 13. Office of Public Integrity
Part1. General Provisions
377:3-13-1. General ~~Purpose~~ purpose, legal basis and authority [AMENDED]
377:3-13-2. Office of Public Integrity's ~~independent function~~ internal affairs investigations [AMENDED]
377:3-13-3. Affirmative Action officer duties ~~Monitoring~~ and reports [AMENDED]
377:3-13-4. Information sharing with other monitoring entities [REVOKED]
377:3-13-5. Access to and collection of information [REVOKED]
377:3-13-6. Certification of Secure Juvenile Detention Facilities Municipal Juvenile Facilities, and Community Intervention Centers [AMENDED]
GUBERNATORIAL APPROVAL:
March 11, 2008

[OAR Docket #08-667; filed 4-18-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #08-668]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Contract Programs and Services
Part 3. Contract-based Residential Care
377:10-7-15. Purpose [AMENDED]
377:10-7-16. Level of care system [AMENDED]
377:10-7-17. Specialized residential care ("Level C") [AMENDED]
377:10-7-18. Moderate intensity specialized residential care ("Level D") [AMENDED]
377:10-7-19. Moderate to high intensity specialized residential care ("Level D Plus") [AMENDED]
377:10-7-20. Specialized residential high intensity treatment programs ("Level E") [AMENDED]
377:10-7-21. Wilderness camp [REVOKED]
Part 7. Independent and Transitional Living
377:10-7-41. Independent living programs [AMENDED]
GUBERNATORIAL APPROVAL:
March 11, 2008

[OAR Docket #08-668; filed 4-18-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #08-669]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Case Records and Reports
377:25-11-1. Case records [AMENDED]
GUBERNATORIAL APPROVAL:
March 11, 2008

[OAR Docket #08-669; filed 4-18-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITUTIONAL SERVICES

[OAR Docket #08-670]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Medical Health Care
377:35-7-2. Surgery [AMENDED]
377:35-7-4. Sanctions/discipline [AMENDED]
377:35-7-5. ~~Refusal of non-necessary medical care~~ Juveniles refusal of medical services [AMENDED]
377:35-7-6. Response to refusal of necessary medical services [REVOKED]
377:35-7-8. Medical isolation [AMENDED]
377:35-7-10. Second medical opinions [REVOKED]
GUBERNATORIAL APPROVAL:
March 11, 2008

[OAR Docket #08-670; filed 4-18-08]

TITLE 485. OKLAHOMA BOARD OF NURSING CHAPTER 1. ADMINISTRATION

[OAR Docket #08-632]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
485:1-1-1. [AMENDED]
GUBERNATORIAL APPROVAL:
March 1, 2008

[OAR Docket #08-632; filed 4-10-08]

TITLE 485. OKLAHOMA BOARD OF NURSING CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #08-633]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Nurses
485:10-16-5. [AMENDED]
GUBERNATORIAL APPROVAL:
March 1, 2008

[OAR Docket #08-633; filed 4-10-08]

TITLE 485. OKLAHOMA BOARD OF NURSING CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #08-634]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions

485:10-1-3. [AMENDED]
GUBERNATORIAL APPROVAL:
March 1, 2008

[OAR Docket #08-634; filed 4-10-08]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #08-635]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2. [AMENDED]
485:10-3-5. [AMENDED]
485:10-3-6. [AMENDED]
Subchapter 5. Minimum Standards for Approved Nursing Education Programs
485:10-5-3.2. [AMENDED]
Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse
485:10-7-1. [AMENDED]
485:10-7-2. [AMENDED]
485:10-7-3. [AMENDED]
485:10-7-4. [AMENDED]
485:10-7-5. [AMENDED]
485:10-7-6. [AMENDED]
Subchapter 9.Requirements for Registration and Licensure as a Licensed Practical Nurse
485:10-9-1. [AMENDED]
485:10-9-2. [AMENDED]
485:10-9-3. [AMENDED]
485:10-9-4. [AMENDED]
485:10-9-5. [AMENDED]
485:10-9-6. [AMENDED]
Subchapter 10. Advanced Unlicensed Assistive Personnel
485:10-10-7. [AMENDED]
485:10-10-8. [AMENDED]
485:10-10-8.1. [AMENDED]
485:10-10-10. [AMENDED]
Subchapter 15. Requirements for Practice as an Advanced Practice Nurse
485:10-15-4. [AMENDED]
485:10-15-4.1. [AMENDED]
485:10-15-5. [AMENDED]
485:10-15-6. [AMENDED]
485:10-15-7. [AMENDED]
485:10-15-8. [AMENDED]
485:10-15-9. [AMENDED]
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Nurses
485:10-16-1. [AMENDED]
485:10-16-3. [AMENDED]
485:10-16-4. [AMENDED]
485:10-16-6. [AMENDED]
485:10-16-7. [AMENDED]
Subchapter 18. Prescriptive Authority for C.R.N.A.
485:10-18-2. [AMENDED]
485:10-18-3. [AMENDED]
485:10-18-4. [AMENDED]
GUBERNATORIAL APPROVAL:
March 1, 2008

[OAR Docket #08-635; filed 4-10-08]

TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 10. LICENSURE OF VETERINARIANS, VETERINARY TECHNICIANS AND ANIMAL EUTHANASIA TEHNICIANS

[OAR Docket #08-710]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensure of Veterinarians [AMENDED]
Subchapter 7. Certification of Veterinary Technicians [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-710; filed 4-23-08]

TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 25. RECORDKEEPING AND SUPERVISION REQUIREMENTS

[OAR Docket #08-711]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
775:25-1-4. Supervision Requirements [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-711; filed 4-23-08]

TITLE 775. BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 26. WHOLESALER/DISTRIBUTOR OF VETERINARY PRESCRIPTION DRUGS

[OAR Docket #08-712]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 26. Wholesaler/Distributor of Veterinary Prescription Drugs [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-712; filed 4-23-08]

Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS

[OAR Docket #08-636]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Subchapter 1. General Provisions
140:15-1-2 [AMENDED]
Subchapter 5. Certificates for Injectables
140:15-5-1 through 140:15-5-3 [AMENDED]
Subchapter 7. Safety and Public Welfare Provisions
140:15-7-3 [AMENDED]
Subchapter 8. Animal Chiropractic Diagnosis and Treatment
140:15-8-2 [AMENDED]
Subchapter 9. Chiropractic Specialties
140:15-9-1 through 140:15-9-6 [AMENDED]
Subchapter 10. Acupuncture [NEW]
140:15-10-1 through 140:15-10-4 [NEW]
DATES:
Adoption:
February 19, 2008
Submitted to Governor:
February 28, 2008
Submitted to House:
February 28, 2008
Submitted to Senate:
February 28, 2008
Withdrawn:
April 7, 2008

[OAR Docket #08-636; filed 4-11-08]

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

[OAR Docket #08-713]

RULEMAKING ACTION:
Withdrawal of permanent rule
WITHDRAWN RULE:
Subchapter 9. School Union Elections
Part 11. Discontinuation of Representation [NEW]
230:40-9-40. Election to discontinue representation [NEW]
DATES:
Adoption:
March 12, 2008
Submitted to Governor:
March 14, 2008
Submitted to House:
March 14, 2008
Submitted to Senate:
March 14, 2008
Gubernatorial Approval:
April 22, 2008
Withdrawn:
April 24, 2008

[OAR Docket #08-713; filed 4-24-08]

Errors in Published Documents

If an agency discovers an error in a document after its publication in the *Register*, the agency may publish in the *Register* a notice of such error, but only if the error meets criteria set forth in OAC 655:10-7-35.

TITLE 165. CORPORATION COMMISSION
CHAPTER 30. MOTOR CARRIERS

[OAR Docket #08-686]

RULEMAKING ACTION:
Notice of error in published document
DOCUMENT CORRECTED:
Document Type:
Notice of Gubernatorial Approval
RULES:
Chapter 30. Motor Carriers [AMENDED]
Register publication:
25 Ok Reg 789
Docket number:
08-444
CORRECTION:
Date of Gubernatorial approval is incorrect. The correct date of approval is March 11, 2008.

[OAR Docket #08-686; filed 4-21-08]

Emergency Adoptions

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

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

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

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

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 50. IGNITION INTERLOCK DEVICES

[OAR Docket #08-700]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
40:50-1-8. Service Representative [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
DATES:
Adoption:
February 20, 2008
Approved by Governor:
Apri1 11, 2008
Effective:
Immediately upon Governors approval
Expiration:
Effective through June 14, 2009 unless superseded by another rule or disapproved by the legislature.
SUPERSEDED EMERGENCY RULES:
Superseded Rules:
40:50-1-8. Service Representative [AMENDED]
Gubernatorial Approval:
June 4, 2007
Register Publication
24 Ok. Reg. 2683
Docket Number
07-1272
INCORPORATIONS BY REFERENCE
N/A
FINDING OF EMERGENCY:
The fees currently in place are burdensome to the service representatives. The reduction in overall fees and changing re registration to annual, rather than biennial is intended to make it easier to become and maintain certified service representative status.
ANALYSIS:
The rule reduces the application fee to become a service representative from one hundred dollars ($100.00) to thirty-five dollars ($35.00). It reduces the renewal fee from seventy-five dollars ($75.00) ever other year to twenty-five dollars ($25.00) every year. It also corrects the typographical error that called for an employee to document that he, himself was sufficiently trained on the equipment he would be servicing. The correction calls for the employer to document the training.
CONTACT PERSON:
J. Robert Blakeburn, (405) 425-2460 (procedural and legal questions);

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

40:50-1-8. Service representative

(a) **Initial certification.**

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following and pay a fee of ~~$100.00~~ $35.00:

(A) proof of employment by an ignition interlock device service center that meets the requirements set forth in 40:50-1-7 of this title (relating to Certification and Inspection of Service Centers); and

(B) documentation from the aforementioned ~~employee~~employer that the applicant is currently trained in all necessary aspects of the specific IIDs involved in the vendors service center.

(C) If a service representative is certified to work with a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the Board may waive portions of subsection (a)(1)(B) of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(2) Prior to initial certification as a service representative of an ignition interlock device service center, an applicant must satisfactorily complete a written examination which shall cover the regulatory aspects of the Oklahoma IID program.

(A) Failure of the initial written examination will cause the applicant to be ineligible for reexamination for a period of thirty (30) days.

(B) A subsequent failure will be handled the same as an initial failure.

(3) An applicant who has been convicted of an alcohol related offense, theft, crime involving moral turpitude, or any offense classified as a felony, within five (5) years prior to the date of filing of the applicants application for certification as an IID service representative is not eligible for certification. For purpose of this section, a conviction means the applicant was adjudicated guilty~~, No lo contendere or received a deferred sentence~~ by a court of competent jurisdiction.

(4) Upon successful completion of the requirements for initial certification, the Board or its designee will issue the individual a service representatives certificate valid for a period of time designated by the Board unless certification is withdrawn, inactivated, suspended, or revoked.

(b) **Renewal of current certification.** The service representative is required to renew certification prior to its expiration date. The minimum requirement for renewal of service representative certification will be:

(1) ~~a biennial~~ an annual written acknowledgment from the service representatives employing IID vendor that this service representative is both;

(A) employed by the vendor in the capacity of service representative, and

(B) currently trained in all necessary aspects of the IIDs involved in the vendors service center.

(C) Renewal fee of ~~$75.00~~$25.00 has been paid.

(2) ~~a biennial~~ an annual written acknowledgment from the service representative that he or she still meets the requirements of subsection (a)(3) of this section.

(3) Renewal of certification will be denied and current certification will be inactivated when the service representative:

(A) fails to ~~finish~~furnish proper documentation required in subsection (b)(1)(A) and of this section or

(B) fails to meet requirements of subsection (a)(3) of this section.

(4) Upon successful completion of the requirements for renewal of certification, the Board will issue the individual a service representatives certificate valid for a period of time designated by the Board or until next renewal unless certification is withdrawn, inactivated, suspended, or revoked.

(c) **Decertification.** Certification of the service representative may denied, withdrawn, inactivated, suspended or revoked by the director if the service representative fails to meet the requirements of these rules. A person whose pending application for certification has been denied, or service representative whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action as established in 40:50-1-10 of ~~this~~these rules. The Board may allow the pending application for certification as an IID service representative, or the Board may reinstate certification of the IID service representative appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.

(d) **Recertification.** Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require written request from the applicant to the Board and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the Board.

(e) **Decertification fees.** Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require a reinstatement fee, this fee will be found in Chapter 55 of the Boards Rules.

[OAR Docket #08-700; filed 4-22-08]

Permanent Final Adoptions

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

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

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

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

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 2. FEES

[OAR Docket #08-721]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fee Schedules
35:2-3-2.1 [AMENDED]
35:2-3-2.2 through 35:2-3-2.4 [AMENDED]
35:2-3-2.6 [AMENDED]
35:2-3-2.8 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(20) and 14-83; Article 6, Section 31, Constitution of the State of Oklahoma
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Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2008
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July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules amend certain fees contained in Subchapter 3 pertaining to animal health, elemental analysis, meat chemistry, dairy, food, water, microbiological, and Bureau of Standards. These rules allow the Oklahoma Department of Agriculture, Food, and Forestry's Laboratory Services Division to recoup some of the costs associated with conducting the specific tests addressed by the amendments.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-2.1. Schedule of animal health testing fees

(a) Equine Infectious Anemia:
  (1) AGID (agar gel immuno-diffusion) - $5.00.
  (2) ELISA (enzyme linked immuno-sorbant assay):
    (A) Routine - $7.50
    (B) One day turn around - $20.00.
(b) Pseudorabies - ~~$3.00~~$4.00.
(c) Brucellosis - ~~no charge~~$3.00.

35:2-3-2.2. Schedule of feed and fertilizer testing fees

(a) Feeds and grains testing fees.
  (1) Proximate analysis:
    (A) Ash - $15.00.
    (B) Fat, dry pet foods (Mojonnier) - $25.00.
    (C) Fat, all feeds (Soxtec) - $20.00.
    (D) Fiber, acid detergent (ADF) - $30.00.
    (E) Fiber, crude - $20.00.
    (F) Moisture - $15.00.
    (G) Non-protein nitrogen - $30.00.
    (H) Protein - $20.00.
  (2) Other feed analysis:
    (A) Aflatoxins - $30.00.
    (B) Feed microscopy - $99.00.
    (C) Salt, from chloride - $10.50.
    (D) Sulfur - $15.00.
    (E) Sugar, brix - $15.00.
    (F) Sugar, total as invert - $50.00.
    (G) Vitamin A - $60.00.
  (3) Drugs in feeds:
    (A) Amprolium - $50.00.
    (B) Chlortetracycline - $50.00.
    (C) Decoquinate - $65.00.
    (D) Lasalocid - $65.00.
    (E) Oxytetracycline - $50.00.
    (F) Sulfamethazine - $65.00.
    (G) Sulfathiazole - $65.00.
    (H) Tylosin - $65.00.
(b) Fertilizer testing fees.
  (1) Major nutrients:
    (A) Nitrogen - $20.00.

(B) Phosphoric acid - $20.00.
(C) Potash - $20.00.
(2) Micro nutrients:
(A) Chlorine - $11.00.
(B) Sulfur - $15.00.
(c) Lime analysis, sieve, and effective calcium carbonate equivalent (ECCE) - $25.00.
(d) Elemental analysis testing fees by atomic absorption (AA) or inductively coupled plasma (ICP) spectrometry, each element - $20.00.
~~(1) First element - $20.00.~~
~~(2) Each additional element - $15.00.~~
~~(3) Includes the following elements:~~
~~(A) Calcium (Ca).~~
~~(B) Copper (Cu).~~
~~(C) Iron (Fe).~~
~~(D) Magnesium (Mg).~~
~~(E) Manganese (Mn).~~
~~(F) Phosphorus (P).~~
~~(G) Potassium (K).~~
~~(H) Sodium (Na).~~
~~(I) Zinc (Zn).~~
~~(J) Aluminum (Al).~~
~~(K) Arsenic (As).~~
~~(L) Boron (B).~~
~~(M) Cadmium (Cd).~~
~~(N) Chromium (Cr).~~
~~(O) Cobalt (Co).~~
~~(P) Lead (Pb).~~
~~(Q) Mercury (Hg).~~
~~(R) Molybdenum (Mo).~~
~~(S) Nickel (Ni).~~
~~(T) Selenium (Se).~~

35:2-3-2.3. Schedule of meat chemistry testing fees

(a) Antibiotics - $50.00.
(b) Benzoate - $20.00.
(c) Cereal - $20.00.
(d) Corn syrup solids - $32.00.
(e) Fat, screening - $14.00.
(f) Fat, total - $30.00.
(g) Imidazole - $20.00.
(h) Maximum internal temperature - $10.00.
(i) Non-fat dry milk - $32.00.
(j) Phosphate - $20.00.
(k) Protein, total - $20.00.
(l) Salt - $20.00.
(m) Sodium nitrite, quantitative - $20.00.
(n) ~~Soy flour - $18.00.~~
~~(o)~~ Soy protein~~ concentrate~~ - $18.00.
(~~p~~o) Species determination - $25.00.
(~~q~~p) Sulfite, qualitative - $9.00.
~~(r) Sulfite, quantitative - $12.50.~~
(~~s~~q) Water, total - $10.00.

35:2-3-2.4. Schedule of dairy, food, water, and microbiological testing fees

(a) Aerobic plate count - ~~$10.00~~$12.00.
(b) Bacillus cereus, confirmed - $61.00.
(c) Bacillus cereus, presumptive - $14.00.
(d) Campylobacter - ~~$20.00~~$25.00.
(e) Clostridium perfringens - ~~$14.00~~$20.00.
(f) Coliform (PA or MF) - ~~$10.00~~$12.00.
(g) Confirmed membrane filter (MF), lauryl sulfate tryptose (LST) and brilliant green bile (BGB) - ~~$7.00~~$10.00.
(h) E. coli - ~~$20.00~~$25.00.
(i) E. coli O157 - ~~$20.00~~$25.00.
(j) Enterococcus - ~~$10.00~~$12.00.
(k) Fecal coliform, membrane filter (MF), or most probable number (MPN) - $10.00.
(l) Filth and adulteration of foods, gross examination - ~~$5.00~~$10.00.
(m) Gram stain - ~~$5.00~~$10.00.
(n) Listeria - $25.00.
(o) pH food products - $10.00.
(p) Plate count, coliform - ~~$10.00~~$12.00.
(q) Residual bacteria count - ~~$10.00~~$12.00.
(r) Residual coliform count - ~~$10.00~~$12.00.
(s) Ribotyping, individual bacteria - $105.00.
(t) Salmonella - ~~$20.00~~$25.00.
(u) Shigella - ~~$20.00~~$25.00.
(v) Staphylococcus - ~~$20.00~~$25.00.
(w) Staphylococcus, confirmation of coagulase + - ~~$5.00~~$10.00.
(x) Swab or utensil count - ~~$10.00~~$12.00.
(y) Thermometer check - $15.00.
(z) Water activity - 30.00.
(aa) Yeast and mold count - ~~$9.00~~$18.00.
(bb) Antibiotics in dairy products (non-permitted dairies) - $15.00.
(cc) Sulfa and tetracycline drugs in milk - $20.00.
(dd) Fat (percent) in milk and milk products (raw) - $6.00.
(ee) Direct microscopic somatic cell count - $8.00.
(ff) Electronic somatic cell count - $8.00.
(gg) Added water in milk - $12.00.
(hh) Fat, protein, and lactose (pasteurized milk and retail products) - $6.00.

35:2-3-2.6. Schedule of water and sediment inorganic testing fees

(a) Alkalinity, total - ~~$10.00~~$15.00.
(b) Biochemical oxygen demand, 5-day (BOD5) - ~~$35.00~~$37.00.
(c) Biochemical oxygen demand, 20-day (BOD20) - ~~$45.00~~$47.00.
(d) Biochemical oxygen demand, 30-day (BOD30) - ~~$50.00~~$52.00.
(e) Carbonate/Bicarbonate - ~~$10.00~~$20.00.
(f) Chloride - ~~$15.00~~$20.00.
(g) Electrical conductivity (EC) - ~~$5.00~~$10.00.
(h) Hardness - $25.00.
(i) Ion balance, cation/anion balance - $85.00.

(j) Ion screen, anions (chloride, sulfate, nitrate-nitrogen, and nitrite-nitrogen) - ~~$25.00~~$40.00.
(k) Ion screen, cations (sodium, potassium, calcium, and magnesium) - ~~$25.00~~$40.00.
(l) Kjeldahl nitrogen, total (TKN) - $20.00.
(m) Monochromatic chlorophyll a and pheophytin - $40.00.
(n) Monochromatic chlorophyll a and pheophytin, pre-extracted and ground - ~~$7.00~~$10.00.
(o) Nitrogen from ammonia - ~~$15.00~~$20.00.
(p) Nitrogen from nitrates - ~~$15.00~~$20.00.
(q) Nitrogen from nitrites - ~~$15.00~~$20.00.
(r) pH - ~~$5.00~~$10.00.
(s) Phosphorus from ortho-phosphorus - $15.00.
(t) Phosphorus, total (TP) - ~~$20.00~~$24.00.
(u) Solids, total dissolved (TDS) - ~~$15.00~~$22.00.
(v) Solids, total suspended (TSS) - ~~$15.00~~$22.00.
(w) Sulfate - ~~$15.00~~$20.00.
(x) Trichromatic chlorophyll a, b, and c - $35.00.
(y) Turbidity - ~~$10.00~~$15.00.
(z) LMFO assessment for licensed managed feeding operations pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, Title 2 of the Oklahoma Statutes, Section 20-12 (electrical conductivity, pH, ammonia-nitrogen, nitrate-nitrogen and total phosphorus) - ~~$33.00~~$45.00.
(aa) Water well assessment (non-potable) (anion screen, hardness, pH, total alkalinity, and TDS) - ~~$80.00~~$90.00.

35:2-3-2.8. Schedule of Oklahoma Bureau of Standards testing fees

(a) Mass Echelon III.
(1) Tolerance test weights not adjusted:
(A) Up to and including 10 lbs/5 kg - $7.00.
(B) Over 10 lbs/5 kg and up to 50 lbs/30 kg - $12.00.
(C) Over 50 lbs/30 kg and up to 1,000 lbs/500 kg - $18.00.
(D) Over 1,000 lbs/500 kg and up to 2,500 lbs/1,250 kg - $40.00.
(E) Over 2,500 lbs/1,250 kg and up to 6,000 lbs/3,000 kg - $75.00.
(F) Weight carts up to 6,000 lbs/3,000 kg - $250.00.
(2) Tolerance test weights when adjusted:
(A) Up to and including 10 lbs/5 kg - $21.00.
(B) Over 10 lbs/5 kg and up to 50 lbs/30 kg - $36.00.
(C) Over 50 lbs/30 kg and up to 1,000 lbs/500 kg - $54.00.
(D) Over 1,000 lbs/500 kg and up to 2,500 lbs/1,250 kg - $120.00.
(E) Over 2,500 lbs/1,250 kg and up to 6,000 lbs/3,000 kg - $225.00.
(F) Weight carts up to 6,000 lbs/3,000 kg - $750.00.
(b) Mass Echelon II.
(1) Tolerance test weights not adjusted:
(A) Up to and including 2 lbs/1 kg - $20.00.
(B) Over 2 lbs/1 kg and up to 20 lbs/10 kg - $40.00.
(C) Over 20 lbs/10 kg and up to 50 lbs/30 kg - $80.00.
(D) Over 50 lbs/30 kg and up to 2,500 lbs/1,250 kg - $100.00.
(2) Tolerance test weights when adjusted:
(A) Up to and including 2 lbs/1 kg - $60.00.
(B) Over 2 lbs/1 kg and up to 20 lbs/10 kg - $120.00.
(C) Over 20 lbs/10 kg and up to 50 lbs/30 kg - $240.00.
(D) Over 50 lbs/30 kg and up to 2,500 lbs/1,250 kg - $300.00.
(c) Mass Echelon I.
(1) Test weights not adjusted:
(A) Up to and including 1 kg - $60.00.
(B) Over 1 kg and up to 30 kg - $100.00.
(2) Test weights when adjusted:
(A) Up to and including 1 kg - $180.00.
(B) Over 1 kg and up to 30 kg - $300.00.
(d) Volume transfer tests:
(1) Up to and including 5 gal/20 liters - $40.00.
(2) Over 5 gal/20 liters and up to 50 gal/200 liters - $100.00.
(3) Over 50 gal/200 liters and up to 100 gal/400 liters - $200.00.
(4) Over 100 gal/400 liters and up to 150 gal/600 liters - $250.00.
(5) Over 150 gal/600 liters and up to 200 gal/800 liters - $300.00.
(6) Over 200 gal/800 liters and up to ~~375~~400 gal/~~1,500~~1,600 liters - ~~$450.00~~$400.00.
(7) Over 400 gal/1,600 liters and up to 600 gal/2,400 liters - $500.00.
(8) Over 600 gal/2,400 liters and up to 800 gal/3,200 liters - $600.00.
(9) Over 800 gal/3,200 liters and up to 1,200 gal/4,800 liters - $700.00.
(10) Over 1,200 gal/4,800 liters and up to 1,600 gal/6,400 liters - $800.00.
(e) Volume gravimetric tests:
(1) Up to and including 1 qt/1 liter - $75.00.
(2) Over 1 qt/1 liter and up to 5 gal/20 liters - $200.00.
(3) Over 5 gal/20 liters and up to 50 gal/200 liters - ~~$500.00~~$400.00.
(4) Over 50 gal/200 liters and up to 100 gal/400 liters - $600.00.
(f) Volume LPG Provers up to and including 100 gal/400 liters - $500.00.
(g) Length calibration per point - ~~$7.00~~$15.00.
(h) Cleaning of standards, handling, and packing - $50.00 per hour.
(i) Minimum fee per calibration certificate - $40.00.

[OAR Docket #08-721; filed 4-25-08]

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

[OAR Docket #08-722]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fine Schedules
Part 11. Livestock Market Violations
35:3-1-11 [NEW]
35:3-1-12 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 2-18, 9-130 et seq., and 9-141 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2008
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Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rules is to create a fine matrix for the Livestock Dealers Act and the Livestock Auction Market Act to address the imposition of administrative penalties in relation to violations of the Oklahoma Agricultural Code and corresponding rules. The implementation of the fine matrices in the rules will provide guidance to the Department and to the public on potential fines for specific violations. Penalties for referenced violations will be more consistently applied, while still allowing the Department to make determinations on a case-by-case basis.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. FINE SCHEDULES

PART 11. LIVESTOCK MARKET VIOLATIONS

35:3-1-11. Livestock dealers

(a) Failure to obtain a license or operating without a license.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(b) Failure to complete renewal license, including submission of the completed application, copy of bonding instrument, and appropriate license fees by December 31.
(1) First violation - $100 to $200
(2) Second violation - $150 to $500
(3) Subsequent violations - $250 to $10,000

(c) Failure to pay for livestock purchases as required by the Livestock Dealers Act.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(d) Failure to keep records pursuant to the Livestock Dealers Act.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(e) Failure to comply with any other provision of the Livestock Dealers Act.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(f) Each day a violation is committed or continues is deemed to be a separate offense.

(g) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

35:3-1-12. Livestock auction markets

(a) Conducting a livestock auction market without a valid bond pursuant to the Livestock Auction Market Act.
(1) First violation - $1,000 to $5,000
(2) Second violation - $2,500 to $7,500
(3) Subsequent violations - $5,000 to $10,000

(b) Failure to properly deposit custodial funds.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(c) Improper disbursement of custodial funds.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(d) Shortages in custodial accounts.
(1) First violation - $250 to $1,000
(2) Second violation - $500 to $3,000
(3) Subsequent violations - $1,500 to $10,000

(e) Failure to keep adequate records.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(f) Failure to comply with any other provision of the Livestock Auction Markets Act.
(1) First violation - $100 to $500
(2) Second violation - $250 to $750
(3) Subsequent violations - $500 to $10,000

(g) Each day a violation is committed or continues is deemed to be a separate offense.
(h) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

[OAR Docket #08-722; filed 4-25-08]

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

[OAR Docket #08-637]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 16. Contagious Equine Metritis
35:15-16-1 [AMENDED]
Subchapter 36. Scrapie
35:15-36-1 [AMENDED]
35:15-36-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2; 6-124, and 6-152; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 9 CFR 2007 Revision, Section 93-301
Title 9 CFR 2007 Revision, Part 79 et seq. with the exception of the following regulations: 79.6 and 79.7
Incorporating rules:
35:15-16-1
35:15-36-1
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105-4298, 405-522-4576
ANALYSIS:
The proposed rules update the incorporation by reference of the Code of Federal Regulations for Contagious Equine Metritis and Scrapie.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 16. CONTAGIOUS EQUINE METRITIS

35:15-16-1. Incorporation by reference
(a) The contagious equine metritis regulation found in Title 9 of the Code of Federal Regulations (CFR) (~~2006~~2007 Revision), Section 93-301 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, is hereby adopted in its entirety.
(b) All words and terms defined or used in the federal regulation incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

SUBCHAPTER 36. SCRAPIE

35:15-36-1. Incorporation by reference of federal regulations
(a) The Scrapie in Sheep and Goats Regulations found in Title 9 of the Code of Federal Regulations (CFR) ~~2006~~2007 Revision, Part 79 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:15-36-2.
(b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

35:15-36-2. Deleted regulations
The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (~~2006~~2007 Revision) of the USDA incorporated by reference under 35:15-36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

[OAR Docket #08-637; filed 4-11-08]

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

[OAR Docket #08-723]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
35:15-40-1 [AMENDED]
Part 7. Import Requirements

35:15-40-92 [AMENDED]
35:15-40-93 [NEW]

AUTHORITY:
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Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
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Part 7. Import Requirements
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ANALYSIS:
These rules provide new tuberculosis requirements for rodeo bulls used for exhibition purposes in the state, and provide entry requirements for Mexican origin steers and spayed heifers. New rules for brucellosis requirements of rodeo bulls were previously approved by the Board. Tuberculosis positives in rodeo stock have recently occurred in several states. During those investigations, it was discovered that Mexican cattle have entered Oklahoma illegally. These rules clarify the tuberculosis entry requirements and help ensure that Oklahoma keeps its tuberculosis free status. These rules were originally approved as emergency rules.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

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

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

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

"Adjacent Herd" means a group or groups of animals sharing common pasture, or having other direct contact with an affected herd, and herds containing previous purchases from or exchanges with an affected herd. Herds separated by a single fence are considered contact or adjacent herds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Mexican origin" means cattle that originate or have ever resided in Mexico.

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

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

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

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

"No Gross Lesion (NGL) Animals" means any cattle, bison, or dairy goats that do not reveal a lesion of bovine tuberculosis upon postmortem inspection. Any animal with skin lesions alone shall be considered a NGL animal.

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

"Official in charge" means any manager, superintendent, secretary, or other person responsible for an exhibition.

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

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

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

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

"Rodeo bulls" means sexually intact male cattle kept for performances at rodeos, bucking events, or for exhibition purposes.

"Routine Screening Tuberculin Test" means a caudal fold tuberculin test, or any other test that may be approved by the USDA, conducted as part of an area eradication program in

which all responding animals are reported without classification to the State Veterinarian.

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

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

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

PART 7. IMPORT REQUIREMENTS

35:15-40-92. Importation of Mexican origin steers and spayed heifers ~~from Mexico~~

(a) ~~Steers~~Mexican origin steers and spayed heifers ~~from Mexican states that have been determined by the State Veterinarian of Oklahoma, based on the recommendation of the Bi-National Committee, to have fully implemented the Control/Preparatory Phase of the Mexican Tuberculosis Eradication Program~~ imported as stocker, feeder, slaughter animals may enter Oklahoma provided they ~~have been tested~~test negative for tuberculosis in accordance with the Norma Official Mexicana (NOM) within sixty (60) days prior to entry into ~~the United States and~~Oklahoma and they obtain a telephone entry permit prior to entering Oklahoma~~.~~ providing the following information:

(1) a certificate of veterinary inspection containing the individual identification and all tag numbers, tuberculosis testing information, statement that the animals are "Mexican Origin Cattle," and complete consignor or consignee information including telephone numbers; and

(2) a VS Form 17-30.

(b) ~~Steers~~Mexican origin steers and spayed heifers ~~from Mexican states that have been determined by the State Veterinarian of Oklahoma, based on the recommendation of the Bi-National Committee, to have fully implemented the Eradication Phase of the Mexican Tuberculosis Eradication Program by March 1, 1997, may enter Oklahoma provided they have been tested negative for tuberculosis in accordance with the Norma Official Mexicana (NOM) within 60 days prior to entry into the United States. Steers and spayed heifers from these same Mexican states that originate from herds equal to U.S. Accredited TB-Free herds may enter Oklahoma without testing provided they are moved directly from the herd of origin across the border as a single group and not commingled with other cattle prior to arriving at the border and obtain a telephone entry permit prior to entering Oklahoma.~~and any commingled cattle shall not be diverted from the stocker, feeder, slaughter channel.

(c) ~~Steers~~Mexican origin steers and spayed heifers ~~from Mexican states that have been determined by the State Veterinarian of Oklahoma, based on the recommendation of the Bi-National Committee, to have achieved Accredited Free status may enter Oklahoma without testing provided they are moved as a single group and~~ shall not be commingled with any cattle ~~of a different status prior to arriving at the border and obtain a telephone entry permit prior to entering Oklahoma~~ other than stocker, feeder, slaughter cattle.

(d) Holstein and Holstein-cross steers and spayed heifers from Mexico ~~are prohibited from entering~~shall not enter Oklahoma regardless of test history.

(e) ~~Rodeo~~Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock ~~from Mexico must be tested negative for tuberculosis within 60 days prior to their utilization as rodeo or roping stock under the supervision of a USDA/APHIS port veterinarian or by a U.S. Accredited veterinarian, retested for tuberculosis every 12 months thereafter, and obtain a telephone entry permit prior to entering Oklahoma. No sexually intact rodeo stock from Mexico will be permitted into Oklahoma.~~prior to entry into Oklahoma shall obtain an entry permit, provide individual identification and all tag numbers, and be accompanied by a negative tuberculosis test that meets one of the following:

(1) Performed by an accredited veterinarian within the previous 365 days; or

(2) Performed in accordance with the Norma Official Mexicana (NOM), the animal is accompanied by a VS 17-30, and the animal is quarantined upon entry into Oklahoma until retested by an accredited veterinarian within sixty (60) to one hundred twenty (120) days of the original tuberculosis test.

(f) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock moving within the state shall meet the following requirements:

(1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days;

(2) Be identified with an official eartag; and

(3) There is no change of ownership since the date of the last official test.

(g) No sexually intact Mexican origin rodeo stock shall enter Oklahoma.

(h) The official in charge shall be responsible for verifying that all Mexican origin cattle utilized as rodeo stock entering any exhibition meet all testing requirements.

(1) The official in charge shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.

(2) Any person providing erroneous or fictitious information shall be in violation of these rules.

(i) Any official in charge who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

35:15-40-93. Rodeo bulls

(a) Rodeo bulls may move into the State of Oklahoma provided:

(1) The rodeo bull is accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days and the test was performed in the name of the current owner;

(2) The bull is identified with an official eartag;

(3) A certificate of veterinary inspection accompanies each interstate movement of the bull; and

(4) A permit for entry is issued for each interstate movement of the bull.

(b) Rodeo bulls moving within the state shall meet the following requirements:

(1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days and the test was performed in the name of the current owner; and

(2) Be identified with an official eartag.

(c) The official in charge shall be responsible for verifying that all rodeo bulls entering any exhibition meet all testing requirements.

(1) The official in charge shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.

(2) Any person providing erroneous or fictitious information shall be in violation of these rules.

(d) Any official in charge who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

[OAR Docket #08-723; filed 4-25-08]

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

[OAR Docket #08-638]

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Part 13. Certified Brucellosis-Free Cervid Herds
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ANALYSIS:
This rule is necessary to protect the cervid industry in Oklahoma from unnecessary injury or fatality to cervidae. Due to the fractious nature of cervidae, frequent testing often results in injury or death to the animals, and also can result in injury to the handler. Testing of cervidae for Brucellosis was on the same schedule as Tuberculosis for maintenance of Certified Brucellosis Free herd status. The Tuberculosis requirements were changed previously from three tests to two tests annually and to increase the time period for recertification from two years to three years. This rule proposes to adopt the same time periods as the Tuberculosis testing for Brucellosis testing in cervidae. This rule was previously adopted as an emergency rule.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 45. BRUCELLOSIS IN CERVIDAE

PART 13. CERTIFIED BRUCELLOSIS-FREE CERVID HERDS

35:15-45-131. Qualifying methods

(a) Certified Brucellosis-Free cervid herd status ~~must~~shall include all test-eligible animals in the herd. A certified herd may be purchased~~,~~ or a herd may qualify for Certified Brucellosis-Free cervid herd status by complete herd testing.

(b) For initial certification, all sexually intact test-eligible cervids in the herd ~~must~~shall have ~~three~~two consecutive negative tests for brucellosis not less than ~~9 or~~nine (9) nor more than ~~15~~fifteen (15) months apart.

(c) A herd test is not required if the purchased animals remain on the same premises. Upon request and with proof of purchase, a new certificate ~~will~~may be issued in the new owner's name. The anniversary date and the herd number ~~will~~ remain the same.

(d) If part or all of the purchased herd is moved directly to premises that have no other animals, the herd may retain Certified Brucellosis-Free cervid herd status without a test. The anniversary date of the new herd ~~will be~~is the test date of the most recent complete herd test.

35:15-45-132. Conditions

(a) A herd is certified for ~~24~~thirty-six (36) months.

(b) For continuous certification, all test-eligible animals in the herd ~~must~~shall have a negative test for brucellosis between ~~21~~thirty-three (33) and ~~27~~thirty-nine (39) months after the last certification date. If suspects or reactors are found on recertification testing, certification status ~~will~~shall be terminated and a herd investigation ~~will be~~ initiated.

(c) ~~Animals~~Test-eligible animals originating in a Certified Brucellosis-Free cervid herd and moving into a Certified Brucellosis-Free cervid herd ~~do not need to be tested prior to movement. However, if the animals are~~ not tested prior to movement~~, the test-eligible animals will~~ shall be tested between ~~60~~sixty (60) and ~~180~~one hundred eighty (180) days after addition to the certified herd.

(d) Animals purchased from cervid herds not Certified Brucellosis-Free ~~cannot~~shall not be considered part of the certified herd until three (3) blood tests have been conducted. The first test shall occur within ~~30~~thirty (30) days prior to movement from the herd ~~or~~of origin, the second test between ~~60~~sixty (60) and ~~180~~one hundred eighty (180) days after addition to the Certified Brucellosis-Free cervid herd, and the third test as a part of the next complete herd blood test for recertification following the second test.

(e) If a herd consists of both cattle and Cervidae, the requirements for herd certification ~~must~~shall be consistent with those for cattle as described in 35:15-17-64 through 35:15-17-66.

(f) The State animal health official and the APHIS AVIC ~~will~~may issue a Certified Brucellosis-Free cervid herd certificate when the herd first qualifies. For recertification, the State animal health official ~~will~~may issue a renewal form~~, which must also be~~ approved by the APHIS AVIC.

[OAR Docket #08-638; filed 4-11-08]

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

[OAR Docket #08-639]

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RULES:
Subchapter 11. Eucha-Spavinaw Management Act [NEW]
35:17-11-1 [NEW]
35:17-11-2 [RESERVED]
35:17-11-3 [NEW]
Appendix A. Eucha-Spavinaw Phosphorus Index [NEW]
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Subchapter 11. Eucha-Spavinaw Management Act [NEW]
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Appendix A. Eucha-Spavinaw Phosphorus Index [NEW]
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25 Ok Reg 69
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ANALYSIS:
These rules fulfill the requirements of House Bill 1490 of the 2007 legislative session by promulgating rules to implement the provisions of the Eucha-Spavinaw Management Act. These rules were previously approved as emergency rules. The rules apply to all persons utilizing poultry waste for land application purposes in the Eucha-Spavinaw Watershed. Specifically, these rules incorporate the Eucha-Spavinaw phosphorus index that is currently in use in that watershed into state law and makes the index enforceable by the Department.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 11. EUCHA-SPAVINAW MANAGEMENT ACT

35:17-11-1. Purpose

The purpose of these rules is to implement the provisions of the Eucha-Spavinaw Management Act and these rules shall apply to all persons utilizing poultry waste for land application purposes in the Eucha-Spavinaw Watershed. In no case shall the provisions of these rules be construed to apply to any persons applying poultry waste for land application purposes in any watershed other than the Eucha-Spavinaw Watershed.

35:17-11-2. [RESERVED]

35:17-11-3. Phosphorus index

(a) The Eucha-Spavinaw phosphorus index for the land application of poultry waste shall be determined pursuant to the criteria and formulas contained in Appendix A of this Subchapter.

(b) Poultry waste shall not be applied to any land application site having a Soil Test Phosphorus (STP) level of 300 mg/kg (milligrams per kilogram) or greater, as determined by the Mehlich-III extractant, ICP analysis method.

(c) Soil samples for analysis of Soil Test Phosphorus shall be collected from zero inches to four inches in depth, or to the actual depth of the soil if less than four inches.

(d) Poultry waste samples for determination of soluble phosphorus shall be analyzed pursuant to the method found on page 74 of "Methods of Phosphorous Analysis for Soils, Sediments, Residuals, and Waters," SERA-IEG 17 Southern Cooperative Series Bulletin No. 396.

(e) Where the index refers to best management practices (BMPs), eligible practices shall adhere to United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standards for Water Quality.

(f) The Eucha-Spavinaw phosphorus index shall also include the following maximum application rates:

(1) The maximum amount of poultry waste that may be applied under any condition during the fall application season is two tons per acre.

(2) The maximum amount of poultry waste that may be applied during any season to fescue or other cool season grasses is two tons per acre.

(3) The maximum amount of poultry waste that may be applied during the spring and summer seasons (April to June) to Bermuda fields with greater than fifty percent Bermuda mix is three tons per acre.

(4) The maximum application limits shall supersede even if the calculated ESPI PI would otherwise allow greater application rates.

(g) Under no circumstances shall poultry waste application rates exceed Nitrogen requirements for the crop.

(h) Land application of poultry waste shall be based on the Eucha-Spavinaw phosphorus index but shall also be limited by other applicable statutes or rules where those statutes or rules are more stringent.

APPENDIX A. EUCHA-SPAVINAW PHOSPHORUS INDEX [NEW]

The Phosphorus Index Concept

The original Phosphorus Index (PI) was developed to assist field staff working with landusers to identify sensitive areas and recommend management alternatives to reduce risk of P losses (Lemunyon and Gilbert, 1993). Parameters which influence P availability, retention, management, movement, and uptake are included in the PI. The PI has been developed as a risk assessment tool for P runoff potential from individual fields within a watershed. This assessment is based on soil and field characteristics as well as management practices within each field. Fields having low or high P runoff potential may be identified through the use of the PI and may be prioritized for nutrient application and soil management practices. The PI is designed to assess the relative risks of P loss, not a quantity of P lost in runoff. This document is intended to provide background information for a version of the P Index developed specifically for the Eucha-Spavinaw watershed.

Most states (44) have developed a PI for specific conditions and management practices within each state. Some states have begun to incorporate runoff data to determine weightings for certain parameters. One of the first states to use actual runoff data was Arkansas in the development of a PI for Pastures (DeLaune et al., 2004). Most recent versions of the PI use a multiplicative matrix rather than an additive matrix. The first component considers factors that account for the amount of P on site or being added to the site (P source potential). The second component considers factors that affect P movement and potential off-site transport (P transport potential). The sum of each individual matrix is then multiplied to obtain the P Index.

Calculating the Eucha-Spavinaw Phosphorus Index

The Eucha-Spavinaw PI (ESPI) is based on the Arkansas PI for Pastures. Eight site characteristics are included in the ESPI; they are grouped into P Source and P Transport categories. The ESPI include the following factors: (1) soil test P, (2) soluble P application rate, (3) soil erosion factor, (4) method of P application, (5) soil runoff class, (6) flooding frequency, (7) timing of P application, and (8) grazing management. Based on the ESPI, fields are assigned a class of low, medium, high, or very high.

The ESPI is calculated by multiplying the values for the P source potential and the P transport potential and BMPs, as

follows;

ESPI = (P Source Potential * P Transport Potential * BMPs)/1.8*100 ***(eq.1)***

Calculating Phosphorus Source Potential

Three sources of P are considered in determining the P Source Potential: soil test P (Mehlich III), soluble manure P, and particulate P soil erosion factor (Table 1).

P Source = 0.4 * lb/ac soluble manure P as poultry litter + 0.0007 * lb/ac soil test P + RUSLE2 value * lb/ac soil test P ***(eq. 2)***

Soil Test P. Soil test P should be determined by collecting a representative soil sample from the field and sending the sample to the appropriate soil testing laboratory. Soil test P should be determined using the Mehlich III procedure (Mehlich, 1984). The value reported by the testing laboratory (lb P/ac) is entered into *eq. 2* after conversion to lb P/ac by multiplying by 1.33.

Soluble Manure P. The soluble manure P applied is determined by collecting and analyzing the manure which is applied to the field. Soluble P in the manure should be determined using the method described by Self-Davis and Moore (2000). The amount of soluble P applied to a field is entered into *eq. 2*.

Particulate P Soil Erosion Factor. The erosion factor is calculated by multiplying the annual erosion rate (as calculated by RULSE2) by soil test P and dividing by a conversion factor (667 ton soil/ac).

Calculating Phosphorus Transport Potential

Five factors of P transport are considered in determining the P Transport Potential: soil runoff class, flooding frequency, method of application, timing of application, and grazing management (Table 2).

P Transport = runoff class + flooding frequency + application method + application timing + grazing management ***(eq. 3)***

Soil Runoff Class. The soil runoff class is determined using slope gradient and the runoff curve number of the soil (Tables 3

and 4).
Flooding Frequency. The flooding frequency for each soil series is found in the Soil Survey for each particular county. Fields are grouped into land that is never flooded (none), occasionally flooded, or frequently flooded.
Application Method. Application method refers to how the farm manager will apply the manure to a field. The categories include: incorporated, surface applied, or surface applied on frozen or snow covered ground.
Application timing. Timing of application was determined by evaluating historical runoff data as well as seasonal crop growth specific to the Eucha-Spavinaw watershed. Times frames are (with increasing risk for runoff): July-October, April-June, November-March.
Grazing Management. Grazing management is subdivided into three management scenarios: pastures which are hayed only, hayed and grazed, and grazed only. A pasture under intensive grazing would be expected to have a higher risk for P runoff than a pasture with no grazing due to compaction and additional P inputs from cattle.

Best Management Practices (BMPs)

A farmer is given credit for the use of BMPs which may reduce the ESPI, such as fencing around streams to prevent cattle access. These include those BMPS which are not accounted for in the ESPI (i.e. alum is accounted for in the P source factor, therefore it is not listed as an additional BMP). Each BMP is given a weighting factor of 0.9. The final P Index value is multiplied by each BMP that may be utilized within a watershed.

ESPI with BMPS = ESPI * 0.9 for each BMP

Example: System with 2 BMPS

ESPI = Initial ESPI * 0.9 * 0.9

More research is needed to determine the effectiveness of each BMP and to identify potential BMPs.

Interpretation and Recommendations of the ESPI

Once the ESPI is calculated using eq. 1, fields are assigned a class of low, medium, high, or very high. Each class is associated with a site interpretation and nutrient application recommendation (Table 5). ESPI values range from 0 to >100 and

are unitless, which follow an initiative by other Indexes used in the Northeastern and Mid-Atlantic Regions to ensure that Indexes are consistent across state boundaries. Consistent with other Indexes, ESPI is designed to assess the relative risks of P loss, not a quantity of P lost in runoff.

Table 1 - Phosphorus Source Potential Characteristics and Calculations

Site Characteristic	**Description**	**Loss value**
Soil Test P (lb/ac)	The amount of Plant available P in the soil, as measured by soil test.	
Loss rating value	**0.0007 x Mehlich III Soil Test P Value**	**LRV**
Soluble manure P rate (lb/ac)	The amount of soluble P applied per acre, lbs. SRP/acre.	
Loss rating value	**0.4 x ___ lbs. soluble P applied as poultry litter**	**LRV**
Particulate P Soil erosion factor (tons/ac/yr)	The amount of soil erosion as calculated by RUSLE2 x STP. RUSLE (Ton A) * STP (lb A) / 667 Ton A	
Loss rating value	**RUSLE2 value x Mehlich III Soil Test P Value**	**LRV**
P source value = (Loss rating value for soil test P + Loss rating value for soluble manure P + Loss rating value for particulate P from soil erosion factor)		

Table 2 - Phosphorus Transport Potential Characteristics and Calculations

Site Characteristic	**Description**					**Loss Value**
Soil runoff class	Negligible	Low	Moderate	High	Very High	
Loss rating value	**0.1**	**0.2**	**0.3**	**0.5**	**1.0**	**LRV**
Flooding frequency	None	Occasional	Frequent			
Loss rating value	**0**	**0.1**	**2.0**			**LRV**
Application method	Incorporated	Surface applied	Surface applied on frozen ground or snow			
Loss rating	**0.1**	**0.2**	**0.5**			**LRV**

value				
Application timing	July-Oct	April-June	Nov-March	
Loss rating value	**0.1**	**0.4**	**0.5**	**LRV**
Grazing Management	Hayed only	Grazed and hayed	Grazed only	
Loss rating value	**0.1**	**0.2**	**0.3**	**LRV**
P Transport = (runoff class + flooding frequency + application method + application timing + grazing management)				

Table 3 - Partial listing of runoff curve numbers.

Cover type	Hydrologic Condition	Soil Hydrologic Group			
		A	B	C	D
	Poor	68	79	86	89
Pasture	Fair	49	69	79	84
	Good	39	61	74	80
Hayland not grazed		30	58	71	78

Table 4 -Runoff class based on field slope and runoff curve number.

Slope %	Runoff Curve Number							
	<50	50-60	60-65	66-70	71-75	76-80	81-85	>85
<1	N	N	N	N	N	L	L	M
1.1-3	N	N	N	L	L	L	M	M
3.1-8	N	N	L	L	M	M	H	H
8.1-15	L	L	L	M	M	H	H	VH
>15	L	L	M	M	H	H	VH	VH
N=Negligible, L=Low, M=Moderate, H=High, VH=Very High								

Table 5. ESPI Interpretation and Nutrient Application

Recommendations

P Index Scale	Site Interpretations and Recommendations
< 33	**Low** potential for P movement from site. Apply nutrients based on ESPI calculation. Caution against long-term P buildup.
34 to 55	**Medium** potential for P movement from site. Evaluate the Index and determine any areas that could cause long-term concerns. Add conservation practices or reduce P application to maintain the risk at **55** or below. Apply nutrients based on ESPI calculation.
56 to 100	**High** potential for P movement from site. Evaluate the Index and determine elevation cause. Add appropriate conservation practices and/or reduce P application. The immediate planning target is a PI value of **55** or less. If this target cannot be achieved with realistic conservation practices and/or reduced P rates in the short term, then a progressive plan needs to be developed with a long-term goal of a PI less than **55**. Apply nutrients to meet ***crop phosphorus needs*** according to NRCS Nutrient Management standard (590). ***Application rates based on crop phosphorus needs are generally less than 1 ton/ac. Since accurate, uniform applications at these low rates are rarely obtainable with conventional equipment, no litter (nutrient) application is recommended.***
>100	**Very High** potential for P movement from site. ***No litter (nutrient) application***. Add conservation practices to decrease this value to below **100** in the short term and develop a progressive conservation plan that would reduce the PI to a lower risk category, with a long-tem goal of a PI less than **55.**

Example 1

The following site characteristics from farm A are:

a) Soil test P = 300 lb/ac
b) Soluble Manure P = 500 mg P/kg manure or 1 lb soluble P per ton of manure.
Application rate is 2 tons manure/ac
2 tons manure/ac * 1 lb soluble P/ ton = 2 lb soluble manure P/ac
c) Soil erosion factor = RUSLE2 value is 0.10 ton/ac/yr
d) Manure is surface applied
e) Soil runoff class is Low (CN=74, Slope = 2%)
f) No flooding occurs
g) Application timing is May
h) Grazing management is grazed and hayed

Calculating P Source Potential

Soil test P (300 lb P/ac * 0.0007)	=	0.21
Soluble manure P rate (2 lb soluble P/ac * 0.4)	=	0.8
Soil Erosion Factor (0.10 ton/ac/yr * 300 lb/ac)/667	=	0.045
	=	**1.055**

Calculating P Transport Potential

Low runoff class	=	0.2
No flooding	=	0
Surface applied	=	0.2
Applied in May	=	0.4
Pasture is grazed and hayed	=	0.2
		1.0

ESPI = 1.055 * 1.0/(1.8*100) = 59

ESPI is 59, which is in the high risk category and nutrient applications are to be based on crop P needs. Since application rates based on phosphorus needs generally equate to <1 ton/ac and such application rates are not accurate, no litter is applied.

However, the ESPI for the same field could be re-calculated if a change in management was made, such as litter application rate. The application rate could be adjusted to 1.5 tons/ac. Calculating the ESPI for the field above with an application rate goal of 1.5 tons/ac would result in an ESPI of 48, which is in the medium risk category. Therefore, a litter application rate of 1.5 tons/ac would be allowed.

Background References:

Coale, F., and S. Layton. 1999. Phosphorus site index for Maryland. Report to the Northeast Phosphorus Index Work

Group. Univ. of Maryland., College Park, MD.

DeLaune, P.B., P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley. 2004. Development of a phosphorus index for pastures fertilized with poultry litter – Factors affecting phosphorus runoff. J. Environ. Qual. 33:2183-2191.

Gburek, W.J., A.N. Sharpley, and G.J. Folmar. 1998. Modifying the P index to account for transport pathways. Report to the SERA Transport Workgroup. USDA-ARS, University Park, PA.

Lemunyon, J.L., and R.G. Gilbert. 1993. The concept and need for a phosphorus assessment tool. J. Prod. Agric., 6: 483-486.

Mehlich, A. 1984. Mehlich 3 soil test extractant: A modification of Mehlich 2 extractant. Comm. Soil Sci. Plant Anal. 15:1409-1416.

Self-Davis, M.L., and P.A. Moore, Jr. 2000. Determining water-soluble phosphorus in animal manure. p. 74-76. In G.M. Pierzynski (ed.), Methods of Phosphorus Analysis for Soils, Sediments, Residuals, and Waters, Southern Cooperative Series Bulletin #396, Sept. 2000. (http://www.soil.ncsu.edu/sera17/publications/sera17-2/pm_cover.htm).

USDA-NRCS. 1999. Development of the phosphorus index. NRCS homepage. www.nhq.nrcs.usda.gov/BCS/nutri/manage.html.

[OAR Docket #08-639; filed 4-11-08]

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

[OAR Docket #08-640]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 6. Pesticidal Product Producing Establishments
35:30-17-13 [AMENDED]
Part 21. Standards for disposal of pesticide and pesticide containers
35:30-17-89.1 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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November 15, 2007 through December 17, 2007
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December 17, 2007
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December 18, 2007
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January 15, 2008
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Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2008
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March 27, 2008
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July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 40 CFR 2007 Revision, Part 167 et seq. and Part 169 et seq. with the exception of 40 CFR § 167.90; Part 156.140 et seq. and Part 165 et seq.
Incorporating rules:
35:30-17-13
35:30-17-89.1
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105-4298, 405-522-4576
ANALYSIS:
The proposed rules incorporate the date for the most recent version of the Code of Federal Regulations.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 6. PESTICIDAL PRODUCT PRODUCING ESTABLISHMENTS

35:30-17-13. Incorporation by reference of federal pesticide producing establishment regulations

(a) The Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports and Books and Records of Pesticide Production and Distribution Regulations found in Title 40 of the Code of Federal Regulations (CFR) ~~2006~~2007 Revision, Part 167 et seq. and Part 169 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of 40 CFR § 167.90.
(b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

PART 21. STANDARDS FOR DISPOSAL OF PESTICIDE AND PESTICIDE CONTAINERS

35:30-17-89.1. Incorporation by reference of federal pesticide management and disposal regulations

(a) The Labeling Requirements for Pesticides and Devices, Container Labeling and Pesticide Management and Disposal regulations found in Title 40 of the Code of Federal Regulations (CFR) ~~2006~~2007 Revision, Part 156.140 et seq. and Part 165 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety.
(b) All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

[OAR Docket #08-640; filed 4-11-08]

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

[OAR Docket #08-641]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2) and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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January 3, 2008
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Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2008
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Subchapter 17. Combined Pesticide
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
Gubernatorial approval:
January 15, 2008
Register publication:
25 Ok Reg 647
Docket number:
08-182
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule will reconcile the language in 35:30-17-21 that was approved in 2007 as two different rules utilizing the same rule number. Currently, the text of the two rules conflicts and is listed twice in the Oklahoma Administrative Code. In addition, the Department determined that the 2007 text revisions from one rule are no longer necessary, therefore this reconciliation is intended to replace both versions of the rule. The rule contains language related to recordkeeping for pesticide applicators and restricted use pesticide sales. This reconciliation effectively replaces any language requiring records to be kept by non-restricted use pesticide dealers. This rule was previously adopted as an emergency rule.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 9. MINIMUM STANDARDS FOR CONTRACTS AND KEEPING OF RECORDS

35:30-17-21. Records required for pesticide applications and restricted use pesticide sales

(a) Commercial and non-commercial applicators shall keep an accurate record pertaining to pesticide activities, which, at a minimum show:

(1) Start and stop time of application.
(2) Total amount of pesticide used.
(3) Name and address of the commercial or non-commercial company.
(4) Name and address of person for whom applied.
(5) Legal description of the land where applied. The legal description may be a street address ~~when~~if properly marked, but shall not be a Post Office Box address.
(6) Date of application.
(7) Application rate.
(8) Dilution rate for mixing.
(9) Total quantity tank mix used.
(10) Complete trade name of pesticide product used.
(11) EPA registration number of pesticide product used.
(12) Target pest for the application.
(13) Site where the pesticide was applied.
(14) Restricted Entry Interval as stated on the product label.
(15) A copy of the pesticide product label or labeling that is attached to the container or included in the shipping case.
(16) Copies of any contracts issued.
(17) Copies of any wood infestation reports issued.
(18) Other information as required by the Board.

(b) Restricted use pesticide dealers shall keep an accurate record of restricted use pesticide sales, which, at a minimum show:

(1) Complete brand name of the pesticide.
(2) EPA registration number of the pesticide.
(3) Date the pesticide was sold.
(4) Total amount of restricted use pesticide sold.
(5) Name of the person to whom sold.
(6) Name and license or certification number of the certified or private applicator.
(7) Other information as required by the Board.

(c) Failure to allow inspection of these records by the Board, to provide copies to the Board when requested in person, or to provide a summary of these records within seven (7) working days when requested by mail or in person shall be a violation of this section.

(d) The principle place of business where records are maintained shall be easily accessible to authorized agents of the Board during reasonable business hours. An applicator's principle place of business shall not be located in a closed gated community or at a residence unless the applicator submits a plan of access to the principle place of business and that plan is approved by the Board.

[OAR Docket #08-641; filed 4-11-08]

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

[OAR Docket #08-642]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 29. Fertilizer
Part 3. Liquid, Dry, and Anhydrous Ammonia
35:30-29-39 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(A)(2), 16, and (29), 2-18.1, and 8-77.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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August 1, 2007 through September 6, 2007
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September 6, 2007
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July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule provides standards for closure of bulk fertilizer facilities. The standards include but are not limited to notification to the State Board of Agriculture of closure, removal of all fertilizer contaminated materials, cleaning of storage facilities, and complete disconnect of all piping.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 29. FERTILIZER

PART 3. LIQUID, DRY, AND ANHYDROUS AMMONIA

35:30-29-39. Cessation of operations and facility closure

(a) If for any reason a bulk fertilizer storage facility is closed, or operations are discontinued, or by action of the Board it is ordered to cease operations, the owner shall be responsible for proper closure of the facility.

(b) The owner shall comply with the following closure requirements:

(1) Notify the Board in writing that the bulk fertilizer storage facility is being closed or operations discontinued.

(2) Remove all fertilizers and rinsates, wash waters, and other materials that contain fertilizers from the facility site and utilize them for the original intended purpose of the product or dispose of them in a manner approved by the Board.

(3) Thoroughly clean the liquid storage containers at the facility by double rinsing or the equivalent, as approved by the Board.

(4) The dry storage container or building shall be swept clean of all fertilizer and fertilizer containing materials.

(5) Inspect and thoroughly clean all areas where fertilizer may be deposited, including but not limited to interiors of walls, holes in the structure or floors, and any other location where fertilizer could be deposited.

(6) Empty all bulk anhydrous ammonia tanks and disconnect all lines to ensure the tanks can not be reused.

(7) Conduct any soil and water sampling at the facility as required by the Board.

(8) Complete any other conditions required by the Board.

(c) A post closure site facility inspection shall be performed by the Board to verify completion of all closure requirements.

(d) Based on soil and water sampling and inspections, if any contamination is identified at the facility caused by the storage of fertilizer, the owner shall submit a remediation plan for approval by the Department and shall remediate the site.

[OAR Docket #08-642; filed 4-11-08]

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

[OAR Docket #08-644]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Meat Inspection
Part 1. General Provisions
35:37-3-1 [AMENDED]
35:37-3-3 [AMENDED]
Subchapter 5. Poultry Products Inspection
Part 1. General Provisions
35:37-5-1 [AMENDED]
35:37-5-2 [AMENDED]
Subchapter 13. Milk and Milk Products
35:37-13-3 [REVOKED]
Appendix A. Chemical, Bacteriological and Temperature Standards for Milk and Milk Products [REVOKED]
Appendix A. Chemical, Bacteriological and Temperature Standards for Milk and Milk Products [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (24), (25), and (29); 6-181 et seq.; 6-251 et seq., 6-280.1 et seq., and 6-290.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Mandatory Meat Inspection Regulations, Title 9, Code of Federal Regulations (CFR) (2007 Revision) Parts 301 to 391; 416; 417; 424; 430; 441; and 500, except for 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329.6; 329.7; 329.8; 329.9; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; and 590.
Mandatory Meat Inspection Regulations, Title 9, Code of Federal Regulations (CFR) (2007 Revision)Parts 381; 416; 417; 424; 430; 441; and 500, except for 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.
Incorporating rules:
35:37-3-1 and 35:37-3-3
35:37-5-1 and 35:37-5-2
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105-4298, 405-522-4576
ANALYSIS:
The proposed rule changes update the incorporation by reference of Code of Federal Regulations citations. In addition, the revisions revoke the rule explaining the PMO and DMO interface because the DMO is incorporated into the PMO. Finally, Appendix A is revoked and reenacted to include references to goat milk standards.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

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

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2006~~2007 Revision), Parts 301 to 391; 416; 417; 424; 430; 441; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329.6; 329.7; 329.8; 329.9; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; and 590 (~~2006~~2007 Revision).

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

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

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2006~~2007 Revision), Parts 381; 416; 417; 424; 430; 441; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

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

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

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

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

(3) "Poultry" means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty (30) days of age).

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

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

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

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq.), (~~2006~~2007 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers who slaughter their own poultry raised on their farm, and each of the following apply:

(1) The producers slaughter no more than two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;

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

(3) The poultry and poultry products do not move in commerce. Poultry producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry producer;

(4) The producers submit a certificate of registration to the Board;

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

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

(7) The poultry producers, allow an authorized agent of the Board access to their facilities and an opportunity to examine records at all reasonable times upon notice.

SUBCHAPTER 13. MILK AND MILK PRODUCTS

35:37-13-3. Terms for interfacing with the PMO and the DMO [REVOKED]

~~For purposes of interfacing with the PMO and the DMO, the following terms apply:~~

~~(1) Entities designated by the symbol for footnote 1 in the introduction (page iv of the PMO) is synonymous with the State Board of Agriculture. In Item 7r, "Toilet" of Section 7 (pages 29 and 30 of the PMO) is synonymous with the State Board of Health. The entities designated by the symbol for footnote 1 in Section 2, "Adulterated or Misbranded Milk or Milk Products" (page 36 of the PMO), Section 3, "Permits" (page 35 of the PMO), Section 5, "Inspection of Dairy Farms and Milk Plants" (page 10 of the PMO), and Section 11, "Milk and Milk Products Which May Be Sold" (page 92 of the PMO) are synonymous with the State of Oklahoma.~~

~~(2) Ordinance is synonymous with these rules.~~

~~(3) Regulatory agency is synonymous with the Oklahoma Department of Agriculture, Food, and Forestry.~~

APPENDIX A. CHEMICAL, BACTERIOLOGICAL, AND TEMPERATURE STANDARDS FOR MILK AND MILK PRODUCTS [REVOKED]

APPENDIX A. CHEMICAL, BACTERIOLOGICAL, AND TEMPERATURE STANDARDS FOR MILK AND MILK PRODUCTS [NEW]

Individual Distributed Raw Milk and Raw Milk for Pasteurization, Aseptic Processing or Manufacturing	Temperature	Cooled to 7°C (45°F) or less within two hours after milking, provided that the blend temperature after the first and subsequent milkings does not exceed 10°C (50°F).
	Bacterial Limits (Grade A)	Individual-distributed raw milk not to exceed 35,000 per ml. Individual producer milk not to exceed 100,000 per ml prior to commingling with other producer milk. Not to exceed 300,000 per ml as commingled milk prior to pasteurization.
	Bacterial Limits (Manufacture Grade) (Note: Manufacture grade raw milk is raw milk that fails to comply with Grade A raw milk standards.)	Individual producer milk for manufacturing not to exceed 500,000 per ml prior to commingling with other producer milk. Not to exceed 1,000,000 per ml as commingled milk prior to manufacturing.
	Drugs	No zone greater than or equal to 16 mm with the Bacillus stearothermophilus disc assay method. No positive results on drug residue detection methods as referenced in Section 6 Laboratory Techniques.
	Somatic Cell Count (Grade A)	Individual producer milk: Not to exceed 750,000 per ml. Goat milk: 1,000,000 per ml.
	Somatic Cell Count (Manufacture Grade) (Note: Manufacture grade raw milk is raw milk that fails to comply with Grade A raw milk standards.)	Individual producer milk: Not to exceed 750,000 per ml. Goat milk: 1,000,000 per ml.

Grade A Pasteurized Milk and Milk Products and Bulk Shipped Heat Treated Milk Products	Temperature	Cooled to 7°C (45°F) or less and maintained thereat.
	Bacterial Limits	20,000 per ml (except cultured products).
	Coliform	Not to exceed 10 per ml.
	Phosphatase	Less than 1 microgram per ml by the Scharer Rapid Method (less than 500 milliunits/L by Fluorometric Procedure) or equivalent.
	Antibiotic	No zone greater than or equal to 16 mm with the Bacillus stearothermophilus disc assay method.
Grade A Aseptically Processed Milk and Milk Products	Temperature	None.
	Bacterial Limits	No growth by test specified in Section 6.
	Antibiotics	No zone greater than or equal to 16 mm with the Bacillus stearothermophilus disc assay method.
Ungraded (Manufacture Grade) Milk Products	Bacterial Limits (except cultured products)	Frozen dessert - 100,000 per ml. Soft-serve mix - 30,000 per ml.
	Coliform Limits	Frozen dessert - not to exceed 20 per ml. Soft-serve mix - not to exceed 10 per ml. Cottage cheese - not to exceed 10 per ml.
	Butterfat	Must match label.

[OAR Docket #08-644; filed 4-11-08]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #08-643]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Concentrated Animal Feeding Operations
35:44-3-3 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (16), and (29), 2-18.2, 2A-1 et seq., and 2A-21 et seq.; 27A O.S. § 1-3-101(D); and Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
November 15, 2007 through December 17,
Public hearing:
December 17, 2007
Adoption:
December 18, 2007
Submitted to Governor:
December 18, 2007
Submitted to House:
December 18, 2007
Submitted to Senate:
December 18, 2007
Gubernatorial approval:
January 15, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2008
Final adoption:
March 27, 2008
Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 40 CFR §§ 122.21 (a)-(b), (e) - (f), (i), and (p) (application for permit); §§ 122.23 (concentrated animal feeding operations); §§ 122.28 (General permits); §§ 122.42(e) (Conditions applicable to specified categories of permits).
Title 40 CFR Part 412 (Concentrated Animal Feeding Operations (CAFO) Point Source Category).
Incorporating rules:
35:44-3-3
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105-4298, 405-522-4576
ANALYSIS:
This rule updates the Code of Regulation Regulations date for the incorporation by reference of the permitting requirements for concentrated animal feeding operations.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. CONCENTRATED ANIMAL FEEDING OPERATIONS

35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2006~~2007.

[OAR Docket #08-643; filed 4-11-08]

TITLE 85. STATE BANKING DEPARTMENT CHAPTER 1. REQUIRED RULES

[OAR Docket #08-738]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. . General Provisions
85:1-1-1. Purpose [AMENDED]
85:1-1-2. Definitions [AMENDED]
85:1-1-4 . Operation and location of the Board and Department [AMENDED]
85:1-1-5. Communication with the Board and Commissioner [AMENDED]
85:1-1-6. Requests for Information [NEW]
Subchapter 3 . Procedural Rules
85:1-3-1. Records and transcripts [AMENDED]
85:1-3-2. Service of Pleadings [AMENDED]
85:1-3-3. Commencement of a proceeding; intervention; consolidation [AMENDED]
85:1-3-7. Production of Documents [AMENDED]
85:1-3-9. Examiner testimony [AMENDED]
85:1-3-10. Examination reports - confidentiality [AMENDED]
85:1-3-11. Pre-hearing conference [AMENDED]
85:1-3-12. Witness and subpoenas [AMENDED]
85:1-3-14. Order of proof [AMENDED]
85:1-3-19. Complaint procedure [NEW]
85:1-3-20. Petitions for rulemaking [NEW]
85:1-3-21. Declaratory rulings [NEW]
AUTHORITY:
State Banking Board; 6 O.S. § 203, 75 O.S. §§ 302(A)(1), 302(A)(2), 305, and 307.
DATES:
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Effective:
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SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

The rule changes are a result of a review of all rules in Chapter 1 and Chapter 10 of Title 85 in the Oklahoma Administrative Code. The intended effect of the new and amended rules is to bring the provisions of Chapter 1 of Title 85 into conformity with statutory requirements and to update Chapter 1 of Title 85 to reflect the current operation of the Banking Department. Several amendments were adopted to correct typographical errors or for clarification of language, with no substantive change intended.

In Subchapter 1, obsolete definitions have been deleted and other terms have been defined. For example, the terms "deposits," "established," "investment securities," and "land" have been deleted from the definitions in section 85:1-1-2 because they are either no longer used in Chapter 1 of Title 85 or were a product of a statute that has since been amended or revoked. Other terms, such as "complaint," "Code," and "Department," have been added for clarity in Chapter 1.

Rule 85:1-1-4 is amended to reflect the Banking Department's new address and to identify the time period during which the Department will be open to the public. Rule 85:1-1-6 is added to describe the method whereby the public may obtain information and records from the Department.

In Subchapter 3, changes are made to update the rules of practice with regard to formal and informal proceedings before the Banking Commissioner and the Banking Board. For example, the complaint procedure has been removed from the formal proceedings before the Board and is now described in detail in new proposed rule 85:1-3-19 as a matter to be decided by the Banking Commissioner or his designee. On the other hand, appeals to the Banking Board from certain decisions of the Commissioner are added to rule 85:1-3-3 as a type of formal proceeding that follows the other procedural rules of Subchapter 3.

Rules 85:1-3-20 (Petitions for rulemaking), and 85:1-3-21 (Declaratory rulings), are new rules added to comply with the requirements of sections 305 and 307 of the Oklahoma Administrative Procedures Act (Title 75 O.S. section 250 *et seq*.)

CONTACT PERSON:

O. Dudley Gilbert, Legal Counsel, State Banking Department, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105, (405) 521-2782.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

85:1-1-1. Purpose

This Chapter provides for organization and operations of the Department and Board, rules of practice and procedure before the Board, and definitions.

85:1-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the ~~text~~ context clearly indicates otherwise. Any term used in this Title but not otherwise defined in this Title shall have the meaning provided for such term in the Code, unless the context clearly indicates otherwise.

"Applicant" means a party commencing a proceeding ~~either~~ in the form of an ~~A~~application, appeal, or some other request for action or review by the Board or the Commissioner ~~or a Complaint~~; and includes the terms "plaintiff," "~~complainant"~~ "appellant" and "petitioner."

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted permission to appear in a proceeding in this state. No attorney not currently licensed to practice in Oklahoma shall be permitted to appear except in association with an attorney so licensed to practice in Oklahoma, who shall also appear in the proceeding. An attorney licensed to practice in a state permitting attorneys of this state to practice before its state courts without local counsel may appear without association of local counsel.

"Board" means the Oklahoma Banking Board.

"Code" means the Oklahoma Banking Code, found at Title 6 Okla. Stat. section 101 *et seq*.

"Commissioner" means the Oklahoma Bank Commissioner.

"Complaint" means a notice to the Commissioner regarding an alleged violation of state or federal law committed by an institution, company, or person under the jurisdiction of the Department.

"Department" means the Oklahoma State Banking Department.

~~**"Deposits"** shall be defined by those definitions used in the Federal Deposit Insurance Act and, specifically for the purpose of computing reserves, demand deposits shall include outstanding Cashiers checks issued by the bank.~~

~~**"Established"** as used in 6 O.S. §501.1(C)(1) first paragraph, means that the branch location is at a minimum, open to the public and conducting a banking business no less than one (1) full business day and subsequent to being opened, has not been closed on any business day that the main bank has not been closed, unless closed due to an emergency under 6 O.S. §603 or closed under 12 U.S.C. §95.~~

~~**"Holiday"** as it applies to Section 601 of the Oklahoma Banking Code shall include Sundays, and those other legal holidays proclaimed by this State, but shall not include Saturdays.~~.

"Intervenor" means a party not an applicant or named respondent who obtains permission to enter the proceeding. An intervenor opposing an application will thereafter be deemed a respondent.

~~**"Investment securities"** as used in Section 806(C) of the Oklahoma Banking Code includes corporate obligations evidencing indebtedness of the issuing corporation in the forms of bonds, notes, debentures or equipment trust certificates which are salable under ordinary circumstances with reasonable promptness at a fair value.~~

~~**"Land"** as it applies to Section 1004(A)(2) of the Oklahoma Banking Code shall not include mortgages on land.~~

"Order" means that which is required or ordered to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decisions of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Board or Commissioner acts.

"Party" means a party of record, and every other party having an interest in the subject matter, and entitled to appear therein as a party of record. "Party of record" includes any

party named a party in a pleading, or who makes formal appearance either in person or by an attorney at any stage of the proceeding whether or not seeking affirmative relief.

"Protestant" means a party who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protestant is governed by the rules applicable to a respondent.

"Record" or "Formal record" of any proceeding shall consist of the following where offered at the hearing, whether or not received:

(A) Preliminary exhibits, including pertinent pleadings, notices and proof of publication.

(B) Transcript of proceedings at all hearings.

(C) Depositions, stipulations, interrogatories, and answers, written testimony, offers of proof, and similar matters.

(D) Exhibits, together with attachments, appendices and amendments thereto.

(E) Exceptions and motions subsequent to the hearing.

(F) Orders or ~~R~~recommendations of the Board or Commissioner, together with findings of fact and conclusions of law.

(G) ~~The~~ Any other instruments or matters relevant to the issues that the Board or Commissioner may order included in the record ~~any other instruments or matters relevant to the issues~~ .

"Respondent" means a party against whom relief is sought in a proceeding, or who appears in opposition to relief sought by the applicant, and includes the term "Defendant". An institution, company, or person named in a complaint shall also be considered a respondent for purposes of the complaint.

85:1-1-4. Operation and Location of the Board and Department

(a) The principal office of the Oklahoma Banking Board is located at ~~4545~~ 2900 North Lincoln Boulevard, ~~Suite 164,~~ Oklahoma City, Oklahoma 73105 .

(b) Office hours of the Department shall be ~~from 8:00 a.m. to 5:00 p.m., each day except Saturday, Sunday and any holiday~~ established by the Commissioner and shall begin no later than 8:30 a.m. and shall end no earlier than 4:30 p.m., except Saturdays, Sundays, holidays, and any day on which state offices are otherwise closed.

(c) The Board, or any official exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

85:1-1-5. Communication with the Board and Commissioner

(a) Every communication in writing to the Board shall be addressed to the Commissioner at the principal office, unless the Board directs otherwise.

(b) Every pleading and other document tendered for official filing shall be deposited with or mailed to the Commissioner at the principal office, and shall be deemed received only upon actual delivery at the office of the Commissioner.

(c) Filing of any instrument shall not be complete except upon payment of all applicable fees required by law ~~or by this Title~~.

85:1-1-6. Requests for Information

(a) The records of the Department are subject to review only as provided in the Code and the Oklahoma Open Records Act. Requests for information shall be accompanied by a Request for Records form prescribed by the Commissioner, which shall identify the name, address and telephone number of the person requesting the information and the specific information or types of information requested. The person requesting to inspect or receive copies of records shall state whether the records are being viewed or requested for a personal, business or commercial reason.

(b) All requests for information must be submitted to the principal office of the Department. Records of the Department will be available to the public for inspection only during regular office hours.

(c) No original records shall be removed from the Department. A charge for copies may be made in accordance with the Open Records Act and the provisions of this title or the Code.

SUBCHAPTER 3. PROCEDURAL RULES

85:1-3-1. Records and transcripts

The Commissioner may, in his discretion, ~~or shall at the request of a party,~~ cause a record to be made of an individual proceeding before the Board or Commissioner. ~~A~~ If the Commissioner chooses not to cause a record to be made, other than audio recording of a proceeding, a record may be made by any party to a proceeding. If a party chooses to cause a record to be made of an individual proceeding, a transcript of proceedings will be made at the request and expense of any party ordering it; however, two copies shall be furnished to the Department at ~~Appellant's~~ the requesting party's expense in cases in which the Commissioner's or Board's decision is appealed.

85:1-3-2. Service of pleadings

(a) Service of an initial pleading. Every application in which a party is named a respondent~~, and every complaint,~~ shall be served by the State Banking Department on each respondent named therein by mail accompanied by a notice of hearing stating the date on which the cause is set for hearing, which shall be no less than ten (10) days after notice is mailed. Service hereunder shall be required in addition to provisions of these rules requiring service by publication.

(b) Service of subsequent pleadings. Every pleading, after the initial pleading, shall be served by the party filing it by regular mail upon all parties of record. Parties of record shall include the applicant, all named respondents and all persons having theretofore entered an appearance in the cause, in person or by an attorney.

(c) Certificate of service. Every pleading required to be served by regular mail shall contain a list of the persons served

and the certificate of the party ~~of~~ or his attorney, that on the date stated a copy of the pleading was mailed, postage prepaid, or delivered, to each person listed. Any pleading required to be served by regular mail may be served by leaving a copy thereof at the principal office of the party, or of the attorney for the party.

(d) Service not jurisdictional. Service prescribed by this section shall not be jurisdictional except where so provided by the Constitution or by ~~Statute~~ statute. Failure to comply with the provisions of this section as to mailing and service notice shall not deprive the Board or Commissioner of jurisdiction of the proceeding, but shall be grounds for such appropriate relief as the Commissioner may order.

85:1-3-3. Commencement of a proceeding; intervention; consolidation

(a) Every proceeding shall be commenced by an initial pleading which shall be either:

(1) an application, which shall include any request for authority, approval, determination, permission or other Board action or relief whether or not directed against a named respondent; or

(2) ~~a complaint~~ an appeal of a decision of the Commissioner, which decision is entitled to be appealed to the Board, or

(3) an order of the Board or Commissioner commencing a proceeding. ~~An application shall include any request for authority, approval, determination, permission or other Board action or relief whether or not directed against a named respondent. A complaint shall include every form of request for enforcement of an order, rule or regulation of the Board or Commissioner or for relief against a named respondent based upon an alleged violation of law or of a rule, regulation or order of the Board or Commissioner.~~

(b) Any interested person may intervene in a proceeding before the Board or Commissioner upon making timely application and showing that he may be aggrieved by the decision. Two or more proceedings or matters may be consolidated if there is no prejudice to any person affected by such consolidation.

85:1-3-7. Production of documents

(a) Upon application of a party, or upon the Commissioner's own motion, with or without notice, the Commissioner may make an ~~Order~~ order requiring a party to produce designated documents or tangible objects for inspection by parties to the proceeding, or for copying at the expense of the applicant, or to be offered in evidence. The ~~Order~~ order shall direct production thereof at the hearing, or at a pre-hearing conference and production shall be at the principal office of the Board, unless some other place is stated in the order. An order hereunder may be directed to a party not yet a party of record, conditioned that if such party appears at the hearing, the ~~Order~~ order thereupon will be complied with.

(b) The party applying therefor shall mail a copy of the ~~Order~~ order by regular mail on each party of record at least seven days prior to the date upon which production is required.

(c) An ~~Order~~ order pursuant to this section may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the proceeding, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the proceedings.

(d) The ~~Order~~ order shall identify the document or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the party ordered to make production.

(e) An exact photographic copy of a document may be substituted for the original, at the expense of the person requesting the instrument.

85:1-3-9. Examiner testimony

(a) ~~Oklahoma State Banking~~ Department examiners are prohibited from giving testimony which would disclose information obtained from confidential records as defined in 6 O.S. §§208 and 209(D), or information obtained in the process of developing confidential records without the express permission in writing of the Commissioner.

(b) Litigants seeking to subpoena ~~banking department~~ Department examiners for depositions or hearings shall serve one copy of the subpoena upon the examiner and shall timely furnish one copy of each subpoena to the Department.

85:1-3-10. Examination reports - confidentiality

Examination reports are the property of the regulatory agencies ~~which~~ that generate them. Copies are furnished to banks and trust companies for their confidential use. Under no circumstances shall ~~the~~ a bank, trust company, or any of its directors, officers or employees disclose or make public in any manner the report or any portion thereof. If a subpoena or other legal process is received calling for production of an examination report, the Department must be notified immediately.

85:1-3-11. Pre-hearing conference

(a) The Commissioner, with or without request by any party of record, may order the parties or their attorneys to appear at a designated time for a pre-hearing conference to consider:

(1) Simplification of the issues.

(2) Presentation of issues of law, adjudication of which may simplify or eliminate issues of fact.

(3) Admissions and stipulations of fact which will avoid unnecessary evidence and testimony.

(4) Identification of documents to be offered at the hearing.

(5) Identification of and numerical limit upon experts and other witnesses.

(6) Discovery and production of documents, records, data and other information.

(7) Other matters as may aid in trial of the proceedings.

(b) Any objection or amendment to the application, notice of hearing, investigative report, any pleading or order commencing a proceeding shall be made at the pre-hearing conference. No objection or amendment will be allowed ~~under~~ after the pre-hearing conference except upon good cause.
(c) Actions taken at the pre-hearing conference may be embodied in a preliminary order, which order shall control subsequent proceedings and shall be binding on all parties, whether or not present, unless modified to prevent manifest injustice.
(d) Notice of the time and place of a pre-hearing conference shall be as prescribed by order of the Commissioner and shall be served by regular mail upon all parties of record.

85:1-3-12. Witness and subpoenas

(a) **Subpoena.** Pursuant to 6 O.S. §206(A), the Commissioner, upon request of a party, or upon his own motion, may issue subpoenas in any pending proceeding requiring attendance of a witness from any place in the state to the place of hearing. Praecipe for subpoena shall be filed with the Commissioner.
(b) **Subpoena duces tecum.** A subpoena may require the witness to produce at the hearing books, records, accounts, papers and other instruments and tangible objects, which shall be described with reasonable particularity in the subpoena. A subpoena duces tecum directed to a party not an individual may direct that the records be produced by an officer or employee responsible therefor.
(c) **Service of subpoena.** A subpoena may be served by a law enforcement officer, by an attorney, or by any other person competent to make an oath; and the person serving the same shall attach his affidavit of the person served, and time and manner of service. Service also may be made in any other manner provided by law.
(d) **Return.** The original subpoena, with affidavit of service thereon, shall be filed with the Commissioner.
(e) **Protective orders.** The Commissioner may make any orders with respect to subpoena and attendance of witness with or without application or notice, as may be appropriate for the protection of parties and witnesses, including an ~~Order~~ order excusing attendance, or limiting documents to be produced.

85:1-3-14. Order of proof

The applicant ~~or complainant~~ who institutes a proceeding shall open and close the proof. Intervenors shall be heard immediately following principal parties with whom allied in interest. In all other cases, the presiding officer shall designate the order of proof.

85:1-3-19. Complaint procedure

(a) The primary purpose of the complaint procedure is to assist consumers in obtaining a formal response from an institution or company under the jurisdiction of the Department (the respondent). If the undisputed facts indicate that a respondent has violated state or federal law with respect to the complaining party, the Commissioner may notify both the complaining party and the respondent and recommend a resolution to the complaint. The Commissioner may take other action against the respondent if the activity or violation identified in the complaint, and verified by the Commissioner, indicates a threat to the safety and soundness of the respondent or a violation of law enforced by the Department.
(b) All complaints shall be on a form prescribed by the Commissioner. All complaints shall be answered by the Commissioner or the Commissioner's designee, without proceedings before the Board.
(c) Unless determined by the Commissioner to be frivolous or not including facts that may entitle the complaining party to relief under applicable law, the Commissioner shall forward each complaint to the respondent named in the complaint. The respondent shall have 20 days to respond in writing to the complaint, unless such time is extended by the Commissioner for good cause.
(d) The Commissioner shall not have jurisdiction to decide questions of fact raised by the parties to a complaint nor shall the Commissioner have authority to enforce, interpret, or avoid the provisions of a contract between the parties to a complaint. However, the Commissioner may inform the complaining party and respondent that a contract provision is contrary to established law.
(e) Although a complaint may include a request for relief against a named respondent, a complaint will not result in adversary or other proceedings as described in these rules. Decisions of the Commissioner with respect to complaints shall be final as to the administrative process and no appeal or other proceedings shall be held before the Commissioner or Board with respect to complaints. Provided, however, decisions of the Commissioner shall not preclude, endorse or otherwise affect the rights of any person to pursue civil relief in a court of competent jurisdiction with respect to the issues presented in a complaint.

85:1-3-20. Petitions for rulemaking

(a) Any interested person may file a petition requesting the promulgation, amendment, or repeal of a rule in this title. The petition shall:
(1) be in writing;
(2) refer to the statutory section that authorizes the rulemaking action requested;
(3) refer to the need for the rulemaking action requested, including the consequences of not approving the rulemaking action requested;
(4) state the exact language for the rulemaking action requested;
(5) state the purpose of the rule sought;
(6) state a fact situation to which the rule sought will apply; and
(7) list the name and address of the person requesting the rule.
(b) Upon receipt of a petition as described in Subsection (a) of this section, the Commissioner may initiate a study of the requested change through whatever means deemed appropriate. If the Commissioner formally acts upon the petition, the petitioner will be advised of the action in writing as specified by the Commissioner. In accordance with 75 O.S. § 305, if the

Department has not initiated rulemaking proceedings within 30 calendar days after the submission of a petition, the petition shall be deemed to have been denied.

(c) No petition for emergency rulemaking will be accepted or acted on by the Commissioner.

85:1-3-21. Declaratory rulings

(a) Any interested person may file a petition for a declaratory ruling as to the applicability of any rule or order of the Department. An official ruling will only be given if it is shown that an actual case, controversy, or issue is in contemplation on the fact situation presented and that unreasonable hardship, loss or delay would result if the matter were not determined in advance.

(b) A petition for a declaratory ruling shall:

(1) be in writing;

(2) refer to the rule or order involved;

(3) state the nature and purpose of the declaratory ruling sought;

(4) state the fact situation with respect to which the declaratory ruling is sought;

(5) provide citations to, and a summary of, authorities (whether controlling or not) relating to the issues presented by the petition; and

(6) list the name and address of the person requesting the ruling.

(c) The Commissioner may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.

(d) Official declaratory rulings may be made by and at the discretion of the Commissioner as to the applicability of any rule or order. Alternatively, the Commissioner may submit the final petition to the Board for review and declaratory ruling.

(e) A declaratory ruling, or refusal to issue such a ruling, shall be issued by the Commissioner or the Board within 90 days from receipt of the final petition, and shall be subject to review in accordance with the Administrative Procedures Act, Title 75 O.S. section 307. The Commissioner or Board may deny the petition if it is repetitive, concerns a matter that in the Commissioner's or Board's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Commissioner or Board's authority.

(f) The Commissioner may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing.

(g) Nothing in this rule shall not be interpreted as limiting the right of the Commissioner to issue, on his own motion or upon request, interpretive statements as provided for in the Code.

[OAR Docket #08-738; filed 4-25-08]

TITLE 85. STATE BANKING DEPARTMENT CHAPTER 10. SUPERVISION, REGULATION AND ADMINISTRATION OF BANKS, TRUST COMPANIES, AND THE OKLAHOMA BANKING CODE

[OAR Docket #08-739]

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These rule changes are a result of a review of all rules in Chapter 1 and Chapter 10 of Title 85 in the Oklahoma Administrative Code. The intended effect of the new and amended rules is to bring the provisions of Chapter 10 of Title 85 into conformity with statutory requirements, to reflect advances in technology, to create clarity and certainty with respect to compliance with various statutes and rules, and to reflect the current operation of banks and trust companies. Several amendments were adopted to correct typographical errors and to clarify language, with no substantive change intended.

Subchapter 1. The primary revisions to subchapter 1 are found in section 85:10-1-2 relating to definitions. Many definitions were deleted because such terms are defined in Chapter 1 of Title 85 and such terms are used exclusively in Chapter 1, rather than Chapter 10. For example, the terms "attorney," "party," "party of record," and "protestant," are defined in Chapter 1 and are used in Chapter 1 with respect to formal proceedings before the Banking Department (the "Department"). Those terms need not also be defined in Chapter 10. Therefore, they are deleted. Other terms, such as "established," are deleted because they relate to statutory provisions in the Oklahoma Banking Code (the "Code") that have been amended or revoked.

Subchapter 3. There are many changes to subchapter 3 designed to make it more convenient for banks and trust companies (referred to as "Institutions") to submit various reports to the Department and to accommodate an Institution's control over the effective date of various corporate activities for which it must file applications with the Department. For instance, the change to rule 85:10-3-1 (Report of condition) will allow an Institution to file its report of condition with the Federal Deposit Insurance Corporation ("FDIC") without filing a duplicate with the Department. Changes to rules 85:10-3-2 (Report of change of controlling interest), 85:10-3-3 (Report of change of chief executive officer) and 85:10-3-4 (Report of change of director) will allow an Institution to use the same form that it is required to file with the FDIC or the Federal Reserve System ("Fed") when submitting notices to the Department.

Amendments to rules 85:10-3-10 (Increase/decrease in capital stock), 85:10-3-11 (Change in number or par value of shares), 85:10-3-12 (Change in name - procedures and requirements), 85:10-3-14 (Applying for trust powers), 85:10-3-15 (Abandonment of trust powers), 85:10-3-17 (Merger/conversion - national bank or savings association to a state charter) and 85:10-3-21 (Fees) remove the requirement that an Institution submit a blank check (made payable to the Oklahoma Secretary of State) with various applications. This will allow an Institution to retain control over when various corporate documents are filed with the Secretary of State and will avoid having a blank check of the Institution outside of Institution control. These changes will also be beneficial to the Department by removing the requirement that the Department file an Institution's corporate documents.

Rule 85:10-3-12 (Change in name - procedures and requirements) has been amended to impose on the Institution the requirement to search state and federal governmental records regarding whether a new name is eligible for use and not infringing on another company's name. The amendment also removes any requirement that the Commissioner make a determination as to whether an Institution's new name is deceptive or misleading.

Rule 85:10-3-16 (Issuance of debentures or capital notes) is amended to remove definitions of "private offering" and "public offering" because these terms are defined in rule 85:10-13-2.

Changes to rule 85:10-3-18 (Records and retention) remove the lengthy and detailed record retention schedule for numerous types of documents. The lengthy retention schedule is replaced by a retention schedule that refers to other state or federal laws that already prescribe a retention schedule for certain documents (such as consumer disclosure documents). The amended schedule also refers to statute of limitation laws when no state or federal law prescribes a retention period for specific records. The amended schedule allows the Commissioner to issue rulings, with the approval of the Banking Board, that require Institutions to retain certain records for a period of time that is longer than may be required under the general rule.

Rule 85:10-3-20 (Registration of bank or trust related activities) is amended to include installation of automated teller and/or cash dispensing machines as a bank or trust-related activity, for which a registration statement must be filed with the Department. Also, the definitions of the terms "deposit" and "transaction account" are deleted and the meaning of those terms is defined by reference to federal regulations.

Changes are made to rule 85:10-3-21 (Fees) but no fees are increased or decreased. In addition to the change described above, the amendments remove any requirement that fees be paid by "check" and to include authorization for electronic payments to the Department if and when the Department develops electronic payment procedures.

The change to rule 85:10-3-22 (Organizational expenses) removes language that is repetitive of language already found in the Code and clarifies what expenses can and cannot be considered "organizational expenses."

The amendment to Rule 85:10-3-23 (Suspicious activity reports) removes any differences between state and federal law as to when an Institution must file suspicious activity reports (SARs). The amendment also authorizes an Institution to file only with its primary federal regulator if and when the Department has electronic access to SARs filed with a federal regulatory agency.

Rule 85:10-3-19 (Reserve requirements) is deleted because the topic is adequately covered by federal law.

Subchapter 5. Amendments to Subchapter 5 address the requirements of an Institution's internal control program. Many changes are clarifying or typographical changes with few substantive amendments. A new subsection (f) is added to rule 85:10-5-2, which provides that the failure of an Institution to meet the requirements of this subchapter does not by itself establish or diminish any private right of action otherwise available under other state or federal law against an Institution. Subsection (d) of rule 85:10-5-3.1 (relating to trust company reports) is deleted but added to rule 85:10-5-4 (Reports) as new subsection (b). The amendments also permit an Institution's board of directors to determine when certain credits (*e.g.*, loans and overdrafts) become "past due" for purposes of being reported to the board of directors. The amendments also include a requirement that an Institution's board of directors receive a report when a loan causes the aggregate indebtedness from a single borrower to exceed the lesser of 20% of the Institution's capital or such lesser percentage as set by the Institution's board of directors.

Subchapter 7. Amendments to Subchapter 7 address the requirements of an Institution's director's examination. Many changes are for clarification or are typographical changes with few substantive amendments. Other changes are for the purpose of deleting obsolete terms. A new subsection (r) is added to rule 85:10-7-3 (Minimum examination procedures) to require trust companies to follow the minimum requirements of that rule. Because of the addition of subsection (r) to rule 85:10-7-3, rule 85:10-7-4 (Trust companies) is deleted as duplicative. A new section 85:10-7-5 is added, primarily for clarification, that an audit by an independent certified public accountant resulting in an unqualified opinion being rendered constitutes satisfaction of the examination requirements of this Subchapter.

Subchapter 9. Many amendments to Subchapter 9 reflect changes to the Code regarding state bank branching laws. Because most of the branching restrictions have been removed from the Code, the amendments remove the requirements that an Institution publish its intent to open a new branch. The amendments also remove the opportunity for protests of branch applications. The amendments remove the references to "detached facilities" because changes to the Code resulted in such facilities being considered branches when the branch restrictions were removed from the Code.

Because the Commissioner may approve most branch applications, the number of branch application copies to be filed with the Department is reduced from ten to two in rule 85:10-9-2.

Rule 85:10-9-3 (Military banking facilities) has been deleted but a new subsection (j) has been added to rule 85:10-9-2 relating to applications for a military installation branch.

Rule 85:10-9-4 (Consumer banking electronic facility) has been deleted in its entirety because its provisions are now obsolete in today's electronic banking environment.

Subchapter 11. Amendments to Subchapter 11 address guidelines and restrictions on various powers and activities of an Institution. Many changes are for clarification or are typographical changes. Other changes are for the purpose of deleting language that is duplicative of language already in the Code or federal law or to delete language that is obsolete due to changes in the Code or federal law.

In rule 85:11-4 (Safe deposit boxes), a change clarifies that an Institution need not give a receipt to a customer regarding the contents of a safe deposit but must only provide a copy of the lease contract to the customer.

Changes to rules 85:10-11-9 (Operating subsidiaries) and 85:10-11-9.1 (Financial subsidiaries) delete the requirement that an Institution submit a blank check (made payable to the Oklahoma Secretary of State) with operating and financial subsidiary applications. This will allow an Institution to retain control over when various corporate documents are filed with the Secretary of State and will avoid having a blank check of the Institution outside of Institution control. These changes will also be beneficial to the Department by removing the requirement that the Department file an Institution's corporate documents.

Changes to rule 85:10-11-10 (Lending limits) include changes made for clarification of existing provisions and substantive changes. Substantive changes are proposed to the definition of "contractual commitment to advance funds" to include most any type of agreement whereby an Institution may be called upon to advance funds to a customer (*e.g.*, borrower or letter of credit beneficiary). However, paragraph (3) to subsection (d) of rule 85:10-11-10 is amended to clarify that with respect to any contractual commitment to advance funds, only those funds that have been advanced under the terms of a contractual commitment to advance funds will be considered a loan or extension of credit for purposes of section 802 of the Code and rule 85:10-11-10.

Another substantive change is made in rule 85:10-11-10 regarding when loans to separate persons are combined when made for the purpose of acquiring an interest in a company to be owned by the borrowers. The amendment changes the borrower's minimum collective ownership of the company from "more than 50%" to "50% or more." Likewise, the definition of a "subsidiary" in paragraph 3 of subsection (b) is changed so that a company will be a "subsidiary" if any person owns "50% or more" of the company, rather than "more than 50%."

Rule 85:10-11-11 (Split-dollar insurance) is changed by deleting all existing language and replacing it with an authorization for Institutions to maintain "bank-owned life insurance" under the same circumstances allowed under federal law and guidelines.

Rule 85:10-11-13 (Loan participations) is changed to clarify that if a loan is classified, either internally or externally, the originating bank shall notify all participants of the classification status within 30 days of classification.

Rule 85:10-11-15 (Insurance) is changed to clarify that if a bank acts as insurance agent in a place that, at the time the insurance agency was established, had a population of less than 5,000 but which has grown in size to exceed 5,000, the bank may continue to maintain the agency in such place without regard to its population.

Rule 85:10-11-16 (Deposit and safekeeping fees) is changed to clarify that a bank may determine by policy when an account is considered "dormant" and

such policy may determine an account is dormant even though it may not be considered abandoned or unclaimed under applicable law.

Subchapter 13. Many of the amendments to Subchapter 13 are intended to clarify certain provisions of the rules relating to investor protection (*viz*., offering circulars). The amendments also include substantive changes, such as when a transaction is exempt from rule 85:10-13-2 (Offering circular). Under the revision to subsection (c) to rule 85:10-13-2, an offering is exempt from the rule if it is solely to existing equity security holders or where the amount of the securities offered for sale, when aggregated with the amount of all other sales by the Institution of its securities within the 12 months immediately preceding commencement of the subject offering, does not exceed $1,000,000. The old rule limited the aggregate of all sales during the previous 12 months to $500,000. The definition of "nonpublic offering" in subsection (d) of rule 85:10-13-2 is amended to say that if an Institution's securities are sold to not more than 25 persons during any continuous 12 month period, it may qualify as a nonpublic offering (so long as other conditions are met). The old limit was 15 persons.

In rule 85:10-13-3 (Advertising) a change removed the strict prohibition against using the name of the Department in an offering circular or other advertising. Instead, the adopted rule states that references to the Department in an offering circular may provide that the Institution shall be subject to the jurisdiction of the Department and subject to periodic examination by the Department. However, the amendment prohibits any reference to the Department that may imply that the Department's supervision or examination will afford protection from loss on any investment in the Institution's securities.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

85:10-1-2. Definitions

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

"Applicant" means a party commencing a proceeding ~~either~~ in the form of an ~~Application~~ application, appeal, or some other request for action or review by the Board or the Commissioner ~~or a Complaint~~; and includes the terms "plaintiff," ~~"complainant"~~ "appellant" and "petitioner."

~~**"Attorney"** means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted permission to appear in a proceeding in this state. No attorney not currently licensed to practice in Oklahoma shall be permitted to appear except in association with an attorney so licensed to practice in Oklahoma, who shall also appear in the proceeding. An attorney licensed to practice in a state permitting attorneys of this state to practice before its state courts without local counsel may appear without association of local counsel.~~

"Board" means the Oklahoma Banking Board.

"Code" means the Oklahoma Banking Code, found at Title 6 Okla. Stat. section 101 *et seq*.

"Commissioner" means the Oklahoma Bank Commissioner.

"Deposits" shall be defined by those definitions used in the Federal Deposit Insurance Act and, specifically for the purpose of computing reserves, demand deposits shall include ~~outstanding Cashiers~~ cashiers checks issued by the bank.

"Department" means the Oklahoma State Banking Department.

~~**"Established"** as used in 6 O.S. §501.1(C)(1) first paragraph, means that the branch location is at a minimum, open to the public and conducting a banking business no less than one (1) full business day and subsequent to being opened, has not been closed on any business day that the main bank has not been closed, unless closed due to an emergency under 6 O.S. §603 or closed under 12 U.S.C. §95.~~

~~**"Holiday"** as it applies to Section 601 of the Oklahoma Banking Code shall include Sundays, and those other legal holidays proclaimed by this State, but shall not include Saturdays.~~

~~**"Intervenor"** means a party not an applicant or named respondent who obtains permission to enter the proceeding. An intervenor opposing an application will thereafter be deemed a respondent.~~

~~**"Investment securities"** as used in Section 806(C) of the Oklahoma Banking Code means corporate obligations evidence indebtedness of the issuing corporation in the forms of bonds, notes, debentures or equipment trust certificates which are salable under ordinary circumstances with reasonable promptness at a fair value.~~

"Land" as it applies to Section 1004(A)(2) of the ~~Oklahoma Banking~~ Code shall not include mortgages on land.

"Official Checks" includes cashiers checks, tellers checks, money orders, and other checks drawn on bank or trust company funds to pay for bank or trust company expenses or liabilities.

"Order" means that which is required or ordered to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decisions of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Board or Commissioner acts.

~~**"Party"** as used in these rules, includes a party of record, and every other party having an interest in the subject matter, and entitled to appear therein as a party of record. "Party of record" includes any party named a party in a pleading, or who makes formal appearance either in person or by an attorney at any stage of the proceeding whether or not seeking affirmative relief.~~

~~**"Party of record"** includes any party named a party in a pleading, or who makes formal appearance either in person or by an attorney at any stage of the proceeding whether or not seeking affirmative relief.~~

~~**"Protestant"** means a party who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protestant is governed by the rules applicable to a respondent.~~

~~**"Record" or "Formal record"** of any proceeding shall consist of the following where offered at the hearing, whether or not received:~~

~~(A) Preliminary exhibits, including pertinent pleadings, notices and proof of publication.~~

~~(B) Transcript of proceedings at all hearings.~~

~~(C) Depositions, stipulations, interrogatories, and answers, written testimony, offers of proof, and similar matters.~~

~~(D) Exhibits, together with attachments, appendices and amendments thereto.~~

~~(E) Exceptions and motions subsequent to the hearing.~~

~~(F) Orders or Recommendations of the Board or Commissioner, together with findings of fact and conclusions of law.~~

~~(G)The Board or Commissioner may order included in the record any other instruments or matters relevant to the issues.~~

~~**"Respondent"** means a party against whom relief is sought in a proceeding, or who appears in opposition to relief sought by the applicant, and includes the term "Defendant".~~

SUBCHAPTER 3. DEPARTMENTAL REQUIREMENTS

85:10-3-1. Report of condition

Each state-chartered bank and trust company located within this State shall report to the Commissioner its statement of condition, together with other statistical information as may be requested by the Commissioner. Unless otherwise directed by the Commissioner, a bank may comply with this section by supplying its report of condition to the Federal Deposit Insurance Corporation or other federal regulatory agency approved by the Commissioner if such report is electronically available to the Commissioner.

85:10-3-2. Report of change of controlling interest

(a) ~~Section 218(B) of the Oklahoma Banking Code requires a report to the Commissioner when control of a bank changes.~~ When a bank or trust company is required by the Code to report a change of control to the Commissioner, such report shall be given within 60 days after the change of control becomes effective, unless such time period is extended upon request to the Commissioner. Such report shall include:

(1) the number of shares sold and by whom,

(2) the number of shares purchased and by whom,

(3) the cost per share,

(4) whether or not a loan was obtained by the purchaser for the purpose of purchasing the stock; if so, the amount, number of shares pledged, other collateral pledged, rate and terms, and the name of the lender, and

(5) a resume of the past business operation and experience of the purchaser(s), together with financial statements dated within six (6) months. If the president or chief executive officer is unable to furnish the information required, the purchaser of the stock shall make the required report. Biographical and financial information called for by this paragraph may be supplied using a form adopted for such use by the Federal Deposit Insurance Corporation or the Federal Reserve System.

(b) ~~This~~ All information supplied under this section shall be confidential and not subject to public inspection for any purpose.

85:10-3-3. Report of change of chief executive officer or director

(a) ~~Section 219 of the Oklahoma Banking code requires a report to the Commissioner when there is a change in the chief executive officer.~~ When a bank or trust company is required by the Code to report a change of chief executive officer or director, such report shall be given within 60 days after the change becomes effective, unless such time period is extended upon request to the Commissioner. Such report shall include:

(1) a biographical sketch of the individual involved,

(2) a statement of the past and present business affiliations and professional affiliations, and

(3) a financial statement dated within six (6) months.

(b) Biographical and financial information called for by this section may be supplied using a form adopted for such use by the Federal Deposit Insurance Corporation or the Federal Reserve System.

(c) ~~This~~ All information supplied under this section shall be confidential and not subject to public inspection for any purpose.

85:10-3-4. Report of change of director [REVOKED]

~~Section 219 of the Oklahoma Banking Code requires a report to the Commissioner when there is a change in director of a bank. Such report shall include:~~

~~(1) a biographical sketch of the individual involved,~~

~~(2) a statement of the past and present business affiliations and professional affiliations, and~~

~~(3) a financial statement dated within six (6) months. This information shall be confidential.~~

85:10-3-10. Increase/decrease in capital stock

(a) In addition to those procedures and requirements specified in Section 405 of the ~~Oklahoma Banking~~ Code, the following procedures shall be ~~established~~ followed in connection with an increase or decrease of capital stock.

(b) Pursuant to the voting of the stockholders to increase or decrease the capital stock, the bank or trust company shall advise the Commissioner of the amount of increase or decrease, and by what means, as follows:~~;~~

~~(1) The Commissioner shall then furnish the bank or trust company with instructions and two (2) sets of forms at the time he gives written approval.~~

(~~2~~1) The bank or trust company shall complete ~~the forms~~ and return ~~both sets~~ to the Commissioner's office a certificate in a form prescribed by the Commissioner, together with two (2) certified copies of the resolution adopted by a majority of the stockholders and approved by the board of directors, which resolution appears in the minutes of their

meetings, in connection with the increase or decrease in capital.

(~~3~~2) The bank shall also submit a copy of its proposed amended certificate of incorporation ~~shall be~~ accompanied by ~~two (2) checks, one made payable to the State Bank Commissioner~~ a fee as set forth in 85:10-3-21 for approving the documents~~, and one check, in blank, made payable to the Secretary of State for his fees due in connection with filing~~.

(~~4~~3) ~~Immediately upon~~ Within 30 days of receiving the properly executed documents from the bank or trust company, the Commissioner shall notify the bank or trust company of his approval or disapproval. The Commissioner may extend the 30-day period called for by this paragraph upon notice to the applicant. If approved, the bank or trust company shall file the ~~documents~~ amended certificate of incorporation with the Secretary of State, after which ~~he~~ it will return a certified copy to the ~~bank or trust company~~ Commissioner, and if a bank, the required number of certified copies to the ~~Federal Deposit Insurance Corporation, or the Federal Reserve System for a member bank. One (1) set will be retained for the Department's files~~ bank's primary federal regulator.

~~(5) The blank check will be filled in by the office of the Secretary of State when the filing fee has been determined.~~

(~~6~~4) The increase or decrease shall not be effective until the Commissioner has approved the documents and the Secretary of State has ~~approved~~ filed the amended ~~articles~~ certificate of incorporation.

(c~~1~~) When an increase in capital stock is requested, the stockholders of the bank or trust company shall include in their resolution whether the new stock will be fully paid either in cash or by transfer from undivided profits or authorized unissued stock.

~~(2)~~ If to be paid in cash, the resolution shall declare whether the offering will be a private offering or a public offering.

~~(3) In making this determination, a private offering will be when the present stockholders have subscribed in full for the entire issue; a public offering will be when some or all of the offering will be made to other than present stockholders.~~

~~(d)~~ If any offering of capital stock of a bank or trust company is a public offering, the bank or trust company must prepare an offering circular pursuant to the terms and requirements of Board rule 85:10-13-2. ~~"Offering Circular" and attach to the certificate as set forth in Section 405(A)(1) of the Oklahoma Banking Code. Thereafter no subscriptions shall be taken, nor stock offered for sale, until and after the Commissioner shall have accepted the "Offering Circular" and then an offering can only be made by divulging to the prospective purchaser of the stock the "Offering Circular" and his/her subscription to the offering must contain a signed statement that said "Offering Circular" was disclosed.~~

~~(e) The contents of the "Offering Circular" shall be prescribed by the Commissioner.~~

85:10-3-11. Change in number or par value of shares

In addition to those procedures and requirements specified in Section 406(C) of the Oklahoma Banking Code, the following requirements must be met in connection with a change in the number and par value of shares:

(1) The bank or trust company shall advise the Commissioner, setting forth the desired change in the number of shares or the par value of shares.

~~(2) The Commissioner shall then furnish the bank or trust company with instructions and two (2) sets of forms.~~

(~~3~~2) The bank or trust company shall complete ~~the forms~~ and return ~~both sets~~ to the Commissioner's office a certificate in a form prescribed by the Commissioner, together with the two (2) certified copies of the resolution adopted by a majority of the stockholders and approved by the board of directors, which resolution appears in the minutes of their meetings, in connection with the change in number or par value of shares.

(3~~4~~) ~~These amended articles shall be~~ The bank shall also submit a copy of its proposed amended certificate of incorporation accompanied by ~~two (2) checks, one made payable to the Commissioner~~ a fee as set forth in 85:10-3-21 for approving the documents~~, and one check, in blank, made payable to the Secretary of State for filing fees~~.

(4~~5~~) ~~Immediately upon~~ Within 30 days of receiving the properly executed documents from the bank or trust company, the Commissioner shall notify the bank or trust company of his approval or disapproval. The Commissioner may extend the 30-day period called for by this paragraph upon notice to the applicant. If approved, the bank or trust company shall file the documents with the Secretary of State, after which ~~he~~ it will return a certified copy to the ~~bank or trust company~~ Commissioner, and if a bank, the required number of certified copies to the ~~Federal Deposit Insurance Corporation, or the Federal Reserve System for a member bank. One (1) set will be retained for the Department's files. The blank check will be filled in by the office of the Secretary of State when the filing fee has been determined~~ bank's primary federal regulator.

(~~6~~5) The increase or decrease shall not be effective until the Commissioner has approved the documents and the Secretary of State has ~~approved~~ filed the amended ~~articles~~ certificate of incorporation.

85:10-3-12. Change in name - procedures and requirements

(a) ~~The~~ A bank or trust company desiring to change its name shall furnish the following to the Commissioner: ~~to the Commissioner evidence of an affirmative majority vote of the outstanding voting stock approving the name.~~

(1) evidence of an affirmative majority vote of the outstanding voting stock approving the new name;

(2) a resolution by the board of directors approving the new name, which resolution appears in the minutes of their meeting;

(3) proposed amended corporate documents evidencing the new name;

(4) a fee in the amount set forth in rule 85:10-3-21.

(b) After the bank or trust company has been notified of the Commissioner's approval of its new name, it must file the necessary corporate documents with the Oklahoma Secretary of State and must submit certified copies of such filed documents to the Department and to the bank or trust company's primary federal regulator.

(c) It shall be the bank or trust company's responsibility to review governmental records with respect to the availability for use of the new name as well as whether the new name or mark used in connection with the new name will violate or infringe on some other company's name or mark. Any approval provided by the Commissioner will not be taken to mean that such new name or mark is available or eligible for use in any community nor will it mean that such new name or mark does not infringe on the rights of any other company.

(d) If any new name chosen by a bank or trust company is a "confusingly similar name" as defined in the Code, the bank or trust company must comply with the requirements of rule 85:10-11-19.

~~(b) Upon receipt of the resolution, the Commissioner shall review the names of banks in the community, and shall review the files of the Secretary of State to determine that the proposed name is not similar to any other corporation in the community, or having been in the community.~~

~~(c) With this review, the Commissioner shall make the sole determination as to the proposed name being the same, deceptive or misleading, and shall so notify the bank.~~

~~(d) The Commissioner shall furnish two (2) copies of the necessary forms to be used for amending the bank's Articles of Incorporation. The bank or trust company shall complete the forms and return both sets to the Commissioner's office, together with two (2) certified copies of the resolution adopted by a majority of the stockholders and approved by the board of directors, which resolution appears in the minutes of their meetings, in connection with the change in name. These amended articles shall be accompanied by two (2) checks, one made payable to the State Bank Commissioner as set forth in 85:10-3-21 for approving the documents, and one check, in blank, made payable to the Secretary of State for his fees due in connection with filing. Immediately upon receiving the properly executed documents from the bank or trust company, the Commissioner shall file the documents with the Secretary of State, after which he will return a certified copy to the bank or trust company, and if a bank, the required number to the Federal Deposit Insurance Corporation, or the Federal Reserve System for a member bank. One (1) set will be retained for the Department's files. The blank check will be filled in by the office of the Secretary of State when the filing fee has been determined. The change in name shall not be effective until the Secretary of State has approved the amended articles.~~

85:10-3-14. Applying for trust powers

In addition to those procedures and requirements specified in Section 407 of the ~~Oklahoma Banking~~ Code, the following ~~procedural regulations~~ procedures shall be ~~established by the Board.~~ followed in connection with applying for trust powers:

(1) The application for a bank to receive approval to exercise trust powers under Section 407 of the Code shall be upon the form prescribed by the Commissioner, and accompanied by the fee prescribed in rule 85:10-3-21.

(2) No application shall be approved except those conditioned upon subsequent approval of the appropriate federal regulatory agency.

(3) All applications shall be approved upon the condition that the applicant bank activate its trust department within six (6) months of federal regulatory approval. In this regard, activating its trust department shall mean satisfying the pledging requirements provided for in Section 1004 of the ~~Oklahoma Banking~~ Code and actually offering trust services to the general public.

(4) ~~If the trust powers are granted, following~~ Following approval of its application to exercise trust powers by the Commissioner and the appropriate federal regulatory agency the bank shall ~~be notified and will be required to send two (2) checks to the Department, one (1) made payable to the Commissioner as set forth in 85:10-3-21 and one (1) in blank, made payable to the Secretary of State for his fees due in connection with the filing of~~ file an amended Certificate of Incorporation ~~and file same~~ with the Oklahoma Secretary of State indicating its ability to exercise trust powers. ~~The check made payable to the Secretary of State will be filled in by that office after the fee for filing has been determined.~~ The ~~Commissioner will~~ bank shall return a certified copy of the amended ~~Certification~~ certificate of ~~Incorporation~~ incorporation to the ~~bank,~~ Commissioner and send the required number to the ~~Federal Deposit Insurance Corporation or the Federal Reserve Bank of Kansas City, and retain one (1) copy for the Department's files~~ bank's primary federal regulator.

85:10-3-15. Abandonment of trust powers

In addition to those procedures and requirements specified in Section 406~~(D)~~ and Section 1017 of the ~~Oklahoma Banking~~ Code, when a bank or trust company intends to relinquish its ability to exercise trust powers it shall be necessary for the bank to:

(1) Receive approval of the appropriate federal regulatory agency.

(2) Cease to use the word(s) "Trust" or "Trust Company" in its corporate name, and take the necessary steps to ~~obtain corporate papers reflecting the name change. Forms will be furnished by the State Banking Department~~ amend its corporate name accordingly. Upon filing its amended certificate of incorporation, the bank or trust company must return a certified copy to the Commissioner and send the required number of copies to the institution's primary federal regulator.

~~(3) Return one (1) set of the completed forms to the Banking Department, together with a copy of the minutes of the stockholders' meeting and a copy of the minutes of the directors' meeting at which the change was voted upon.~~

~~(4) These shall be accompanied by two (2) checks, one (1) made payable to the State Bank Commissioner as set forth in 85:10-3-21 for approving the documents, and one (1) check in blank, made payable to the Secretary of State for his fees due in connection with the filing of the amended Certificate of Incorporation. The Commissioner shall file the Certificate with the Secretary of State, after which he will return a certified copy to the bank, send the required number to the Federal Deposit Insurance Corporation or the Federal Reserve Bank of Kansas City, and retain one (1) copy for the Department's files. The blank check will be filled in by the office of the Secretary of State when the filing fee has been determined.~~

85:10-3-16. Issuance of debentures or capital notes

(a) Section 410 of the ~~Oklahoma Banking~~ Code provides that a bank may issue its convertible or nonconvertible debentures or notes in such amounts and under the terms and conditions as shall be prescribed and approved by the Board. Section 1001~~(A)(22)~~ provides that a trust company has the power to issue debentures, notes, or other evidences or debt to the extent of an amount equal to ten (10) times its capital and surplus. Notwithstanding other terms and conditions the Board may require, no approval will be granted unless:

(1) The request for approval is made on the form prescribed by the Commissioner~~.~~;

(2) The bank shall receive approval of ~~the appropriate federal regulatory agency~~ its primary federal regulator~~.~~;

(3) The amount of the issue shall exceed Twenty-five Thousand Dollars ($25,000.00)~~.~~;

(4) The average maturity of the issue shall be no less than seven (7) years~~.~~;

(5) The issue by its terms expressly subordinates itself to the prior payment in full of ~~its depositors' liability~~ the bank's liability to its depositors~~.~~; and

(6) Payment of the fee for approval in the amount set forth in Rule 85:10-3-21(g).

(b) When a debenture or capital note issue is authorized by the board of directors of a bank or trust company, their resolution shall state whether the issue is to be offered at a private or public offering. ~~In making this determination, a private offering will be when the present stockholders have subscribed in full to the entire issue or when the minimum denomination of any debenture or capital note of the issue exceeds $100,000.00. A public offering will be when some or all of the offering will be made to other than present stockholders, unless the minimum denomination of any debenture or capital note of the issue exceeds $100,000.00.~~

~~(c) If the offering is a public offering, the bank or trust company must prepare an "Offering Circular" and attach to the Application for Subordinated Capital Notes or Debentures. No application shall be approved until the Commissioner shall have accepted the "Offering Circular" and thereafter no offering will be made except by divulging to the prospective purchaser of the issued the "Offering Circular" and his/her acceptance of the issue must contain a signed statement that said "Offering Circular" was disclosed.~~

~~(d) The contents of the "Offering Circular" shall be prescribed by the Commissioner.~~ If the issue will be offered through a public offering, the bank or trust company must prepare an offering circular pursuant to the terms and requirements of Board rule 85:10-13-2.

85:10-3-17. Merger/conversion - national bank or savings association to a state ~~bank~~ charter

(a) Any merger resulting in a state bank shall require the prior approval of the Board. A national bank, trust company or savings association shall obtain prior approval of the Board to convert to a state bank or trust company charter. A state bank or trust company shall give notice to the ~~State Banking~~ Department before converting to or merging with and into a national bank or savings association.

(b) The Board shall not approve any request for ~~merger or~~ conversion into a state bank or trust company until the national bank, trust company or savings association has been examined by the ~~State Banking~~ Department and the ~~recommendations~~ findings of the ~~Examiner~~ examiner in charge have been presented to the Board. The examination shall be considered a special examination as authorized by ~~6 O.S. § 211~~ section 211 of the Code, and the national bank, trust company or savings association shall pay for the examination within 10 days of receipt of the invoice for payment. In the event of a merger that will result in a surviving state chartered bank, the Commissioner may require, at the Commissioner's discretion, a special examination of any merging institution or company.

(c) Upon completion of an examination by the ~~State Banking~~ Department, only eligible ~~depository~~ institutions will be considered by the ~~Banking~~ Board for conversion to a state bank or trust company charter. An eligible ~~depository~~ institution is a national bank, trust company or savings association that:

(1) Has a composite CAMELS rating of 1 or 2 based on the Department's examination conducted in connection with the conversion application;

(2) Is not subject to supervisory action by its primary federal regulator (such as a Memorandum of Understanding, Cease and Desist Order, or Formal Written Agreement) unless waived by the Commissioner;

(3) Meets the standards and requirements of the Board for conversion to a state bank or trust company; and

(4) Meets the requirements of ~~6 O.S. §§~~ sections 1107 and 1108 of the Code.

(d) Procedures for converting to a state bank or trust company charter - The national bank, trust company or savings association shall:

(1) Submit to the ~~State Banking~~ Department a letter indicating its desire to convert to a state bank or trust company and include a copy of the most recent daily statement of condition and income;

(2) Call a meeting of the directors to pass a resolution by a majority (51%) of the directors for conversion to a state bank or trust company. This resolution must be presented to the stockholders;

(3) Call a meeting of the stockholders to pass a resolution by a majority (51%) of the stockholders for conversion to a state bank or trust company. Upon approval by the

stockholders, the directors of the bank, trust company or savings association shall then designate a person to have authority to act on the behalf of the national bank, trust company or savings association in all matters pertaining to the conversion; and

(4) Submit to the ~~State Banking~~ Department its application to convert to a state bank or trust company. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Include two (2) certified copies of the resolutions passed at each meeting of the board of directors and the stockholders;

(C) Include the latest report of condition and report of income;

(D) Include current financial statements and biographical reports for all directors and principal stockholders (those holding at least 10% of the stock of the bank, trust company or association). Biographical and financial information called for by this paragraph may be supplied using a form adopted for such use by the Federal Deposit Insurance Corporation or the Federal Reserve System. All information supplied under this paragraph shall be confidential and not subject to public inspection for any purpose;

(E) If a bank, ~~State~~ state whether the institution wishes to exercise fiduciary powers after the conversion;

(F) Identify each branch that the resulting bank or trust company expects to operate after conversion;

(G) Identify all subsidiaries that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities that would be required if the converting institution were a state bank or trust company establishing each subsidiary pursuant to the ~~State Banking~~ Code and ~~Banking~~ Board Rules; ~~and~~

(H) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in, and describe the plans to retain or divest those assets~~.~~; and

(I) Submit a copy of the institution's proposed certificate of incorporation.

(e) Post approval procedures - Within 60 days after receiving written notification that the Board has approved the request for conversion, the national bank, trust company or savings association must:

(1) Call an organizational meeting of the stockholders in the name of the new state bank or trust company to elect a board of directors and approve or ratify the certificate of incorporation and bylaws;

(2) Call an organizational meeting of the board of directors of the new state bank or trust company to elect officers, including the designation of the managing officer;

(3) File the certificate of incorporation with the Oklahoma Secretary of State; and

(~~3~~4) After both organizational meetings, the new state bank or trust company must submit the following documents to the ~~State Banking~~ Department:

(A) Two (2) signed copies of the minutes of each organizational meeting;

(B) ~~The original and one (1)~~ A certified copy of the ~~executed~~ filed certificate of incorporation~~;~~. The institution shall also send the required number of copies to the institution's primary federal regulator; and

(C) The approved bylaws~~; and~~

~~(D) A blank check made payable to the Secretary of State for filing and certification fees~~.

(f) The new state bank cannot use "and Trust" or "and Trust Company" in its name unless the bank submits an application and obtains prior approval to exercise fiduciary powers. The Board may consider for approval the application to exercise fiduciary powers concurrently with the conversion application. No application is required where the national bank or savings association had obtained approval from its primary federal regulator to exercise fiduciary powers prior to converting to a state bank.

(g) Approval to convert to a state bank or trust company expires if the conversion has not occurred within six (6) months of the Board's approval of the application.

(h) When the Commissioner determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth herein and in 6 O.S. § 301 *et seq.*, and any other conditions, the Commissioner will issue a certificate of authority. The certificate provides that the institution is authorized to begin conducting business as a state bank or trust company as of a specified date.

(i) Post conversion documents - At the completion of the conversion, the new state bank or trust company must submit the following to the Commissioner:

(~~A~~1) Oath of Directors - the original and one (1) copy, to be administered at the organizational meeting of the board of directors;

(~~B~~2) List of Stockholders - the original and one (1) copy, to be completed at the organizational meeting of the stockholders;

(~~C~~3) Copy of the original blanket bond with riders, if any; and

(~~D~~4) Certificate of Annual Examination - the original attached to the most recent audited financial statements, if any.

85:10-3-18. Records and retention

~~(a) Banks and trust companies shall not be required to preserve or keep the following records or files for a longer period than specified.~~

~~(1) **ADMINISTRATIVE**~~

~~(A) Attachments and/or garnishments: 2 years after close (Note: Legal documents and copies of returns and correspondence should be filed after case is closed with general correspondence.)~~

~~(B) Bank examiners' reports: 7 years *(Note: These are the property of the supervisory authorities, whose approval should be obtained prior to destruction.)*~~

~~(C) Charged-off assets records: 5 years after close~~
~~(D) Court case records (foreclosed real estate, etc.): 2 years after close~~
~~(E) Insurance Records:~~
~~(i) Schedules of fire and other insurance, also record of premium payments and of amounts recovered: 2 years~~
~~(ii) Casualty liability policies expired - P.L. & P.D., O.L.& T., etc.: 2 years~~
~~(iii) Windstorm, fire, theft, etc., policies expired: 2 years~~
~~(iv) Records of policies in force: 3 years~~
~~(v) Bankers Blanket Bonds: 6 years~~
~~(F) Minute books of meetings (stockholders, directors, committees, etc.): Permanent~~

~~(2) ACCOUNTING AND AUDITING~~
~~(A) Accrual and bond amortization records: 1 year~~
~~(B) Audit reports: 2 years~~
~~(C) Audit work papers: 2 years~~
~~(D) Bank Call Reports: 5 years~~
~~(E) Branch statements (daily): 2 years~~
~~(F) Budget work sheets: Optional~~
~~(G) Consolidated financial statements: 10 years~~
~~(H) Daily reserve computation: 1 year~~
~~(I) Difference record: 2 years~~
~~(J) Income and dividend report: 5 years~~
~~(K) Reconcilements of bank (due to) deposits: 5 years~~
~~(L) Reconcilements register (due from): 5 years~~
~~(M) Reports to directors: 6 years~~
~~(N) Reports to executive committee: 6 years~~
~~(O) Securities vault "in and out" tickets: 1 year~~
~~(P) Tax records: 7 years (Note: Copies of schedules and returns to taxing authorities for tax purposes, notices of assessment by taxing authorities and documentary proceedings in appeal therefrom.)~~

~~(3) CAPITAL~~
~~(A) Capital stock certificates, records of, or stubs of: Permanent~~
~~(B) Capital stock ledger: Permanent~~
~~(C) Capital stock transfer register: Permanent~~
~~(D) Dividend checks: 6 years~~
~~(E) Dividend register: 6 years~~
~~(F) Proxies: 3 years~~
~~(G) Receipts for stock certificates: Permanent (Note: Where bank secures a receipt it is recommended that it be affixed to stub of certificate book)~~

~~(4) CERTIFICATES OF DEPOSIT~~
~~(A) Certificates: 7 years after paid~~
~~(B) Ledger cards: 2 years after close~~
~~(C) Register: 2 years~~

~~(5) CHECKING ACCOUNTS - INDIVIDUALS AND FIRMS~~
~~(A) Account analysis: 1 year~~
~~(B) Analysis work sheets or cards: Optional~~
~~(C) Average balance cards: Optional~~
~~(D) Interest computation records: Optional~~
~~(E) Service charge records: 1 year~~
~~(F) Bookkeeper's daily lists of checks charged: Optional~~
~~(G) in total (short lists): 6 months~~
~~(H) Check book orders: Optional~~
~~(I) Copies of advices of deposit: 3 years~~
~~(J) Daily report of overdrafts: 1 year~~
~~(K) Deposit tickets: 1 year (Note: Return with statement after micro-filming and retain microfilm 3 years)~~
~~(L) Individual ledgers: 6 years after last entry~~
~~(M) Individual ledger journals: 6 months~~
~~(N) Reports of accounts opened and closed: Optional~~
~~(O) Resolutions: 5 years after close~~
~~(P) Signature cards: 5 years after close~~
~~(Q) Statement mailing order: 2 years after close~~
~~(R) Statement receipt cards: 2 years~~
~~(S) Statement stubs:~~
~~(i) If accounts are analyzed direct from statement stubs, the stubs should be retained in lieu of work sheets or cards: 2 years~~
~~(ii) If microfilm is used as a ledger record, the stubs should be retained: Optional~~
~~(T) Stop payment orders: 6 months~~
~~(U) Undelivered statements and cancelled checks: 5 years~~

~~(6) CHRISTMAS CLUB~~
~~(A) Checks (cancelled): 1 year after paid~~
~~(B) Check Register: 1 year~~
~~(C) Coupons (deposit tickets): Optional~~
~~(D) Journal: 1 year~~
~~(E) Ledger cards or sheets: 1 year~~
~~(F) Pass books: Cancel by perforation and return to customer or take up book and destroy~~
~~(G) Signature cards: 1 year~~
~~(H) Trial balances: Optional~~
~~(I) Withdrawal receipts: 1 year~~

~~(7) COLLECTIONS~~
~~(A) Collection receipts, carbons of: 2 years~~
~~(B) Collection register: 2 years~~
~~(C) Coupon cash letters, outgoing: 6 months~~
~~(D) Coupon envelopes: Optional~~
~~(E) Customers' file copies: 1 year~~
~~(F) Departmental blotters: 2 years~~
~~(G) Incoming collection letters: 6 months~~
~~(H) Installment contract or note records: 2 years after close~~

~~(8) COMMERCIAL LOANS~~
~~(A) Collateral cards: Optional~~
~~(B) Collateral receipts: 7 years~~
~~(C) Collateral register: Optional~~
~~(D) Credit files (closed): 2 years after close~~
~~(E) Daily reports: Optional~~
~~(F) Debit and Credit tickets: 1 year~~
~~(G) Journal:~~
~~(i) If the journal is a byproduct of posting the liability ledger: Optional~~

~~(ii) If the journal is used as a book of original entry, with descriptions: 5 years~~

~~(H) Liability ledger: 5 years~~

~~(I) Loan applications: Optional~~

~~(J) Loan committee minutes: 3 years~~

~~(K) Margin cards: Optional~~

~~(L) Note or discount register: Optional~~

~~(i) If the register is a byproduct of posting the liability ledger: Optional~~

~~(ii) If the register is used as a book of original entry, with descriptions: 5 years~~

~~(M) Note and discount tickler: Optional~~

~~(N) Receipts for coupons removed from collateral: 5 years~~

~~(O) Resolutions: 5 years after close~~

~~(P) Statement of borrower under federal regulations (Regulations U, W, Z, etc.): 5 years~~

~~(9) CONSUMER CREDIT~~

~~(A) Borrowers' statements: 3 years after close~~

~~(B) Correspondence, general: Optional~~

~~(C) Coupons, loan deposits: 2 years~~

~~(D) Coupons, loan payments: 2 years~~

~~(E) Credit applications (closed or rejected): Optional~~

~~(F) Credit folders containing applications, etc.: 3 years after close~~

~~(G) Disbursement vouchers, cash receipts: 2 years after close~~

~~(H) Loan deposit ledger cards: 2 years after close~~

~~(I) Loan deposit and loan payment posting journals : 2 years~~

~~(J) Loan ledger cards: 2 years after close~~

~~(K) Loans made journal: 2 years~~

~~(L) Loans paid journal: 2 years~~

~~(M) Note and Disclosure Statements: 4 years from the date of transaction or 2 years from the date of final entry, whichever is later.~~

~~(N) Note or discount tickler: Optional~~

~~(O) Note register: 2 years~~

~~(P) Rebate receipts: 2 years after close~~

~~(Q) Resolutions: 5 years after close~~

~~(R) Trial balances: Optional~~

~~(10) CUSTOMER SERVICE~~

~~(A) Brokers' confirmations: 2 years~~

~~(B) Brokers' invoices: 2 years~~

~~(C) Brokers' statements: 2 years~~

~~(D) Night depository agreement: 1 year after close~~

~~(E) Night depository receipts: 1 year after close~~

~~(F) Safekeeping records and receipts: 5 years after close~~

~~(G) Securities buy and sell orders: 2 years~~

~~(11) DUE FROM BANKS~~

~~(A) Advices from correspondents: 6 months~~

~~(B) Bank statements: 5 years~~

~~(C) Drafts: 5 years after paid~~

~~(D) Draft register: 6 years (Note: Affidavits, bonds of indemnity, and all pertinent information pertaining to issuance of duplicate checks 5 years after paid)~~

~~(E) Reconcilements register: 5 years~~

~~(12) **DUE TO BANKS**~~

~~(A) Copies of advices: Optional~~

~~(B) Country bank ledger: 5 years~~

~~(C) Incoming cash letter memos for credit: 6 months~~

~~(D) Incoming cash letters for remittance: 6 months~~

~~(E) Proof sheets: 6 months~~

~~(F) Reconcilement verification: 6 months~~

~~(G) Reconcilement register: 5 years~~

~~(H) Reports of accounts, opened and closed: 6 months~~

~~(I) Resolutions: 5 years after close~~

~~(J) Signature cards: 5 years after close~~

~~(K) Trial balances: 6 months~~

~~(L) Undelivered statements and cancelled checks: 5 years~~

~~(13) GENERAL~~

~~(A) Applications for travelers checks: 1 year~~

~~(B) Central file cards: Optional~~

~~(C) Change of address orders: Optional~~

~~(D) Check book orders: Optional~~

~~(E) Code books (not returned): Destroy~~

~~(F) General correspondence: 7 years~~

~~(G) Incoming mail envelopes: Optional~~

~~(H) Paid bills, statements and invoices: 3 years~~

~~(I) Protest notices: Optional~~

~~(J) Receipts for check books: Optional~~

~~(K) Requisition for supplies: Optional~~

~~(L) Stenographers notebooks and mechanical device records; extra copies of letters if other copies are retained: Optional~~

~~(M) Telegram, cable and radiogram copies: 3 years~~

~~(N) Vault records, opening and closings: 6 months~~

~~(O) Wire transfer debit and credit entries: Optional~~

~~(14) GENERAL LEDGER~~

~~(A) Daily statement of condition: Permanent~~

~~(B) General journal:~~

~~(i) If the journal is a byproduct of posting the general ledger: 1 month~~

~~(ii) If the journal is used as book of original entry, with descriptions: 5 years~~

~~(C) General ledger sheets: Permanent~~

~~(D) General ledger tickets (debits and credits): 5 years~~

~~(15) INTERNATIONAL DEPARTMENT~~

~~(A) Cable copies: 6 years~~

~~(B) Cable requisitions: 6 years~~

~~(C) Foreign collection register: 6 years~~

~~(D) Foreign draft applications: 6 years~~

~~(E) Foreign draft carbons: 6 years~~

~~(F) Foreign exchange remittance sheets or books: 6 years after issue~~

~~(G) Foreign mail transfer applications: 6 years~~

~~(H) Foreign mail transfer carbons: 6 years~~

~~(I) Letter of credit applications: 6 years~~

~~(J) Letter of credit ledger sheets: 6 years~~

~~(K) Travelers check applications: 2 years~~

~~(L) Travelers check register: 2 years~~

~~(16) INVESTMENTS~~

~~(A) Bond ledger sheets: 5 years after close~~

~~(B) Brokers' confirmations: 2 years~~

~~(C) Brokers' invoices: 2 years~~

~~(D) Brokers' statements: 3 years~~

~~(E) Descriptive literature on securities disposed of: Optional~~

~~(17) OFFICIAL CHECKS AND DRAFTS~~

~~(A) Carbon copy official check register: 1 month after paid~~

~~(B) Cashiers checks: 5 years after paid~~

~~(C) Cashiers checks register: 5 years~~

~~(D) Certified checks or receipts: 5 years after paid *(Note: If not delivered or returned to depositor, photograph and destroy checks and then retain film)*~~

~~(E) Certified check register: 5 years~~

~~(F) Drafts (cancelled): 5 years after paid~~

~~(G) Draft register: 5 years~~

~~(H) Expense checks (cancelled): 3 years after paid~~

~~(I) Expense checks register: 3 years~~

~~(J) Expense vouchers or invoices: 6 years~~

~~(K) Money orders, bank or personal: 5 years~~

~~(L) Money order registers: 2 years~~

~~(M) Receipts for certified checks: 5 years after date~~

~~(N) Requisitions:~~

~~(i) If all information including name of purchaser is recorded on register: Optional *(Note: Consider retaining requisition for checks unpaid, at time of destruction)*~~

~~(ii) If no detail is transcribed on register: 5 years~~

~~(18) **PERSONNEL**~~

~~(A) Attendance record: 3 years~~

~~(B) Record of employees:~~

~~(C) Application for employment, reference records, reports and certificates of examination, service records, efficiency tests and other similar data: 6 years after termination~~

~~(D) Applications of those not employed: Optional~~

~~(E) Salary ledger: 3 years~~

~~(F) Salary receipts: 3 years (Note: Retain final receipt in personnel folder)~~

~~(19) **PROOF, CLEARINGS AND TRANSIT**~~

~~(A) Clearing house settlements sheets: 3 months~~

~~(B) Copies of advices of corrections: 6 months~~

~~(C) Departmental or tellers' proof sheets: 6 months~~

~~(D) Deposit proof sheets or tapes: 6 months~~

~~(E) Inclearings envelopes, proof sheets or tapes: 6 months~~

~~(F) Microfilm: 1 year~~

~~(G) Outclearings proof sheets or tapes: 6 months~~

~~(H) Outgoing cash letters, transit: 6 months~~

~~(I) Proof sheets, transit: 6 months~~

~~(20) **REAL ESTATE LOANS**~~

~~(A) Journal (debits and credits): 2 years~~

~~(B) Ledger cards: 5 years~~

~~(C) Loan credit files: 2 years after close~~

~~(D) Mortgage credits: 1 year~~

~~(E) Remittances: 1 year~~

~~(F) Tellers' blotter: 2 years~~

~~(21) **REGISTERED MAIL**~~

~~(A) Marine insurance books: 3 years~~

~~(B) Registered mail (incoming) record: 3 years~~

~~(C) Registered mail (outgoing) record: 3 years~~

~~(D) Return receipt cards: 3 years~~

~~(22) **SAFE DEPOSIT VAULT**~~

(A) Access tickets: 2 years

~~(B) Cancelled signature cards: 2 years after close~~

~~(C) Copies of rent receipts: 2 years~~

~~(D) Correspondence: 2 years after close~~

~~(E) Leases or contracts, closed accounts: 2 years after close~~

~~(F) Ledger record of account: Optional~~

~~(23) **SAVINGS ACCOUNTS**~~

~~(A) Withdrawals: 7 years~~

~~(B) Deposits: 7 years~~

~~(C) Journal: 6 months~~

~~(D) Ledger cards or sheets: 5 years after last entry~~

~~(E) Window bookkeeping machine control tapes: 6 months~~

~~(F) Passbooks: Destroy~~

~~(G) Reports of accounts, opened and closed: Optional~~

~~(H) Resolutions: 7 years after close~~

~~(I) Signature cards: 7 years after close~~

~~(J) Trial balances, nonautomated: Optional~~

~~(i) If statement or account history record retained: Optional~~

~~(ii) If no alternate record: 5 years~~

~~(K) Withdrawal affidavits: 3 years~~

~~(24) **TELLERS**~~

~~(A) Cash item record: 6 months~~

~~(B) Return item register: 6 months~~

~~(C) Tellers' cash books: Optional~~

~~(D) Tellers' cash tickets, originals and carbon copies: 1 month~~

~~(E) Tellers' recapitulation: 1 month~~

~~(F) Tellers' machine tapes: 1 month~~

~~(G) Tellers' blotter, journal or proof: 2 years~~

~~(H) Tellers' exchange tickets: 3 months~~

~~(25) **TRUST DEPARTMENT**~~

~~(A) Advices of payment:~~

~~(B) Securities department bond and coupon collections: 6 months~~

~~(C) Amortization schedules: Destroy when securities are disposed of~~

~~(D) Buy and sell orders: Return to issuing corporation or cremate, retaining receipt of cremation certificate until account is closed~~

~~(E) Cash trial balances: 6 months~~

~~(F) Corporate trust ledger: 7 years~~

~~(G) Correspondence:~~

~~(H) Corporate trust (bond issues): 3 years~~

~~(I) Dividend: 3 years~~

~~(J) General: 3 years~~

~~(K) Irregular transfer: 3 years~~
~~(L) Cost cards, securities: 5 years~~
~~(M) Coupon collection record: 18 months~~
~~(N) Coupon envelopes: Optional~~
~~(O) Daily statement of trust department: 3 years~~
~~(P) Dividend check tapes (adding machine): Optional~~
~~(Q) Dividend record cards (closed): 8 years~~
~~(R) Dividend and coupon ledger: Until closed~~
~~(S) Dividend and interest disbursement checks: 5 years~~
~~(T) Dividend and interest disbursement list: Optional~~
~~(U) Document files: Until closed~~
~~(V) Fee cards: Until closed~~
~~(W) Journal sheets, accounting division and stock transfer: 5 years~~
~~(X) Ledger records: asset ledger, cash ledger, investment ledger, stock transfer ledger and mutual income foundation: 5 years after close~~
~~(Y) Listing for Form 1099: 1 year after filing~~
~~(Z) Minute books, trust committee and trust investment committee: Permanent~~
~~(AA) Original trust entries (daily debits and credits and multiple forms): 2 years~~
~~(BB) Paid invoices: tradesman, professional (excluding attorney) and miscellaneous: 3 years *(Note: In probate accounts retain three years after expiration of time of appeal from order closing account)*~~
~~(CC) Probate slips: Destroy original when account is closed. Destroy duplicate after circulation~~
~~(DD) Registered mail report: 3 years~~
~~(EE) Registration journals: Until closed~~
~~(FF) Rent collection, mortgage and land contract collection (file accountant's copy): 5 years~~
~~(GG) Signature files: Until closed~~
~~(HH) Stock transfer change-of-address authority: 1 year~~
~~(II) Stock transfer memos: 1 year~~
~~(JJ) Stock transfer receipts: 3 years~~
~~(KK) Stockholders list: Optional~~
~~(LL) Supporting papers to transfers: 10 years *(Note: Except recorded instruments and agreement from banks - return to transferor.)*~~
~~(MM) Surety bonds: 6 years~~
~~(NN) Tax returns:~~
~~(i) Ad valorem tax returns: 2 years after filing~~
~~(ii) Estate tax returns: 15 years after filing~~
~~(iii) Federal and state income tax returns: 10 years after filing~~
~~(iv) Intangible tax returns: 2 years after filing~~
~~(v) Social Security returns: 5 years after filing~~
~~(OO) Tellers' daily blotter: 18 months~~
~~(PP) Transfer instructions: 5 years~~
~~(QQ) Transfer journal tapes: 2 years~~
~~(RR) Transfer tax waivers: Until closed~~
~~(SS) Trust checks: Until closed~~
~~(TT) Trust register: Until closed~~
~~(UU) Vouchers, probate trust: 3 years after expiration of time of appeal from order closing account~~

~~(b) The retention of other records not described in (a) of this Section shall be considered optional.~~

~~(c) No liability shall accrue against any bank destroying such records or files after the expiration of time specified in (a) of this Section and in any proceeding in which any such records or files may be called in question or be demanded, a showing by the bank that such records or files have been destroyed under this provision shall be sufficient for failure to produce them.~~

~~(d) Any bank may cause any or all records, including its records as a fiduciary, at any time in its custody to be reproduced by the microphotographic process and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.~~

(a) When any law of the state of Oklahoma or federal law requires the retention of a specific record or a specific class, type or category of records for a certain period of time, a bank and trust company shall retain its records falling within such class, type or category for the time period required by such law. If no Oklahoma state law or federal law prescribes a retention period for a specific record or a specific class, type or category of records, a bank or trust company must retain such records for the period of time that would be necessary to prosecute or defend an action for which such records would be required in the prosecution or defense of the action.

(b) The Commissioner may issue rulings from time to time, with the approval of the Board, that require banks and trust companies to retain certain records or a certain class, type or category of records for a period of time that is longer than may be required under subsection (a) of this section.

85:10-3-19. Reserve requirements [REVOKED]

~~In accordance with the reserve requirements pertaining to state banks, every bank which is not a member of the Federal Reserve System shall have on hand at all times in lawful money of the United States or on deposit payable on demand, in a bank approved as a reserve depository by the Commissioner, an amount equal to the current Federal Reserve Requirements.~~

85:10-3-20. Registration of bank or trust related activities

(a) **Definition of "Bank or Trust-Related Activities.** The phrase "bank or trust-related activities" shall be defined as follows:

(1) With respect to activities conducted by banks, bank holding companies or trust companies, or any affiliate thereof, domiciled outside the State of Oklahoma, directed to or offered to residents of Oklahoma in a public manner, "bank or trust-related activities" shall ~~be defined to include~~ mean:

(~~1~~A) soliciting or receiving deposits;
(~~2~~B) offering or making loans;
(~~3~~C) issuing debentures, certificates or other evidences of debt;
(~~4~~D) offering transaction accounts;

(~~5~~E) holding funds or other property in trust;

(~~6~~F) acting in a fiduciary capacity;

(G) installation of automated teller and/or cash dispensing machines; or

(~~7~~H) other activities deemed by the Bank Commissioner to be bank or trust related.

(~~b~~2) With respect to activities conducted by business organizations which are not banks, bank holding companies or trust companies, or any affiliate thereof, directed to or offered to residents of Oklahoma in a public manner, "bank or trust-related activities" shall ~~be defined to include~~ mean:

(~~1~~A) soliciting or receiving deposits;

(~~2~~B) issuing certificate-type evidences of debt incorporating terminologies utilized by banking and other rate-regulated financial institutions;

(~~3~~C) offering transaction accounts;

(~~4~~D) holding funds or other property in trust;

(~~5~~E) acting in a fiduciary capacity;

(F) installation of automated teller and/or cash dispensing machines; or

(~~6~~G) other activities deemed by the Commissioner to be bank or trust-related.

(~~c~~b) **Registration requirement.** Each institution or organization~~, as defined in (a) and (b) of this Section,~~ conducting bank or trust-related activities and not holding a certificate of authority to engage in the banking or trust company business in Oklahoma must file with the Commissioner a Registration Statement prior to engaging in bank or trust related activities and annually thereafter. Annual statements shall be filed on or before April 1 of each year ~~by Registrants whose fiscal year ends December 31, or whose information systems allow them to report on a calendar year basis. For all other Registrants, the reporting date shall be the first day of the fourth month following the end of the Registrant's fiscal year. The initial reporting date for each Registrant shall be the first scheduled reporting date falling more than 30 days after the effective date of this rule~~.

(~~d~~c) **Forms.** Registration forms may be obtained from the office of the ~~Bank~~ Commissioner~~, 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105~~.

(~~e~~d) **Fee.** ~~The Commissioner shall charge and collect a fee therefor~~ Each Registrant shall pay annually a fee in an amount as set forth in rule 85:10-3-21.

(~~f~~e) **Exemption.** Open-end investment companies and broker dealers which are registered or have securities registered with the Oklahoma Department of Securities ~~Department~~ and place on file with the Oklahoma Department of Securities ~~Department~~ on an annual basis the information required by the Registration Statement are excused from compliance with this Section, provided aggregate data for such entities is made available to the Commissioner on an annual basis.

(~~g~~f) **Definition of "Deposit" and Transaction Account".** ~~The following words and terms, when used in this Section shall have the following meaning, unless the text clearly indicates otherwise~~ As used in this section, the terms "deposit" and "transaction account" shall have the same meaning that is given those terms in Title 12 C.F.R. section 204.2.

~~(1) "Deposit" shall be defined as:~~

~~(A) the unpaid balance of money received by the subject institution for which it has given credit to an account or which is evidenced by an instrument on which the subject institution is primarily liable;~~

~~(B) money received or held by the subject institution in the usual course of business for a special or specific purpose, regardless of the relationship established thereby;~~

~~(C) any due bill or other liability or undertaking on the part of the subject institution to sell or deliver securities for the account of any customer involving the receipt of funds by the subject institution, regardless of the use of the proceeds;~~

~~(D) any liability of the subject institution's affiliate, that is not a depository institution, on any promissory note, acknowledgment of advance, due bill, or similar obligation, with a maturity of less than four (4) years, to the extent that the proceeds are used to supply or maintain the availability of funds (other than capital) to the subject institution;~~

~~(E) credit balance;~~

~~(F) any liability of the subject institution on any promissory note, acknowledgment of advance, or similar obligation, except any such obligation that:~~

~~(i) arises from transfer of direct obligation of, or obligations that are fully guaranteed by, the U.S. Government or any agency thereof that the subject institution is obligated to repurchase;~~

~~(ii) is not insured by a Federal agency and is subordinated to the claims of depositors;~~

~~(iii) arises from a borrowing by the subject institution from a dealer in securities.~~

~~(2) "Deposit" shall be further defined as interpreted by the Federal Reserve Board. "Deposit" does not include:~~

~~(A) trust funds received or held by the subject institution that it keeps properly segregated as trust funds and apart from its general assets or which it deposits in another institution to the credit of itself as trustee or other fiduciary;~~

~~(B) accounts payable;~~

~~(C) hypothecated "deposits" created by payments on an installment loan;~~

~~(D) dealer reserve and differential accounts that arise from the financing of dealer installment accounts receivable.~~

~~(3) "Transaction account" includes demand deposits, NOW accounts, ATS accounts, share draft accounts, accounts used for making payments or transfers, all accounts subject to telephone or preauthorized transfer, and all accounts that permit the account holder to make third party payments through automated teller machines.~~

(g~~4~~) **Definition of "Business Association".** As used in ~~Title 6 O.S. §104~~ section 104 of the Code, the term "business association" shall be interpreted to exclude insured depository institutions, as defined by Section 103 of the Depository Institutions Deregulation and Monetary

Control Act of 1980, and uninsured savings and loan associations and credit unions supervised by and reporting to the Department. "Business Association" shall not include entities licensed by the State of Oklahoma which license authorizes such activities to be engaged in by the licensed entity.

85:10-3-21. Fees

(a) **New Charters.**

(1) **Application fee for authority to organize.** In accordance with the provisions of Section 303(C) of the ~~Banking~~ Code with respect to applications for authority to organize a state bank or trust company, an application fee in the amount of $7,500.00 shall be submitted ~~to the Commissioner~~ with each ~~Application for Authority to Organize~~ application for authority to engage in the banking business.

(2) **Application fee for holding company bank charters.** Notwithstanding the fee set forth in paragraph (1) of this subsection ~~(a) of this Section~~, in the case of an Application for Authority to Organize pursuant to ~~6 O.S.~~ Section 502(E) and 502.1 of the Code, an application fee in the amount of $2,000.00 shall be submitted ~~to the Commissioner~~ with each ~~Application fee for Authority to Organize~~ application for authority to engage in the banking business.

(b) **Application fee to change location.** In accordance with the provisions of Section 406(B) of the ~~Banking~~ Code with respect to applications to change location, an application fee in the amount of $2,000.00 shall be submitted ~~to the Commissioner~~ with each ~~Application to Move~~ application.

(c) **Application fee for detached facility.** An ~~Application~~ application for a ~~Certificate~~ certificate to ~~Maintain~~maintain and ~~Operate~~operate a ~~Detached~~detached ~~Facility~~facility shall be accompanied by a fee in the amount of $2,000.00.

(d) **Application fee for operating and financial subsidiaries.** An ~~Application~~application for ~~Approval~~approval of an ~~Operating~~operating or ~~Financial~~financial ~~Subsidiary~~subsidiary must be accompanied by a ~~check made payable to the Commissioner~~ fee in the amount of $2,000.00 ~~and a check, in blank, made payable to the Secretary of State for fees due in connection with filing the certificate of incorporation or other organizational documents~~.

(e) **Application fee for branch.** An application fee of $2,000.00 shall accompany each ~~Application~~application for ~~Certificate~~certificate to ~~Maintain~~maintain and ~~Operate~~operate a ~~Branch~~branch.

(f) **Other types of applications and fees.** The following applications shall be accompanied by ~~a check made payable to the Commissioner~~ fee in an amount as prescribed below:

(1) Application to ~~Change Name~~ change name - $250.00

(2) Application to ~~Abandon Trust Powers~~ abandon trust powers - $1,500.00

(3) Application to ~~Change Number~~ change number or ~~Par Value~~ par value of ~~Shares~~ shares - $250.00

(4) Application to ~~Exercise Trust Powers~~ exercise trust powers - $1,500.00

(g) **Debentures or capital notes.** ~~Fee~~ An application for approval of debentures or capital notes must be accompanied by a fee in the amount of - $1,000.00

(h) **Fee for merger.** In accordance with the provisions of Sections 1103 and 1111 of the ~~Banking~~ Code, with respect to the submission of the merger agreement for review, a fee in the amount of $3,500.00 shall be submitted ~~to the Commissioner~~ together with the merger agreement. Such fee shall be in addition to and not in lieu of any branch application fee(s) which may also be required.

(i) **Fee for purchase and assumption agreements.** In accordance with the provisions of Section 1109 of the ~~Banking~~ Code, with respect to the submission of the agreement of purchase and sale for review, a fee in the amount of $3,500.00 shall be submitted ~~to the Commissioner~~ together with the purchase and sale agreement.

(j) **Fee for registration statements.** In accordance with the provisions of Section 104 of the ~~Banking~~ Code with respect to registration statements, a fee in the amount of $500.00 shall be submitted ~~to the Commissioner~~ with each registration statement.

(k) All fees shall be paid by an instrument made payable to the Oklahoma State Banking Department. However, the Department may develop procedures for receiving electronic payment with respect to any or all fees, and subject to such conditions as may be prescribed by the Commissioner.

85:10-3-22. Organizational expenses

~~(a) Title 6 O.S. Section 304 provides that each subscriber to the stock of a proposed state bank or trust company shall pay in cash a sum equal to five percent (5%) of the par value of the stock of the bank into a fund to be used to pay the expenses of organization and further provides that no organization expense shall be paid out of any other funds of the bank.~~

~~(b) Paragraph B of that Section provides that if there are any unexpended balances in the organizational account upon the granting of a charter, they shall be transferred to undivided profits.~~

~~(c) As provided by Paragraph B of that Section, the Commissioner requires an account of disbursements from the fund and the question arises as to~~

~~(1) what constitutes organizational expense, and~~

~~(2) when in the course of the organization and opening of a new bank does the expense cease to be organization expense and commence being expense of a newly organized bank.~~

(~~d~~a) ~~The Board has adopted the following as a guideline for those interested parties~~ For purposes of section 304 of the Code, "organizational expenses" shall include the following:

(1) Expenses incurred and necessary to present the application for authority to engage in the banking business, through and including all appeals~~, shall be considered as organization expenses~~. These expenses shall include, but are not ~~absolutely~~ limited to, the charter filing fee to the Department, attorney's fees, feasibility study fees, expenses incurred in order to provide the Board ~~and the record of the hearing~~ with those facts ~~which are necessary,~~

upon which the Board or subsequent courts may base a decision as to the feasibility of granting a charter. ~~However, it should be remembered that no payment shall be made from the organizational expense for the actual expense in the obtaining of subscription of stock.~~

(2) ~~Also included as organizational expense would be those expenses~~Expenses incurred in ~~the~~ obtaining ~~of~~ membership in the Federal Reserve ~~Bank of Kansas City~~ System and/or insurance from the Federal Deposit Insurance Corporation.

(3) ~~Those expenses~~Expenses incurred up to ~~and through~~ the ~~application to the Department for~~ issuance of a ~~Certificate~~certificate of ~~Authority~~authority ~~would be considered as part of the organizational expense~~. Upon the issuance of the ~~Certificate~~certificate of ~~Authority~~authority, the application has been concluded and subsequently there is in existence a bank, although it may be inoperative and not opened at the time. Thereafter such expenses incurred by the ~~then existing~~ bank are not organizational expense but~~, are, in reality,~~ expenses of the bank.

(4) ~~It should be noted that in some cases~~ If a ~~Certificate~~certificate of ~~Authority~~authority is ~~applied for~~ issued prior to the actual acceptance of the bank into membership of the Federal Reserve ~~Bank of Kansas City~~ System or obtaining insurance from the Federal Deposit Insurance Corporation, ~~and in those particular cases,~~ any expenses which might thereafter be incurred in regard to membership in the Federal Reserve ~~Bank of Kansas City~~ System or obtaining insurance from the Federal Deposit Insurance Corporation would ~~still have to~~ be ~~charged to~~ organization ~~expense~~ expenses rather than expense of the bank.

(5) Amounts paid to future personnel of the bank in organization and fees to consultants may be considered organizational expenses when approved in advance by the Commissioner.

(~~5~~b) ~~An example of the expenses~~Expenses which ~~may thereafter~~ are not organizational expenses and which must be charged to the bank ~~are such things as~~ without regard to whether the bank is open for business, include but are not limited to salaries ~~for pre-opening expense~~ paid to bank officers and other personnel after the issuance of the certificate of authority, amounts paid for the purchase of land and fixed assets, including reimbursement of previously paid options for land, amounts paid for the construction of a bank building, ~~ordering of~~ expenses for stationery and supplies, signage costs, and fees paid to vendors that are providing or will later provide services to the bank ~~etc~~.

~~(c) Should there hereafter be a question as to~~ Questions of whether ~~or not a given or certain~~ an expense should be treated as ~~organization~~ organizational expense or expense of the newly organized bank~~, such questions~~ should be addressed to the Commissioner in writing, and his determination thereof shall be final.

85:10-3-23. Suspicious activity reports

~~In addition to any reports or action required by any federal agency, an immediate written report shall be made by an appropriate officer of the bank or trust company to the Commissioner, of any of the following events:~~

~~(1) Any known or suspected theft, embezzlement, check kiting operation, misappropriation, or other defalcation involving bank/trust personnel or bank/trust funds in any amount. Where there is reason to suspect any person or persons in connection with the event, the identity of such persons and the reason for suspicion shall be included in the report.~~

~~(2) Any state of facts growing out of the affairs of the bank/trust known or suspected to involve criminal violation of any other Section of the United States Code.~~

~~(3) Any mysterious disappearance or unexplained shortage of bank/trust funds or other assets of $25,000 or more.~~ Whenever a bank or trust company submits a suspicious activity report to any federal regulatory authority pursuant to the requirements of the federal Bank Secrecy Act, the bank or trust company must immediately submit a copy of the suspicious activity report to the Department. Provided, if the Department has electronic access to suspicious activity reports after they are submitted to a federal regulatory authority, the bank or trust company need not submit an additional copy to the Department.

SUBCHAPTER 5. REQUIREMENTS, STANDARDS AND PROCEDURES FOR AN INTERNAL CONTROL PROGRAM

85:10-5-1. Internal controls

(a) The Board of Directors of every state chartered bank and trust company shall adopt and reduce to writing, and maintain thereafter, standards and procedures for an ~~Internal~~internal ~~Control~~control ~~Program~~program, which shall contain as a minimum those standards and procedures as outlined in this Subchapter.

(b) ~~Said~~ The ~~Internal~~internal ~~Control~~control ~~Program~~program shall be made available to the regulatory authorities for review and also the bank's or trust company's bonding company for review.

(c) The ~~Board~~board of ~~Directors~~directors of every state chartered bank and trust company shall elect a ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor annually to serve at the pleasure of the board. Such a person shall be charged with implementation of the bank's or trust company's ~~Internal~~internal ~~Control~~control ~~Program~~program. The ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor, who shall be someone other than the ~~Chief~~chief ~~Executive~~executive ~~Officer~~officer, shall report a summary of control activities to the ~~Board~~board of ~~Directors~~directors or committee thereof, periodically, as required in ~~the publications~~ rule 85:10-5-3.

(d) The ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor may, with the approval of the ~~Board~~board of ~~Directors~~directors, outsource the performance of the procedure of the internal control program. Outsourcing occurs when the state chartered bank or trust company engages an independent public accounting firm or other outside professionals as described in rule

85:10-7-1 to perform the procedures required by the ~~Internal~~internal ~~Control~~control ~~Program~~program.

85:10-5-2. Internal control program

(a) The ~~Internal~~internal ~~Control~~control ~~Program~~program set forth in this ~~Subchapter~~subchapter must be administered by the ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor with a record maintained as to the date upon which each recommended procedure was performed and a notation as to any exceptions disclosed.

(b) The ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor must be accountable directly to the ~~Board~~board of ~~Directors~~directors or committee thereof ~~and if the size of the bank permits, audit responsibilities should be the Auditor's only duties~~.

(c) The adoption of a sound ~~Internal~~internal ~~Control~~control ~~Program~~program is a primary responsibility of the bank's board of directors. They cannot delegate this duty. They shall appoint a ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor to ~~carry out the technical details of~~ administer such a program, but the ultimate accountability for the degree of effectiveness with which the program functions is ~~their~~ the board's responsibility. ~~It is clear that~~ ~~Neither~~neither supervisory examination nor insurance, or a combination thereof, can ~~properly~~ take the place of an ~~Internal~~internal ~~Control~~control ~~Program~~program.

(d) In order to obtain the maximum protection economically feasible it is necessary that all concerned be continually aware of the fundamental principles with respect to sound internal ~~check~~checks and ~~control~~controls and internal auditing. ~~The primary~~ An objective in any bank or trust company control program is to discourage fraud, not necessarily to discover its existence. A program of safeguards must be implemented to meet this primary objective.

(e) The ~~Internal Control Program~~ internal control program should contain the institution's policy for annual examination by the ~~Board of Directors~~ board of directors and, further, should contain a provision for annual review as to adequacy and compliance.

(f) The failure of a bank or trust company to meet the requirements of this subchapter does not by itself establish or diminish any private right of action otherwise available under other state or federal law against a bank or trust company.

85:10-5-3. Minimum control elements for bank internal control program

All internal control programs adopted by banks shall contain as a minimum the following:

(1) A requirement that each officer and employee, when eligible for vacation, be absent from the institution at least five consecutive ~~banking~~ business days each calendar year, unless otherwise approved in writing by the bank's bonding company for bank officers and employees generally and then each officer and employee who may be excepted from this requirement must be specifically approved by the bank's ~~Board~~board of ~~Directors~~directors and it shall be recorded in the ~~Board~~board of ~~Directors~~directors minutes, that the officer or the employee may be absent less than the five consecutive banking days. During the absence of an officer or employee, the duties of the absent officer or employee must be performed by other bank officers and employees.

(2) A requirement that periodic reports be made to the ~~Board~~board of ~~Directors~~directors, said report to contain at least the minimum as set out in 85:10-5-4.

(3) Require the ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor to periodically, as frequently as necessary but no less often than stated herein, perform or supervise performance of:

(A) Daily - Review ~~EDP~~ master file changes.

(B) ~~As frequently as necessary but at least quarterly~~ Quarterly - on a surprise basis, count tellers' cash~~, (which includes~~ including vault cash~~)~~, review bait money, and ~~insure~~ ensure that established procedures are being followed.

(C) Monthly - On a surprise basis, prove to the general ledger and verify validity of all cash items and cash collections, and report to the ~~Board~~board of ~~Directors~~directors those cash items and cash collections which are in excess of the minimum amount established by the Board. Also, all ~~stale-dated (~~cash items held over 30 days~~) cash items~~ that are not being currently worked for collection, should be charged off. The collection effort of these items should be documented in writing.

(D) Monthly - On a surprise basis, balance overdrafts to general ledger, scrutinize for large recurring overdrafts and report to the ~~Board~~board of ~~Directors~~directors those overdrafts which are in excess of the minimum amount established by the ~~Board~~board.

(E) Monthly - ~~Reconcile~~ Review and prove to the general ledger:

(i) All customer deposit accounts, ~~(~~including demand, savings, time certificates and cashier's checks~~)~~.

(ii) Official checks.

(iii) All loans.

(iv) Internal accounts used for bank purposes.

(F) Monthly - Reconcile all correspondent bank accounts. ~~Verify~~ Explain any item outstanding over fifteen (15) days and document resolution efforts.

(G) Monthly - Review tellers over/short.

(H) Quarterly - Reconcile all unissued consignment items.

(I) Quarterly - Reconcile Treasury Tax and Loan Account.

(J) Quarterly - Review all ~~senior officers'~~ officer and employee accounts in the institution and report any unexplained items to the ~~Board~~board of ~~Directors~~directors or committee thereof. ~~All other employees' accounts must be reviewed no less often than semi-annually.~~

(K) Monthly - Reconcile and prove to the general ledger all investment accounts.

(L) Monthly - Verify the unrealized gains or losses on securities account and associated tax account.

(M) Quarterly - Prove to the general ledger those accounts which have been determined by institution policy to be ~~"dormant"~~ inactive or dormant. Review the operations for compliance to institution policy. Each time activity occurs in ~~a~~ an inactive or dormant account that activity should be reviewed to establish the authenticity of the entry.

(N) Quarterly - Balance and verify all ~~"other asset" accounts and "other liability"~~ remaining asset and liability accounts which have had activity since last verification.

(O) Monthly - Balance to general ledger and verify all accruals ~~(~~ including but not limited to loans, investments, and time deposits~~, etc.)~~.

(4) Establish the maximum cash exposure the institution will have. This should include not only the total but the maximum amounts to be in each teller's unit.

(5) Establish a procedure for security of vault cash and for collateral held by the bank or trust company.

(6) Establish a procedure for dual control for the reserve stocks of all official checks, consigned items, and the reserve stocks of other items in the bank.

(7) All requirements of this ~~Section~~section~~, Minimum Control Elements,~~ that are met, should be documented, in writing, so that evidence exists that will substantiate to an examiner that this Section's requirements are being met.

85:10-5-3.1. Internal control program for fiduciary activities of trust departments and trust companies

(a) Each trust department and trust company should establish an appropriate system of notification to prompt and aid in the administration of fiduciary accounts.

(b) Where applicable, the following items, at a minimum, shall be performed by all trust departments and all trust companies conducting fiduciary activities to assure the maintenance of sufficient internal audits, reviews and appointments, and reports. Documentation must be maintained to show that each item was completed as required.

(1) A daily review of master file changes.

(2) A monthly review of overdrafts that exceed a reasonable minimum established by the institution.

(3) A monthly review of uninvested cash balances that exceed a reasonable minimum established by the institution.

(4) A monthly review of past due loans held in trust accounts to assure proper collection efforts.

(5) A monthly verification to assure that all opened and closed accounts received appropriate review within 60 days of opening or closing.

(6) A monthly reconcilement of trust department or trust company deposit accounts.

(7) A semi-annual verification of dual control procedures for all trust assets held on premises.

(8) Annually assure that a notification or prompt system has been established for the following items, at a minimum:

(A) Annual reviews of all fiduciary accounts.

(B) Premiums due for property insurance.

(C) Payment of real estate taxes.

(D) Performance of annual real estate inspections.

(E) Performance of tri-annual real estate appraisals

(c) All trust departments and all trust companies conducting fiduciary activities shall on an annual basis perform the following reviews and make the following appointments. Documentation must be maintained to show that each item was completed as required.

(1) A review of trust department policies, including account investment criteria.

(2) An annual appointment of individuals or committees with authority to approve discretionary account distributions over a reasonable minimum established by the institution.

(3) An annual appointment of individuals with authority to sign trust department checks, including dual signature requirements.

~~(d) All trust departments and all trust companies conducting fiduciary activities shall on a quarterly basis prepare the following written reports.~~

~~(1) A report of all existing and threatened litigation.~~

~~(2) A report of trust department profitability.~~

~~(3) A report of all exceptions involving the aforementioned requirements.~~

85:10-5-4. Reports

(a) **Bank reports.** Reports which the internal control program shall require to be made monthly, except as otherwise provided, to the bank's ~~Board~~board of ~~Directors~~directors or committee thereof shall consist of, at a minimum, the following:

(1) A report containing either:

(A) all expense items over a reasonable minimum amount established by the ~~Board~~ board of directors, or

(B) if a formal budget has been previously approved by the ~~Board~~board of ~~Directors~~directors, ~~report~~ any substantial deviations or changes (as determined by the ~~Board~~board of ~~Directors~~directors) in budget items.

(2) A report from the ~~Control~~control ~~Officer~~officer or ~~Auditor~~auditor that the internal minimum control elements ~~had~~ have been performed and any differences, outages or shortages determined thereby~~; and an additional report containing all cash items, cash collections, and overdrafts, as of a random date, which are in excess of a minimum amount established by the board. The report should contain the date the cash item, cash collection or overdraft commenced~~.

(3) A report containing all cash items, cash collections, and overdrafts, as of the surprise date, which are in excess of a minimum amount established by the board, including the date the cash item, cash collection or overdraft commenced.

~~(3) All loans made since the last report to the board where the line of credit extended the customer exceeds 1% of the capital of the bank or trust company, including~~

~~renewals and extensions. Board approval or other action taken should be properly recorded in the minutes. (This requirement may be substantiated by a report from the Loan and Discount Committee.)~~

(4) A report of income and expense since the beginning of the institution's accounting period, together with a comparison for the same period of the previous year.

(5) A quarterly report of the ~~The~~ institution's liquidity position, rate sensitivity analysis, and volatile liability dependence position as of the last business day of the previous quarter. ~~(This report can be made quarterly.)~~

(6) A quarterly report of the progress being made and current status of all internally and externally classified loans in excess of 5% of the institution's capital, until the Board of Directors has determined the loan has either been paid in full or its condition significantly improved to no longer ~~warrant their review. (This report can be made quarterly.)~~ be classified.

(7) A report of all loans made to officers, employees and directors and their business interests or affiliates since the last report ~~to the board. (It is highly recommended that the board establish a policy which should include a limit of the aggregate of these loans. The reports should then include a statement as to compliance with the board policy.)~~.

(8) Investments purchased or sold since the last report ~~to the board~~.

(9) All charge-offs or other losses the bank has sustained since the last report ~~to the board~~.

(10) ~~A report of all~~ All past due loans. ~~Loans, leases, debt securities, and other assets are to be reported as past due when either interest or principal is unpaid in the following circumstances:~~ A loan or category of loans shall be considered "past due" according to guidelines that may be established by the board of directors.

~~(A) Closed-end installment loans, amortizing loans secured by real estate, and any other loans and lease financing receivables with payments scheduled monthly are to be reported as past due when the borrower is in arrears two or more monthly payments. (At a bank's option, loans and leases with payments scheduled monthly may be reported as past due when one scheduled payment is due and unpaid for 30 days or more.) Other multipayment obligations with payments scheduled other than monthly are to be reported as past due when one scheduled payment is due and unpaid for 30 days or more,~~

~~(B) Open-end credit such as charge card plans, check credit, and other revolving credit plans are to be reported as past due when the customer has not made the minimum payment for two or more billing cycles,~~

~~(C) Single payment and demand notes, debt securities, and other assets providing for the payment of interest at stated intervals are to be reported as past due after one interest payment is due and unpaid for 30 days or more,~~

~~(D) Single payment notes, debt securities, and other assets providing for the payment of interest at maturity are to be reported as past due after maturity if interest or principal remains unpaid for 30 days or more,~~

~~(E) Unplanned overdrafts are to be reported as past due if the account remains continuously overdrawn for 30 days or more.~~

(11) All overdrafts which exceed a time period and/or amount to be set by the board of directors.

(12) All loans since the last report for which cause the aggregate indebtedness from a single borrower to exceed the lesser of 20% of the bank's capital or such lesser percentage as set by the bank's board of directors. This report shall be made to the bank's entire board of directors.

(b) **Trust reports.** All trust departments and all trust companies conducting fiduciary activities shall on a quarterly basis prepare the following written reports for review by the board of directors or committee thereof:

(1) A report of all existing and threatened litigation.

(2) A report of trust department profitability.

(3) A report of all exceptions involving the aforementioned requirements.

85:10-5-5. Review and appointments

Review and Appointments of the following items shall be made by the board of directors at least annually.

(1) A review and approval of the ~~Internal Control Audit Program, Lending Policy,~~ internal control audit program, lending policy ~~Risk Management Policy and Investment Policy~~ and asset/liability management policy and their implementation for the previous year~~, and a determination of their adequacy and approval of same~~.

(2) A review and approval of the institution's blanket bond and all other insurance coverages ~~and a determination of its adequacy and approval of same~~.

(3) Elect officers and appoint committees for the coming year as designated by the bylaws.

(4) Designate the officers and/or employees with authority to sign official checks of the bank or trust company, to include any dollar limitations or two signatures required stipulations.

(5) Review the report per Subchapter 7 of this Chapter, "Director's Examination". Follow up on the disposition of any differences or recommendations and submit a copy of the report to the Commissioner within the time prescribed in Subchapter 7 of this Chapter.

SUBCHAPTER 7. DIRECTOR'S EXAMINATIONS

85:10-7-1. Examination procedures

(a) In addition to the requirements set forth in ~~Title 6 O.S.,~~ Section 714(C) of the Code, the annual examination must be made in accordance with the minimum examination procedures outlined in this ~~Section~~section.

(b) The examination shall be performed by:

(1) qualified directors who are members of the board of directors but not officers or employees of the bank or trust company and who are in fact reasonably independent and have demonstrated his or her capability to perform said examination. A director, to be considered reasonably independent cannot:

(A) be ~~closely related to~~ an immediate family member of active officers or employees of the bank or trust company,

(B) have any outstanding loans with the bank or trust company which have been criticized or specially mentioned by one of the examining agencies,

(C) have been determined by the Commissioner not to be independent of the management for any other reason~~, and who has demonstrated his or her capability to perform said audit~~; or

(2) Certified public accountants, an independent examiner who has demonstrated a capacity to perform said examination and who is in fact independent, or persons whose proficiency has been certified by a nationally recognized certification authority, and who:

(A) are not connected with the bank or trust company as an officer, director, attorney or employee, or as a member of the immediate family of an officer, director, attorney or employee of the bank or trust company,

(B) are not beneficial owners, directly or indirectly, of any of the shares of stock of the bank or trust company,

(C) ~~who~~ have no proprietary interest in any partnership, ~~form or~~ corporation, firm or other entity that ~~which~~ controls the bank or trust company, directly or indirectly,

(D) do not have any outstanding loans to themselves, their partners, their firms or their families, unless such loans are adequately disclosed in the report to the board of directors, disclosing the name of the borrower, the amount, security pledged and appraisal or market value of the security,

(E) do not make entries or postings on the books of the bank, or perform any other operational functions for the bank, except such functions for which prior approval was requested and obtained in writing from the Commissioner, and except a correspondent bank whose operational functions are subject to supervision by the bank regulatory agencies, and

(F) can and do specifically specify in the report that he/she has met the test of independence as stated above and that he/she is in fact independent. Where a bank or trust company is part of a consolidated company audit done by certified public accountants meeting the criteria of Subsection 2 (A) through (E) of this Section, the ~~I~~internal audit staff of the parent company shall also be acceptable~~; or~~.

~~(3) Independent examiner who has demonstrated his capacity to perform said examination and who is in fact independent. It is the responsibility of the board of directors to disclose the qualification and any unusual relationships or affiliations which the independent examiner may have, and to have any questions as to his qualifications or independence resolved before he proceeds with the examination program. The examiner will not be considered independent if:~~

~~(A) he has any outstanding loans to himself, his partners or firm unless such loans are adequately disclosed in the report to the board of directors,~~

~~(B) he makes any entries or postings on the institution's books or who performs any other operational functions for the institution, except such functions for which prior approval was requested and approved in writing by the Commissioner and except a correspondent bank whose operational functions are subject to supervision by the bank regulatory agencies. The independent examiner must specifically specify in the report that he is in fact independent.~~

~~(4) A person whose proficiency has been certified by the Bank Administration Institute as a Chartered Bank Auditor (CBA) shall be acceptable as an independent examiner if he otherwise passes the test of independence.~~

~~(c) Performance of an audit by an independent certified public accountant resulting in an unqualified opinion being rendered constitutes satisfaction of the requirements of this Subchapter. No additional statements or reports are required from the accounting firm.~~

~~(d) A copy of such audit report, together with an unqualified opinion, must be submitted to the Commissioner within 120 days of completion of the audit.~~

85:10-7-2. Scope of examination

(a) **Standards of acceptability.** An examination of a state bank or trust company, to be acceptable, must be made in accordance with the minimum examination procedures. The Commissioner has the responsibility to determine whether an examination is acceptable. He also has the authority to reject any examination which does not conform in all respects with prescribed requirements. If, at any time, it is found that those performing the audit or examination as set out in 85:10-7-1 (a) and (b) have not followed recognized rules, ethics, or conduct, or have not met the minimum standards of the Department, or made any misstatement of facts or circumstances or any misrepresentation of any kind knowingly made, it will not only cause the examination to be rejected but will also form a basis for the temporary or permanent disqualification of the individual(s) from conducting similar examinations.

(b) **Reporting.** A report shall be prepared and submitted to the ~~Board~~board of ~~Directors~~directors, describing the scope of examination and setting forth the finding and recommendations as a result of the examination. Any open or unreconciled item at the time the report is submitted shall be disclosed and commented upon in the report.

(c) **Report content.** The report shall include the date of examination; a statement indicating that at least the minimum requirements outlined in this Subchapter were met; a statement that the test of independence specified in 85:10-7-1(b) has been

met; a statement that the ~~Internal Control Program~~ internal control program adopted by the bank or trust company is being complied with to the best of the individual's(s') knowledge; or set forth in the report any exceptions and any other comments or statements which the individual(s) may wish to make. The ~~Report~~report shall also include the management letter summarizing the findings of the directors examination.

(d) **Report order and balance.** The reports should follow as closely as possible the order contained in this Subchapter and include the balance of the general ledger accounts as of the examination date under the specific account heading.

(e) **Definition.** Contained in this Subchapter, the words "tests" and "selected" are used without specific definition. For each situation in which such terminology is used, indicate in some appropriate manner the extent and/or basis of the tests.

(f) **Employees.** Include in the report the extent to, and the purpose for, which employees of the bank under examination were used.

(g) **Defalcations.** Any defalcations should be reported immediately to the Department.

(h) **Deadline to file.** The board of directors must file a copy of the report with the Department within one hundred twenty (120) days from the ~~examination~~ date of completion of the examination.

85:10-7-3. Minimum examination procedures

(a) **Generally.** Commence examination on a surprise basis. Assume control over the assets and records to be examined until procedures have been completed.

(b) **Cash, cash items, clearings and exchanges.**

(1) Count cash and reconcile total with the general ledger balance.

(2) Examine cash items; investigate any unusual or noncurrent items; trace disposition of selected amounts.

(3) Confirm totals of clearings and exchanges direct with drawee banks or paying agents; trace disposition of selected **return items.**

(c) **Due from banks.**

(1) Obtain current statements ~~and cancelled vouchers direct~~ from correspondents; reconcile and clear selected open items; obtain confirmation of balances at the examination date.

(2) Trace disposition of selected return items recorded by correspondents on examination date and several days thereafter.

(d) **Investments.**

(1) Obtain ~~Trial~~ trial balance of securities and reconcile totals ~~carrying values~~ with applicable general ledger accounts ~~and review recording of amortization and accretion and items involving profits and losses~~.

(2) Examine all securities on hand and confirm those held by others.

(3) Inspect documents supporting carrying values of selected securities held at examination date and of selected acquisitions and retirements since last examination.

~~(4) Account for interest income on a test basis and trace to general ledger.~~

(e) **Loans.**

~~(1)~~ Obtain ~~Trial~~trial balance ~~notes~~ of loan portfolio and reconcile totals ~~(if payments are posted to notes) and loan ledger cards, or obtain a trial balance from service center~~ and reconcile totals with applicable general ledger accounts.

~~(2) Account for interest income on a test basis.~~

~~(3) Trace installment loan ledger cards on a test basis to original amount of notes; examine supporting documents.~~

(f) **Building, furniture and fixtures.**

(1) Review transactions in the accounts.

(2) Trace selected additions to supporting documentation.

(g) **Other resources (including customers' liabilities under acceptances and confirmed letters of credit).**

(1) Accruals. Review accounting procedures and test selected transactions.

(2) Other. Review and test selected transactions to supporting documentation and confirm balances to extent necessary to be satisfied with accuracy of amounts recorded.

(h) **Demand deposits.**

(1) Obtain ~~Trial~~trial balance of ~~individual ledgers or obtain trial balance from service center~~ demand deposits and reconcile totals with general ledger account. ~~Trace disposition of selected unposted items.~~

(2) Review overdrafts; trace subsequent disposition of selected items.

(3) Obtain ~~Trial~~trial balance of outstanding official checks and~~;~~ reconcile totals with general ledger accounts; review selected items paid subsequent to examination date.

(4) ~~Obtain statement of treasury tax and loan account; reconcile with general ledger account; confirm balance.~~ Trace disposition of selected unposted items.

(5) Prepare or obtain listing of due-to-bank accounts; confirm selected account balances directly with the correspondent bank.

(i) **Time deposits.** Obtain ~~Trial~~trial balance of time deposit accounts ~~or obtain trial balance from service center;~~ and reconcile totals with applicable general ledger accounts; trace disposition of selected unposted items. Examine selected certificates of deposit paid subsequent to examination date to determine proper payment of proceeds.

(j) **Other liabilities (including bank's liability under acceptance and confirmed letters of credit).**

(1) **Accruals.** Review accounting procedures and test selected transactions.

(2) **Unearned discount and deferred income.** Review accounting procedures and test selected transactions, including rebates.

(3) **Other.** Review and test selected transactions to supporting documentation, and confirm balances to extent necessary to be satisfied with accuracy of amounts recorded.

(4) Obtain statement of treasury tax and loan account, reconcile with general ledger account, and confirm balance.

(k) **Capital stock.**

(1) Obtain ~~Trial~~trial balance of stockholders' ledger and open stubs of stock certificate books~~;~~ and reconcile total par value with the general ledger account.

(2) Trace open stubs of stock certificate book to stockholders' ledger on a test basis where practical.

(3) Examine stock transfers for proper assignments, cancellation and recording in the stockholders' register.

(4) For institutions using an outside registrar and/or transfer agent, confirm the number of shares of stock issued and outstanding and reconcile totals with the general ledger account.

(5) Obtain ~~Trial~~trial balance of capital notes and debentures outstanding and reconcile total with general ledger account; determine that the bank is in compliance with applicable accounting provisions of such instruments; confirm balances with holders on a test basis.

(l) **Surplus and reserves.** Review transactions in the account and trace selected additions and reductions to supporting documents.

(m) **Undivided profits.** Review selected transactions in the account. Trace income and expense account balances closed to undivided profits since the last examination.

(n) **Income and expense (non-operating).** Test selected transactions to supporting documents.

(o) **Collection items.**

(1) Schedule selected outstanding items at the examination date; inspect items or confirm with holders.

(2) Examine, credit or remittance advices, checks or other evidence of payment applicable to scheduled items paid subsequent to examination date.

(p) **Safekeeping department.** Review accounting procedures for recording items held in safekeeping for customers; inspect selected items on hand and confirm selected items held in custody by other banks; confirm selected safekeeping accounts by direct communication with customers.

(q) **Trust department.**

(1) Obtain a ~~Trial~~trial balance ~~summary cards for the various~~ of individual trust accounts and reconcile the totals with the ~~trust general ledger control accounts where practicable~~ trust department balance sheet.

(2) ~~Prove the detail asset cards to the amounts shown on the trial balance for selected trusts.~~ Verify the existence of assets contained within selected trust accounts. Savings accounts and certificates of deposit should be confirmed on a test basis by reference to the bank records or by direct communication with the bank.

~~(3) Examine or confirm assets of selected trust as noted on the detail asset cards. Savings accounts and certificates of deposit should be confirmed on a test basis by reference to the bank records or by direct communication with the bank.~~

(~~4~~3) Review selected trust accounts and test transactions to supporting records and data.

(r) **Trust Companies.** The examination of a trust company must be geared to those particular activities of the specific trust company being examined. The minimum examination procedures required by this rule should be utilized for all trust companies as applicable.

(~~r~~s) **General.**

(1) Review minutes of Board of Directors since last examination; determine that formal resolutions of an accounting nature have been followed.

(2) Review accounting procedures for handling non-ledger assets, such as charged-off loans, recoveries, etc.

(3) Compare most recent daily statement with general ledger accounts; review examination date transactions reflected in general ledger accounts; investigate any unusual transactions.

(4) Review board authorization on purchases and sales of investments.

(~~s~~t) **Direct confirmation with borrowers and depositors.**

(1) Mail negative and/or positive confirmation requests on a test basis for all loan and deposit categories, including participation loans purchased and sold. (Most bonding companies have minimum requirements. This determination should be made prior to examination.)

(2) For participation loans purchased, confirm balances with the selling bank only. For participating loans sold, confirm the balances sold with the purchasing bank and the total balances with the borrower on a test basis.

(3) Mail confirmation requests to a selected number of customers whose loans have been charged off.

(4) Mail confirmation requests to a selected number of deposit customers whose accounts have been closed since last examination.

(5) Any positive confirmation request not acknowledged by a loan customer after two weeks from the date of the original mailing shall be followed by a second confirmation request. A listing of significant positive confirmation requests not acknowledged after the mailing of both a first and second request shall be included in the report.

(~~t~~u) **Others.** The examination procedures listed above are the minimum procedures to be performed and deal primarily with the accountability for the bank's recorded assets and liabilities. However, they should not be construed as restrictive. Circumstances relative to individual banks or situations encountered may make it necessary or desirable to expand certain procedures~~. Apply~~, apply alternative procedures, or extend examination procedures to other areas.

85:10-7-4. Trust companies [REVOKED]

~~(a) The examination of a trust company must necessarily be geared to those particular activities of the specific trust company being examined, as trust companies' activities vary, all being within the confines of the activities authorized by law.~~

~~(b) The examiner must determine the trust company's activities and then perform the applicable examination functions. The foregoing scope is applicable to all banks and is to be used for trust companies insofar as applicable. If the trust company solicits funds from the general public, either in the form of trust deposits or in the form of certificates or notes, representing funds due the public, much of the foregoing will be applicable. Additionally, the examiner should address himself to areas such as title guarantee operation, fidelity bonds outstanding, sinking funds, etc.~~

85:10-7-5. Performance of an audit in lieu of examination

Performance of an audit by an independent certified public accountant resulting in an unqualified opinion being rendered constitutes satisfaction of the requirements of this Subchapter. No additional statements or reports are required from the accounting firm. A copy of such audit report, together with an unqualified opinion, must be submitted to the Commissioner within 120 days of completion of the audit.

SUBCHAPTER 9. NEW BANKS, BRANCHES, AND OTHER FACILITIES

85:10-9-1. Application for a new bank or trust company

In addition to those provisions set out in Article III of the Oklahoma Banking Code, the following requirements must be met:

(1) The application shall be on a form prescribed by the Commissioner, including but not limited to that information required in Section 305 of the ~~Banking~~ Code.

(2) If any of the stock of the proposed bank or trust company is offered to other than the organizers (as provided in Sections 303 or 303.1 of the ~~Banking~~ Code), it shall be offered by an ~~Offering Circular~~ offering circular only in accordance with provisions of 85:10-13-2, the contents of which must be accepted by the Commissioner.

(3) No ~~Certificate~~certificate of ~~Authority~~authority for a bank shall be approved until an application for ~~Federal Deposit Insurance~~ federal deposit insurance or for membership in the Federal Reserve System has been approved in accordance with the provisions of Section 313(B)(5) of the ~~Banking~~ Code.

85:10-9-2. Application to establish or relocate a branch ~~or a detached facility~~

(a) ~~**Generally**~~ **Filing of application.**

(1) A bank desiring to establish or relocate ~~either~~ a branch ~~or a detached facility~~ pursuant to the ~~Banking~~ Code, shall submit to the Commissioner the original and ~~ten~~ two copies of an application ~~for certificate to maintain and operate a branch or detached facility~~ on a form prescribed by the Commissioner.

(2) The application shall be executed by the applicant's president or vice-president~~, and attested by the applicant's cashier or secretary~~.

(3) An application fee as set forth in 85:10-3-21 shall accompany each application.

(4) Applicants are urged to submit their applications to the Federal Deposit Insurance Corporation (nonmember banks) or the Federal Reserve Board (member banks) at the same time the application is submitted to the Commissioner.

~~(5) The term "application," as used in 85:10-9-2, shall be understood to refer to an application to establish or relocate a branch or detached facility.~~

~~(b)~~ ~~**Notice of application.**~~

~~(1) The applicant shall publish a Notice of Application in a newspaper of general circulation in the community in which the applicant proposes to establish or relocate the branch or detached facility.~~

~~(2) The Notice shall state that an application has been mailed or delivered on or before the date of the Notice, and the Notice shall contain the name of the applicant(s) and the subject matter of the application.~~

~~(3) The application shall be mailed or delivered to the Commissioner on or before the day the Notice is published. A statement containing the date of publication and the name and address of the newspaper in which the notice was published shall be furnished with the application.~~

~~(c)~~ ~~**Protest period.**~~ ~~Within ten (10) days after the notice by publication as described in (b) of this Section, any interested person desiring to protest the approval of the application shall submit to the Commissioner a written protest, which shall include both the specific facts and specific legal authority pursuant to which such protestant requests that the application be disapproved. Failure to include such specifics may result in the protest being returned to the protestant or disregarded for lack of specifics.~~

(~~d~~b) **Investigation.** The Commissioner may request additional information from the applicant ~~and any protestant,~~ and conduct such investigation as he deems appropriate. No special emphasis will be placed on an appraisal of economic and competitive conditions.

~~(e)~~ ~~**Effect of protest/nonprotest.**~~ ~~At the earlier of receipt by the Commissioner of a written protest requesting a hearing before the Board or the expiration of the Protest Period prescribed by this Section, the Commissioner shall:~~

~~(1) Upon receipt of such written protest, notify the Applicant and each protestant of the receipt of the protest and of the date, time and place of the hearing on the Application and protest(s) before the Board; or~~

~~(2) Upon receipt of such written protest and the Applicant's latest completed examination reflects a Uniform Financial Institutions Composite "CAMEL" rating of "I" or "II", and the Applicant is not subject to supervisory action by the Department such as a Memorandum of Understanding, Cease and Desist Order, or similar action, the Commissioner may proceed pursuant to subsection (g)(1) of this Section; or~~

~~(3) If no such written protest is received, proceed pursuant to subsection (g) of this Section.~~

~~(f)~~ ~~**Applicant request for hearing.**~~ ~~The Applicant may in the application or at any time prior to expiration of the Protest Period prescribed by this Section, request in writing that the Application be submitted to the Board for a hearing before the Board for approval/disapproval of the Application. In such event, the Commissioner shall proceed according to subsection (e)(1) of this Section.~~

(~~g~~c) **Commissioner approval.**

(1) ~~In the event an Application is not protested in writing within the protest period prescribed by this section, and unless~~ Unless the Applicant requests a hearing before the Board either by having so stated in the Application

or by subsequent written request, the Commissioner may consider the Application, grant approval and issue the ~~Certificate~~certificate of ~~Authority~~authority to establish and operate or to relocate a branch or detached facility without a hearing before the Board. The Commissioner's consideration of the Application for approval shall be conducted pursuant to the same standards and criteria as are applicable to ~~Applications~~applications before the Board.

(2) ~~Provided, that such approval~~ Approval may be granted by the Commissioner only in the event ~~Applicant's~~applicant's latest completed examination reflects a Uniform Financial Institutions Composite "CAMEL" rating of ~~"I" or "II"~~ 1 or 2, and the ~~Applicant~~applicant is not subject to supervisory action by the Department such as a ~~Memorandum~~memorandum of ~~Understanding~~understanding, ~~Cease~~cease and ~~Desist~~desist ~~Order~~order, or similar action.

~~(3) In the event an Application is protested in writing and the Applicant meets the requirements as stated in (g)(2) of this subsection, then the Commissioner may consider the Application, grant approval and issue the Certificate of Authority to establish and operate or to relocate a branch or detached facility without a hearing before the Board.~~

(~~4~~3) ~~In the event~~ If the Commissioner~~, upon consideration of an Application pursuant to (1) or (3) of this subsection,~~ determines that the ~~Application~~application should not be approved, the ~~Application~~application will proceed pursuant to subsection ~~(h)~~ (d) of this ~~Section~~section.

~~(5) In the event the Application is protested in writing which protest is withdrawn in writing, the Commissioner may, at his discretion, approve such Application pursuant to (1) of this subsection or submit it to the Board for hearing.~~

(~~6~~4) The Commissioner shall have the absolute discretion to defer ruling on any ~~Application~~application ~~pursuant to (1) or (3) of this subsection,~~ thereby allowing such ~~Application~~application to ~~come on for hearing~~ be heard before the Board for ~~Board~~ consideration and approval/disapproval.

(~~h~~d) **Notice of intent to recommend denial.** In the event the Commissioner, based on his investigation, determines not to approve the application, the Commissioner shall ~~mail~~ send to the applicant by overnight mail or ~~telefacsimile(fax)~~ electronic communication a written notice of intent to recommend denial, including the reasons for such negative recommendation and the date, time and place the ~~hearing on the Application~~ application will ~~come on before~~ be heard by the Board. Within ten (10) days after receipt of such notice, the applicant shall notify the Commissioner of its intent to withdraw its application or to proceed with a hearing on the application before the Board.

(~~i~~e) **Hearing.** In the event a hearing before the Board is set by the Commissioner, such hearing shall be conducted as follows:

(1) **Time limit.** The applicant shall be limited to 30 minutes to present testimony and arguments at the hearing~~, and the protestants as a group shall be limited to 30 minutes to present testimony and arguments~~. Additional time may be granted by the Commissioner upon good cause shown.

(2) **Transcript.** A transcript may be made of each hearing of an application. The Commissioner or the applicant may arrange for a court reporter to be present to record the proceedings. All expenses of the reporter, including the furnishing of the original and two(2) copies of the transcript to the Commissioner, shall be borne by the ~~protestants or if no protest has occurred, by the~~ applicant.

(3) **Procedure.** The order of presentation, appearance of witnesses, and presentation of evidence for hearings of applications shall be as directed by the ~~Chair~~chair of the Board present at the hearing. Ten (10) copies of all documentary evidence shall be furnished to the Commissioner prior to the hearing as directed by the Commissioner.

(4) **Decision of the Board.** Within twenty (20) days after the conclusion of the hearing of an application, or such additional time as the Board may prescribe, the Board ~~Chair~~chair shall issue an order approving or disapproving the application, and shall promptly mail a copy of the order to the applicant ~~and to each protestant~~.

(5) **Criteria.** No special emphasis will be placed by the Board on an appraisal of economic and competitive conditions. The Board, at its discretion, may consider the following factors in arriving at its decision:

(A) Financial condition and history of the applicant. The current asset and liability condition and history of the applicant, its compliance with applicable laws and regulations, and its investment in fixed assets are primary areas of consideration. The applicant's aggregate fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity and capital, and must comply with Section 414 of the ~~Banking~~ Code.

(B) Adequacy of capital structure. Capital earnings and retention of earnings should be sufficient to support the applicant's current level of operations as well as the proposed expansion.

(C) Future earnings prospect. The applicant's earnings potential will be evaluated in terms of the ability of overall bank earnings to absorb the anticipated expenses resulting from the establishment and operation of the proposed branch ~~or facility~~.

(D) Quality of management. The applicant's management must have demonstrated ability to operate the bank in a sound manner, and must display the degree of depth necessary to permit the establishment of the proposed branch ~~or facility~~.

(E) Legal limitations. Any statutory limitations and requirements regarding the establishment and location of branches ~~and detached facilities~~.

(F) Insiders. Any financial or other business arrangement, direct or indirect, involving the proposed branch ~~or facility~~ and bank insiders which involve terms and conditions more favorable to insiders than would be available in a comparable transaction with unrelated parties.

(G) **Affiliates.** The current asset and liability condition and history of any of applicant's affiliates, and other financial information on such affiliates which the Board deems relevant. As used in this paragraph, "affiliate" shall mean any company which the applicant controls, any company which controls the applicant, or any company under control of a company which also controls the applicant. For purposes of this paragraph, "control" shall be presumed to exist when one or more persons acting in concert directly or indirectly own, control, or have power to vote 25 percent or more of any class of voting securities of another person; or one or more persons acting in concert control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.

(~~j~~f) **Conditions.** The Board's or Commissioner's approval of an application shall be subject to any condition deemed by the Board or Commissioner to be relevant to the criteria set forth in ~~(i)~~(e)(5) of this Section.

(~~k~~g) **Commencement of business.** The applicant shall commence business at the branch ~~or facility~~ within eighteen (18) months of Board or Commissioner approval. Extensions of time within which to commence business may be granted by the Commissioner only upon good cause shown.

(~~l~~h) **Reapplication.** In the event an application is disapproved by the Board, the applicant may submit a new application following a material change of the circumstances which were the basis for the initial disapproval.

(~~m~~i) **Judicial review.** The decision of the ~~Board or Commissioner approving, or of the~~ Board disapproving~~,~~ an application may be appealed to the Oklahoma Supreme Court ~~by any party directly affected and showing aggrievement, from other than mere increase in competition, resulting from the Commissioner's or Board's decision~~. An appeal shall be commenced and conducted in accordance with the provisions of Section 207 of the ~~Banking~~ Code.

(j) **Military installation branch.** An application to establish a military banking facility or a branch on a military installation pursuant to Section 421 of the Code shall be made in accordance with this Rule 85:10-9-2. Provided, the application shall be accompanied by a letter of approval from the military installation commander.

85:10-9-3. Military banking facilities [REVOKED]

~~(a) **Oklahoma Military Banking Facility.** Section 421 of the Oklahoma Banking Code provides that any bank located in the State of Oklahoma may maintain and operate a facility on any military installation located in the State of Oklahoma, subject to the following:~~

~~(1) A letter of approval shall be submitted by the military installation commander, such letter to be attached to the application.~~

~~(2) Upon request of the military installation commander, the bank's board of directors shall adopt a resolution to remove the facility.~~

~~(3) All approvals shall be conditioned that should the installation commander request in writing such other services as provided in Section 421(A)(1) of the Banking Code and the request would include the making of loans, no such service shall be performed without the express approval of the Commissioner.~~

~~(b) **Military Installation Branch.** An application to establish a branch pursuant to Section 421(A)(2) of the Code shall be made in accordance with Rule 85:10-9-2. Provided, the notice of Application shall be as required by the Commissioner.~~

85:10-9-4. Consumer banking electronic facility [REVOKED]

~~(a) **Policy statement.** The policy of the Board with respect to consumer banking electronic facilities is that:~~

~~(1) Consumer banking electronic facility services should be made available to all banks and their customers within Oklahoma on a fair and equitable basis of nondiscriminatory terms and rates.~~

~~(2) Regulation of consumer banking electronic facilities should be fair and not unduly impede the development of new technologies which benefit the public.~~

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

~~(1) "Consumer banking electronic facility" when used herein is defined by Section 102(15) of the Banking Code as any electronic device owned, operated, leased by or on the behalf of a bank, savings association, or credit union other than a telephone or modem operated by a customer of a depository institution, to which a person may initiate an electronic fund transfer. The term includes without limitations, a point-of-sale terminal, automatic teller machines, automated loan machines, video banking centers, or any other similar electronic devices.~~

~~(2) "Consumer banking electronic facility network" shall mean two or more consumer banking electronic facilities electronically or manually connected directly or indirectly to the customer accounting system of one or more banks. A consumer banking electronic facility network shall not avail itself of nor be subject to the provisions of Section 422 of the Banking Code or rules adopted thereunder.~~

~~(3) "Banks located in Oklahoma," as that phrase is used in Section 422 of the Banking Code, shall be defined to include all banks, savings associations and credit unions, chartered by any state or the United States of America and having its main office or branch located within the State of Oklahoma.~~

~~(4) "Fair and equitable basis of nondiscriminatory access and rates" - Section 422(D)(3) of the Banking Code grants the Banking Board the jurisdiction to determine what constitutes a fair and equitable basis of nondiscriminatory access and rates, based upon cost of installation and proportionate usage of the facility. A principal factor~~

~~in any equitable formula of shared costs of installation and operation shall give weight to the number of transactions of each participating bank.~~

~~(A) Additional factors to be considered in determining "fairness" and "equitability" shall include, but not be limited to, the following:~~

~~(i) Cost associated with each transaction;~~

~~(ii) Total cost involved in operation of the consumer banking electronic facilities to be accessed;~~

~~(iii) Number of locations to be accessed;~~

~~(iv) Geographic area of the consumer banking electronic facility to be accessed;~~

~~(v) Other factors involved in the request arrangement.~~

~~(B) A bank requesting mandatory access to a consumer banking electronic facility shall be responsible for all costs associated with inter connection of the requesting bank's customer accounting system to the consumer banking electronic facility, and all costs necessary to achieve compatibility of the data processing systems of the requesting bank and the consumer banking electronic facility. Additionally, a determination of whether terms of access and rates are "fair and equitable" shall involve a consideration of whether they provide to the operator a fair return on the capital investment of the operator concerned. A determination of whether terms of access and rates are "nondiscriminatory" shall involve a consideration of the terms of access and rates offered by the operator from whom access is requested to other parties having access to the operator's consumer banking electronic facilities.~~

~~(5) **"Operator"** shall mean any bank, combination of banks or business entity, association or organization which owns, leases or otherwise controls the right to use any consumer banking electronic facility.~~

~~(6) **"Participating bank,"** as that term is used in Section 422 of the Banking Code, is a bank having access to a consumer banking electronic facility of the operator.~~

~~(c) **Procedural requirements.**~~

~~(1) **Petition.** In the event of a dispute concerning access to and rates for the use of consumer banking electronic facilities, a petition shall be submitted to the Commissioner setting forth the following information:~~

~~(A) The name of the specific bank(s) or other financial institution(s) ("Petitioner") located in Oklahoma, requesting access and/or rate determination.~~

~~(B) Designation of the specific consumer banking electronic facility to be accessed including, but not limited to, the exact location of the facility as well as the name of the operator ("Respondent") of such facility. This information is necessary only in connection with actions requesting access relief and shall not be required for actions brought solely for rate relief.~~

~~(C) A definitive, technical proposal specifically detailing the relief requested by the Petitioner. The technical proposal may address itself either to the issue of access, rates, or to both access and rates, if applicable.~~

~~(D) Evidence of a clear, definitive request for access and/or rate relief made by the Petitioner to the operator.~~

~~(E) Evidence that Petitioner has been denied access to a specific consumer banking electronic facility by the operator of such facility, and/or evidence of an offering of access to a specific consumer banking electronic facility, by the operator thereof, on terms alleged to be unfair, inequitable, or discriminatory as to Petitioner.~~

~~(F) Evidence of the Petitioner's good faith efforts to arrive at an agreement satisfactory to both the Petitioner and the operator of the consumer banking electronic facility, as to the issues of access, and/or rates, on a fair, equitable and nondiscriminatory basis.~~

~~(2) **Determination by the Board.** The Commissioner shall promptly forward a copy of the petition to the operator of the consumer banking electronic facility to which the Petitioner desires access ("respondent"). The respondent shall have thirty (30) days from the date the petition is received by the respondent to submit to the Commissioner an answer to the allegations contained in the petition. Upon receipt of such answer, the Commissioner shall schedule a pre-hearing conference for the purpose of delineating the issues to be addressed by the Board, setting the schedule for the parties' exchange of exhibits and witness lists, and other matters which may aid in the orderly resolution of the complaint. The hearing before the Board shall be conducted in accordance with the provisions of Chapter 1 of this Title. The Commissioner and the Board may exercise those powers of discovery and information gathering provided for by Section 206 of the Banking Code, Section 315 of the Administrative Procedures Act, and applicable rules in this Title.~~

85:10-9-6. Branch~~/detached facility~~ closing

(a) A bank may discontinue a branch~~/detached facility~~ office with the approval of the Commissioner. In order to gain approval, the bank must:

(1) submit to the Commissioner a resolution of its board of directors authorizing the closing;

(2) post a notice of the closing at both the branch~~/detached facility~~ location and the main office of the bank for thirty (30) days prior to the closing. Said notice shall state the effective date of the closing and indicate the location of the bank's closest office;

(3) submit to the Commissioner an affidavit stating that the notice posting requirement has been met;

(4) either publish notice of the closing once a week for two (2) weeks in a legal newspaper in general circulation in the community where the branch~~/detached facility~~ is located or furnish written notice to depositors and safe deposit box holders at the branch~~/detached facility~~ to be closed; and

(5) submit to the Commissioner a copy of the notices required by subsections (a)(2) and (a)(4) of this Section.

(b) The Commissioner shall approve the branch~~/detached facility~~ closing absent ~~grievous and~~ compelling reasons for denial.

85:10-9-7. Loan production office/Deposit origination office

For purposes of Section 424 of the Code, "main office" or "branch office" in connection with the loan decision and loan funding, shall be defined to include "back office facility" operations. "Back office facility" is defined as a bank facility that is neither accessible to nor visited by the public. The following activities can be conducted at a back office facility:

(1) Loan origination: Credit information may be assembled and loan applications can be solicited or processed.

(2) Loan approval: Loans that originate at ~~an LPO~~ a loan production office or other bank facility may be approved at a back office facility.

(3) Receipt of loan funds: Since back office facilities only refer to bank facilities that are neither accessible to nor visited by the public, there can be no situation in which a customer receives loan funds at the back office facility. A back office facility may credit loan funds (through ACH, wire transfer, or other electronic method) to a deposit account of the borrower at the bank without any in-person contact between the back office facility and the borrower.

SUBCHAPTER 11. SUBSTANTIVE GUIDELINES AND RESTRICTIONS

85:10-11-1. Pledging requirements for banks and trust companies

~~(a) Section 203(3) of the Banking Code provides that in addition to other powers conferred by the Banking Code, the Board shall have power to *adopt and promulgate reasonable and uniform rules and regulations to govern the conduct, operation and management of all banks or trust companies . . . and to govern . . . reports of such banks and trust companies and the form on which such banks and trust companies shall report . . . and otherwise keep their records and accounts.* [Refer to 6 O.S. §203(3)]~~

(~~b~~a) Each bank having trust powers and each trust company operating within this State shall report to the Commissioner annually or more often if requested by the Commissioner, on a form prescribed by him, the amount of ~~"~~cash and securities~~"~~ held in trust by the bank or trust company.

(~~c~~b) Section 1004(A)(1) of the ~~Banking~~ Code, requiring the pledging of securities to the Commissioner for the faithful performance of its duties, shall be satisfied by the securities being held in safe keeping at any bank approved by the Commissioner, other than the pledging bank, including the Federal Reserve Bank; the holding bank issuing its joint custody receipt therefor and forwarding said joint custody receipt to the Commissioner.

85:10-11-2. Investment securities

(a) **Qualifications.** In order to be classified as an "investment security," under Section 806(C) of the ~~Banking~~ Code, one or more of the following characteristics must exist with respect to a particular security:

(1) A public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue; or

(2) Other existing securities of the obligor must have such public distribution as to protect or insure the marketability of the issue under consideration; or

(3) In the case of investment securities for which a public distribution as set forth in (1) or (2) of this ~~Subsection~~subsection cannot be so provided, or so made, and which are issued by established commercial or industrial business or enterprises, that can demonstrate the ability to service such securities, the debt evidenced thereby must mature not later than ten (10) years after the date of issuance of the security and must be of such sound value or so secured as reasonably to assure its payment~~; and~~. ~~such~~Such securities must, by their terms, provide for the amortization of the debt evidenced thereby so that at least seventy-five percent (75%) of the principal will be extinguished by the maturity date by substantially equal periodic payments~~;~~. ~~provided~~Provided that no amortization need be required for the period of the first year after the date of issuance of such securities. Provided, further, that if the investment securities ~~be~~ are mortgage bonds or notes that the issuing corporation or the constituent companies comprising it for three (3) years immediately prior to the date of investment has earned, above all fixed charges other than interest on indebtedness, an amount equal to at least double the interest charges which it will be required to pay upon its outstanding obligations or when such mortgage bonds or notes plus all prior encumbrances outstanding are in an amount not in excess of fifty percent (50%) of the actual value of the property of the issuing corporation securing same.

(b) **Trust.** Where the security is issued under a trust agreement, the agreement must provide for a trustee independent of the obligor, which trustee must be a properly qualified trust company or banking trust business.

(c) **Purchasing Restrictions.** The purchase of "investment securities" in which the investment characteristics are distinctly and predominantly speculative or the purchase of securities which are in default, as to principal or interest, is prohibited. The purchase of any security convertible into stock at the option of the issuer is prohibited.

(d) **Duty.** Responsibility for the making of proper investments rests primarily with the ~~banks~~ bank's board of directors and there is no intention on the part of the ~~office of the Bank~~ Commissioner or Board, in the promulgation of regulations or otherwise, to delegate this responsibility to the rating services or others. Further, this duty should not in any way be considered as being fully performed by merely ascertaining that a particular security falls within a particular rating classification.

(e) **Applicability.** The requirements, conditions, restrictions and limitations of this regulation do not apply to loans and further, do not apply to securities:

(1) acquired through foreclosure on collateral, or

(2) acquired in good faith by way of compromise of a bad or doubtful claim to prevent loss to the bank in connection with a debt previously contracted.

85:10-11-3. Real estate lending

(a) ~~**Permitted.** A bank may make, arrange, purchase or sell in whole or in part loans or extensions of credit secured by liens on interests in real estate, subject to such terms, conditions and limitations as may be prescribed by the Commissioner or the Banking Board.~~ **Definition of "real estate".** For the purposes of ~~Title 6 O.S.,~~ Section 803 of the Code and this ~~Section~~section, the term "real estate" includes, but is not limited to, condominiums, leaseholds, cooperatives, land sale contracts and construction and development projects.

(b) **Compliance.** In making real estate loans pursuant to ~~Title 6 O.S.,~~ Section 803 of the Code and this ~~Section~~section, banks must comply with all applicable laws and regulations, including those pertaining to disclosure, reporting, documentation and public protection.

(c) **Safety and Soundness.** The safety and soundness of a bank's real estate lending activities shall be evaluated, as all other lending activities, with respect to prudence, loan quality, concentrations, policy adherence and other areas of supervisory concern. Real estate loans having excessive risk of nonpayment shall be classified by examiners. Additionally, examiners shall list as ~~"Technical Exceptions~~ technical exceptions~~"~~ those loans having deficiencies in documentation.

85:10-11-4. Safe deposit boxes

(a) **Lease.** For purposes of ~~Title 6 O.S.,~~ Section 1302 of the Code, ~~provides that, subject to such regulations as the Board may prescribe, a lessor as defined in Section 1301 may maintain and lease safe deposit boxes and may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor~~ the term "receipt" shall mean a copy of the lease contract but does not mean that the lessor must provide a receipt for any or all items deposited in a safe deposit box.

(b) **Requirements.** Each ~~bank or trust company which~~ lessor that provides safe deposit box services for its customers shall:

(1) Maintain a record as to the lessee(s) of each box rented.

(2) Maintain a record as to the person or persons permitted to enter the box~~.~~

~~(3) Maintain a record~~ with minimum data consisting of names of entries into the box and dates of entry.

(~~4~~3) Establish other precautionary procedures as may be deemed advisable by the institution's ~~Board~~ board of ~~Directors~~ directors to insure adequate safety to the lessees with a minimum of liability on the ~~bank or trust company~~ lessor.

85:10-11-5. Interest on deposits

~~(a) Savings/time deposits.~~ Any state bank is authorized to pay interest on ~~savings and time~~ deposits at rates authorized by its board of directors and not otherwise prohibited by the law of this state or by federal law ~~a rate not in excess of the maximum rate allowed to national banks by the Board of Governors of the Federal Reserve System~~.

~~(b) Demand deposits. Any state bank is authorized to pay interest on savings and time deposits in the same manner and at a rate not in excess of the maximum rate allowed to national banks.~~

85:10-11-6. Loans and investments in other banks

(a) **Application to trust companies.** The provisions of this ~~Section~~section are made applicable to trust companies in the same manner as to banks and each reference to "bank" or ~~"bank's"~~ "banks" shall include "trust company" or "trust ~~company's~~ companies" as if so worded.

(b) **Limitation and waiver.** The following limitations shall apply to all state chartered banks as they relate to their deposits, loans and investments in other banks (whether state or national), providing, however, that these limitations can be exceeded upon specific authorization in writing from the ~~Bank~~ Commissioner for a specific authorized period of time when in the opinion of the Commissioner conditions warrant due to seasonal influx, extraordinary large items and temporary situations. Request for waiver of the limitation must be made by the selling or depositing bank on an individual basis, stating reasons for request and time of waiver requested~~, and further provides that~~. As~~as~~ these rules relate to Federal Funds and Term Federal Funds, the limitation shall not apply if those funds are secured by at least 100% market value of securities which can be legally held by a state chartered bank.

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

(1) "Buying bank/depository bank" means the bank receiving the funds.

(2) "Certificate of deposit" means those deposits placed in a bank and evidenced by a written instrument or other record providing the funds shall remain on deposit for a given period of time (~~excess of 30~~ at least seven days) and draw interest thereon at a given rate of interest.

(3) "Demand balance" means those deposits placed in a bank on which no interest is payable and are withdrawable on demand.

(4) "Federal funds" means a loan from one bank to another on which the buying bank shall pay interest on a daily basis and the funds shall be available to the selling bank any day.

(5) "Selling bank/depositing bank" means bank from which the funds came.

(6) "Term federal funds" means a loan from one bank to another, on which the buying bank shall pay interest on a daily basis, or any other basis, and the funds shall be available to the selling bank at a predetermined future date.

(d) ~~Demand~~ Total **deposits.** No state chartered bank shall at any time have on deposit at any other bank an amount in excess of the depository bank's capital and surplus accounts (exclusive of debentures, undivided profits and reserve accounts). The permissible amount should then be reduced by those funds covered under ~~parts~~ other provisions of this ~~Section~~section.

(e) **Fed funds.** No state chartered bank shall at any time have sold in the form of ~~Fed~~ federal ~~Funds~~funds to any other bank an amount in excess of twice the selling bank's capital, surplus and undivided profits accounts exclusive of debentures and reserves, as reflected on the most recent ~~call~~ report of condition. The permissible amount should then be reduced by those funds covered under subsection (f) of this ~~Section~~section, if any, but in no event in excess of buying bank's capital and surplus.

(f) **Term fed funds and/or certificates of deposit.** No state chartered bank shall at any time have sold to any other bank in the form of ~~Term~~term ~~Fed Funds~~ federal funds, and/or have deposited in any other bank in the form of a certificate of deposit, or any other interest bearing deposit, an aggregate amount in excess of the selling or depositing bank's capital, surplus and undivided profits accounts, exclusive of debentures and reserves as reflected on the most recent ~~call~~ report of condition.

(g) **Capital debentures of bank.** No state chartered bank shall at any time invest its funds in the capital debenture issue of another bank in an amount of more than its lending limit, and capital debentures so invested in shall be qualified as "~~Investment Securities"~~ "investment securities" as set forth in 85:10-11-2.

(h) **Concentration of funds.** Compliance with these rules does not preclude the ~~Banking~~ Department from ~~having and expressing an opinion and comment that even compliance could still be a~~ concluding that deposits in a single institution could be considered a concentration of funds and placing these comments in the reports of examination to be called to the attention of ~~the~~ an institution's ~~Board~~board of ~~Directors~~directors.

85:10-11-7. Adjustable rate mortgage loans, graduated payment adjustable mortgage loans and reverse annuity mortgage loans

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

(1) **"Adjustable rate mortgage loan"** means any amortized loan made by a bank or trust company ~~to finance or refinance the purchase of and~~ secured by a lien on a one-to-four family dwelling where such loan is made pursuant to an agreement which enables the bank or trust company to make periodic adjustments to the interest rate.

(2) **"Graduated payment adjustable mortgage loan"** means a specific type of adjustable rate mortgage loan for which the monthly payment amount is insufficient at the beginning of the loan term to fully amortize the loan, but which provides for periodic adjustment of the payment amount to a level sufficient to fully amortize the loan at the then-existing interest rate.

(3) **"Reverse annuity mortgage loan"** means a debt instrument which provides periodic payments to homeowners secured by the accumulated equity in their home. The loan becomes due either upon a specific date or when a specified event occurs.

(b) **Authorization.** Banks and trust companies supervised by the ~~Oklahoma Banking Board~~ Department are hereby authorized to make, purchase or participate in adjustable rate mortgage loans, graduated payment adjustable mortgage loans and reverse annuity mortgage loans. Banks and trust companies are further authorized to apply the principles of interest rate adjustment discussed in this ~~S~~section to reverse annuity mortgage loans.

(c) **Disclosure.** Each bank or trust company that offers adjustable rate mortgage loans, ~~or~~ graduated payment adjustable mortgage loans, or reverse annuity mortgage loans must give borrowers and prospective borrowers written disclosure notices in accordance with the Oklahoma Consumer Credit Code, the Federal Truth-in-Lending Act and Regulation Z of the Federal Reserve Board to the extent such Federal law is applicable to institutions covered by this section.

(d) **Index.** Adjustments to the interest rate of adjustable rate mortgage loans, graduated payment adjustable mortgage loans and reverse annuity mortgage loans must correspond to the movement of an index specified in the loan documents, subject to such rate adjustment limitations, if any, as agreed by the parties. The documents may specify any interest rate index which is readily verifiable by the borrower and beyond the control of the bank or trust company.

(e) **Adjustment options.** Adjustment of the interest rate may be implemented through changes in the payment amount and/or through adjustments to the rate of amortization (i.e. the amount, if any, allocated to repayment of principal) and/or the loan term~~, provided that the loan term may not exceed 30 years~~. With respect to adjustable rate mortgage loans, adjustments to the rate of amortization are permissible only if the initial payment amount is sufficient to fully amortize the loan at the beginning of the loan term and if the payment amount is adjusted at least every 5 years to a level sufficient to amortize the outstanding principal at the interest rate then in effect over the remainder of the original loan term. With respect to graduated payment adjustable mortgage loans, within ten (10) years of the closing of the loan and at least every five (5) years thereafter, the monthly payment amount must be adjusted to a level sufficient to amortize the loan balance at the then-existing interest rate over the remaining term of the loan.

(f) **Cost or fees.** Borrowers may not be charged any costs or fees in connection with adjustments to an interest rate, payment amount, rate of amortization or loan maturity.

(g) **Assumption.** Banks and trust companies offering, purchasing, or participating in adjustable rate mortgage loans or graduated payment adjustable mortgage loans are not required to allow those loans to be assumed by new purchasers of the mortgaged property or to allow new purchasers to take title to such property subject to the lien of an adjustable rate mortgage loan made pursuant to this section. If a bank or trust company does allow such a loan to be assumed or purchaser to take title to property subject to the lien of an adjustable rate loan or

graduated payment adjustable mortgage loan made pursuant to this rule, the interest rate and any other loan terms may be reset as of the date of assumption.

85:10-11-8. Interest rate futures transactions

(a) The provisions of this Section are made applicable to trust companies in the same manner as to banks and each reference to "bank" or ~~"bank's"~~ "banks" shall include "trust company" or "trust ~~company's~~ companies" as if so worded.

(b) Oklahoma ~~State~~state-chartered banks engaging in interest rate futures transactions shall comply with ~~the guidelines and precautionary~~ any rules ~~previously~~ adopted by the federal bank regulatory agencies. ~~Said rules are made a part of this Section in (d) of this Section. While considerable management discretion is preserved by these guidelines, strict adherence to the provisions may avoid situations involving potentially unsafe banking practices~~.

(c) Each bank's ~~Board~~board of ~~Directors~~directors shall have ultimate responsibility to establish prudent policies and carefully monitor compliance ~~therewith~~ with any applicable rules. Such monitoring should be evidenced in the minutes of each meeting of the ~~Board~~board of ~~Directors~~directors.

~~(d) *Guidelines and Rules adopted by the three Federal bank regulatory agencies and respecting bank participation in financial futures markets, reviews to March 14, 1980. A bank that decides to engage in interest rate futures must first take the following steps.*~~

~~(1) *Prior to engaging in these transactions, a bank should obtain an opinion of counsel or its state banking authority concerning the legality of its activity under state law.*~~

~~(2) *The board of directors should consider any plan to engage in these activities and should endorse specific written policies in authorizing these activities. Policy objectives must be specific enough to outline permissible contract strategies and their relationship to other banking activities, and record keeping systems must be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives. Bank personnel are expected to be able to describe and document in detail how the positions they have taken in interest rate futures contracts contribute to the attainment of the bank's stated objectives.*~~

~~(3) *Banks that engage in interest rate futures transactions should do so only in accordance with safe and sound business practices and generally accepted accounting principles applicable to such activity.*~~

~~(4) *The board of directors should establish limitations applicable to interest rate futures contract positions; and the board of directors, a duly authorized committee thereof, or the bank's internal auditors should review periodically contract positions to ascertain conformance with such limits.*~~

~~(5) *Futures contract transactions should be of a size reasonably related to the bank's business needs and to its capacity to fulfill obligations incurred.*~~

~~(6) *The bank should maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments to make or take delivery of securities. Such registers and supporting journals should at a minimum include:*~~

~~(A) *the type and amount of each contract,*~~

~~(B) *the maturity date of each contract,*~~

~~(C) *the current market price and cost of each contract, and*~~

~~(D) *the amount of money held in margin accounts.*~~

~~(7) *All open positions should be reviewed and market values determined at least monthly, regardless of whether the bank is required to deposit margin in connection with a given contract. At the end of each month, the bank should value its interest rate futures contracts on a lower of cost or market value basis.*~~

~~(8) *Bank financial reports should disclose in an explanatory note any futures contract activity that materially affects the bank's financial condition.*~~

~~(9) *To assure adherence to bank policy and prevent unauthorized trading and other abuses, banks should establish other internal controls including periodic reports to management, segregation of duties, and internal audit programs.*~~

~~(10) *In managing their assets and liabilities, banks should evaluate the interest rate risk exposure resulting from their overall activities to insure that the positions that they take in the interest rate futures markets will reduce their risk exposure and the policy objectives should be formulated in light of the bank's entire asset and liability mix."* [Refer to 12 C.F.R. 3 Appendix A 3(6)(5)]~~

~~(e) *"Precautionary Rules*~~

~~(1) *Banks that engage in futures, forward or stand by contract transactions should do so only in accordance with safe and sound banking practices.*~~

~~(2) *Such transactions should be of a size reasonably related to the bank's business needs and to its capacity to fulfill obligations incurred.*~~

~~(3) *The positions banks take in futures, forward and stand by contracts should be such as to reduce the bank's exposure to loss through interest rate changes.*~~

~~(4) *Policy objectives should be formulated in the light of the bank's entire mix of assets and liabilities.*~~

~~(5) *Stand by contracts calling for settlement in excess of 150 days should not be issued by banks except in special circumstances and ordinarily such long term stand by contracts would be viewed by the agencies as being inappropriate."* [Refer to 12 C.F.R. 3 Appendix A 3(6)(5)]~~

85:10-11-9. Operating subsidiaries

(a) A bank or trust company may purchase for its own account not less than 50% of the voting shares or interest in a corporation or other entity to perform functions that the bank is empowered to perform directly, subject to the prior written approval of the Commissioner and subject to the provisions of this ~~Section~~section.

(1) The bank must own not less than 50% of the stock of the subsidiary, and the bank must control 50% of ~~its votings~~ the voting regarding the management and activities of the subsidiary.

(2) No officer, director or shareholder of the bank or officer, director or shareholder of the bank's holding company may otherwise have a direct or indirect pecuniary interest in the operating subsidiary.

(3) The subsidiary's operations must be limited to those functions which the parent bank is permitted to perform.

(4) The subsidiary's operations may be performed only at ~~the~~ a location at which the bank ~~is~~ would be authorized to engage in such operations.

(5) All transactions between the parent bank and the operating subsidiary are subject to any limitations and restrictions applicable under the laws of the State of Oklahoma and the United States.

(6) All provisions of the banking laws, rules and regulations applicable to the operations of the parent bank shall be equally applicable to the operations of the subsidiary.

(7) Unless otherwise provided by statute or regulation, pertinent book figures of the parent bank and its operating subsidiary shall be consolidated for the purpose of applying applicable statutory limitations, including, but not limited to Sections 220, 409, 410, 414, 802, 803, 805 and 806 of the Banking Code.

(8) Each operating subsidiary shall be subject to examination and supervision by the Commissioner in the same manner and to the same extent as the parent bank. If the Commissioner shall ascertain that the subsidiary is created or operated in violation of the ~~Banking~~ Code or Board rules, or that the manner of operation is detrimental to the business of the parent bank and/or its depositors, he may order the bank to dispose of all or any part of such subsidiary upon such terms as the Commissioner may deem proper.

(b) The bank shall request in writing the approval of the Commissioner to own and operate such a subsidiary. The request shall include a brief description of the subsidiary and its operations. The bank shall attach to the request a copy of the proposed certificate of incorporation and bylaws of the subsidiary or other similar organizational documentation in the case of a non corporate entity.

(c) The request with attachments shall be accompanied by ~~two (2) checks, one (1) made payable to the Commissioner as~~ a fee in the amount set forth in rule 85:10-3-21 ~~for approving the documents, and one (1) check in blank, made payable to the Secretary of State for fees due in connection with filing the Certificate of Incorporation~~. If the Commissioner approves the request and attached documents, ~~he shall file the Certificate, return a certified copy to~~ the bank~~, retain~~ shall file the necessary organizational documents with the Oklahoma Secretary of State (if the subsidiary is an Oklahoma organization) and return one ~~(1)~~ certified copy to the Department ~~for the Department's files~~, and forward necessary copies to the Federal Deposit Insurance Corporation or the Federal Reserve System. ~~The blank check will be completed by the Secretary of State when the filing fees are determined.~~

(d) Notwithstanding the restrictions of subsection (a) of this section, minority interests (less than 50%) in corporations, partnerships, limited liability entities, and other business ventures are permitted, if the Commissioner first determines that:

(1) the activities of the entity are part of or incidental to banking,

(2) the bank must be able to prevent the entity from engaging in activities not part of or incidental to banking,

(3) the investment must not subject the bank to open ended liability, and

(4) the investment must be convenient and useful to the bank's business and not a passive investment.

(e) Prior to disposition or dissolution of an operating subsidiary, the parent bank shall notify the Commissioner.

85:10-11-9.1. Financial subsidiaries

(a) A bank may control or hold an interest in a financial subsidiary, subject to the prior written approval of the Commissioner, and the following conditions:

(1) the bank and each depository institution affiliate of the bank must be well capitalized after deducting the aggregate amount of the outstanding equity investment, including retained earnings, of the bank in all its financial subsidiaries. The term "well capitalized" shall have the same meaning given the term in section 38 of the Federal Deposit Insurance Act;

(2) the bank must be well-managed, which shall mean the achievement of a composite CAMELS rating of 1 or 2 on the most recent examination and at least a rating of 2 for management. If the bank has not yet been examined, a bank may be considered well managed if the Commissioner determines that the bank's managerial resources are satisfactory;

(3) the aggregated consolidated total assets of all financial subsidiaries of the bank do not exceed the lesser of 45% of the consolidated total assets of the parent bank or $50 billion;

(4) the bank may not have received at its most recent examination for compliance with the Community Reinvestment Act a rating of less than "satisfactory";

(5) the bank must file an application with the Commissioner which includes:

(A) a description of the activities to be conducted by the financial subsidiary;

(B) a list of each license, permit, or other evidence of approval, if any, which the financial subsidiary, or one of its officers or employees, must hold as a condition for conducting activities;

(C) appropriate certifications as to compliance with the provisions of this section;

(D) a description and analysis of the specific legal authority permitting the activity to be conducted by the financial subsidiary; and

(E) such other information as the Commissioner may require.

(b) For purposes of this section, a "financial subsidiary" shall be defined according to section 46 of the Federal Deposit Insurance Act. Activities conducted through a financial

subsidiary shall include any activity permitted for a financial subsidiary under section 5136A of the Revised Statutes of the United States (12 U.S.C. § 24a). Provided, however, a state bank may continue to seek approval for subsidiary activities permissible under the Oklahoma Banking Code and section 24 of the Federal Deposit Insurance Act without complying with the provisions of this section.

(c) The assets and liabilities of a bank's financial subsidiaries shall not be consolidated with those of the bank.

(d) The organizational structure of the financial subsidiary must protect the separate corporate identity of the bank and may not subject the bank, its subsidiaries, or its affiliates to unlimited liability. The separate organizational structure of the subsidiary must withstand scrutiny under Oklahoma law, and any other law which the subsidiary was organized, so that the liabilities of the subsidiary are not attributable to the bank.

(e) For purposes of Sections 23A and 23B of the Federal Reserve Act, the financial subsidiary shall be considered an affiliate of the bank and not a subsidiary, and the bank must comply with all ~~amendments to~~ provisions of Section 23A and 23B of the Federal Reserve Act ~~made by section 121(b) of the Gramm-Leach-Bliley Act~~.

(f) Each financial subsidiary shall be subject to examination and supervision by the Commissioner in the same manner and to the same extent as the parent bank. If the Commissioner shall determine that the financial subsidiary is created or operated in violation of the Banking Code or Board rules, or that the manner of operation is detrimental to the business of the parent bank and/or its depositors, the Commissioner may order the bank to dispose of all or any part of the financial subsidiary upon such terms as the Commissioner may deem proper.

(g) The bank shall attach to its application a copy of the proposed certificate of incorporation and bylaws of the subsidiary or other similar organizational documentation in the case of a non-corporate entity.

(h) The fee for reviewing an application for a financial subsidiary shall be the same as that for reviewing the application of an operating subsidiary. The application with attachments shall be accompanied by ~~two checks, one made payable to the Commissioner as set forth in 85:10-3-21 for reviewing the documents, and one check in blank, made payable to the Secretary of State for fees due in connection with filing the organizational documents~~ the appropriate fee. If the Commissioner approves the application and attached documents, the ~~Commissioner~~ bank shall file the organizational documents with the Oklahoma Secretary of State (if the financial subsidiary is an Oklahoma organization), return a certified copy to the ~~bank, retain one copy for the Department's files~~ Department, and forward necessary copies to the Federal Deposit Insurance Corporation or the Federal Reserve System. ~~The blank check will be completed by the Secretary of State when the filing fees are determined.~~

(i) Prior to disposition or dissolution of a financial subsidiary, the parent bank shall notify the Commissioner.

85:10-11-10. Lending limits

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

(1) **"Commercial or business paper"** means negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in connection with the fabrication of a product, or to be used for any other business purpose which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper of the kind described in this paragraph must bear full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

(2) **"Contractual commitment to advance funds"** means:

(A) an obligation on the part of the bank or trust company to make payments (directly or indirectly) to a designated third party contingent upon a default by the customer of the bank or trust company in the performance of an obligation under the terms of the customer's contract with the third party; ~~or~~

(B) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit (as defined in this Section), guarantees, puts, and other similar arrangements;

(C) ~~For purposes of this Section,~~ undisbursed loan funds and lines of credit and loan commitments not yet drawn upon ~~which are not equivalent to a contractual commitment to advance funds as defined herein are not considered a "contractual commitment to advance funds."~~; and

(D) ~~This definition also does not include~~ commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer~~, which does not "guarantee" payment of a money obligation, and which does not provide for payment in the event of default by the account party~~.

(E) ~~Also~~ However, ~~excluded from this Section and~~ not within the meaning of "contractual commitment to advance funds" is the guaranteeing or insuring by trust companies of title to real and personal property to persons interested in such property or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon such property and bonds authorized to be issued by banks or trust companies under Sections 1001 and 1015 of the Banking Code.

(3) **"Loans and extensions of credit"** means

(A) any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a person or for the direct benefit of a person made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person;

(B) any contractual commitment to advance funds; and

(C) overdrafts, whether or not prearranged, except for "intra-day" or "daylight" overdrafts.~~"Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in this Section.~~

(4) **"Person"** shall have the same meaning as defined in Section 102~~(52)~~ of the ~~Banking~~ Code.

(5) **"Standby letter of credit"** is any letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer:

(A) to repay money borrowed by or advanced to or for the account of the account party; or

(B) to make payment on account of any indebtedness undertaken by the account party; or to make payment on account of any default by the account party in the performance of an obligation.

(b) **Combining loans to separate borrowers.**

(1) **General rule.** Loans or extensions of credit to one person will be attributed to other persons, for purposes of Section 802 of the Code and this Section, when

(A) the proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person or persons; or

(B) a "common enterprise" is deemed to exist between the persons.

(2) **Common enterprise.**

(A) Whether two or more persons are engaged in a "common enterprise" will depend upon a realistic evaluation of the facts and circumstances of particular transactions.

(B) Where the expected source of repayment for each loan or extension of credit is the same for each person, a "common enterprise" will be deemed to exist and the loans or extensions of credit must be combined.

(C) Where loans or extensions of credit are made to persons who are related through common control, including where one person is controlled by another person, a "common enterprise" will be deemed to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them. ~~A "common enterprise"~~ The businesses will be considered interdependent or substantial financial interdependence will be deemed to exist when 50 percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control ~~(as defined in(b)(2)(E) of this Section)~~. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, compensation, dividends, capital contributions, and similar receipts or repayments. For the purposes of this paragraph, "control" shall be presumed to exist when:

(i) one or more persons acting in concert directly or indirectly own, control, or have power to vote 25 percent or more of any class of voting securities of another person;

(ii) one or more persons acting in concert control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(iii) any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.

(D) A "common enterprise" will also be deemed to exist between separate persons when those separate persons borrow from a bank or trust company for the purpose of acquiring a business enterprise of which those persons will collectively own ~~more than~~ 50 percent or more of the voting ~~securities~~ interest of such business or enterprise.

~~(E) For the purposes of subsection (b)(2) (C) of this Section, "control" shall be presumed to exist when one or more persons acting in concert directly or indirectly own, control, or have power to vote 25 percent or more of any class of voting securities of another person; or one or more persons acting in concert control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.~~

(3) **Loans to ~~corporations~~ companies and subsidiaries.**

(A) For purposes of section 802 of the Code and this Section, a ~~corporation~~ company is a "subsidiary" of any person which owns or beneficially owns ~~more than~~ 50 percent or more of the voting ~~stock~~ interest of the ~~corporation~~ company. Such ownership need not be direct. Thus, if A owns ~~more than~~ 50 percent or more of the voting ~~stock of Corporation~~ interest in Company X which, in turn, owns ~~more than~~ 50 percent or more of the voting ~~stock of Corporation~~ interest in Company Y, ~~Corporation~~ Company Y would be considered a subsidiary of both A and of ~~Corporation~~ Company X.

(B) Loans or extensions of credit to a person and its subsidiary or to subsidiaries of one person need not be combined where the bank or trust company has determined that the person and subsidiaries involved are not engaged in a "common enterprise" as that term is defined in paragraph (2) of this subsection.

(C) Notwithstanding (b)(3)(B) of this Section, loans or extensions of credit to a "corporate group" may not exceed 50 percent of the capital of a bank or trust company. This aggregate limitation applies only to loans made pursuant to Section 802 of the Banking Code. A "corporate group" includes a person and all of its subsidiaries.

(4) **Loans to partnerships, joint ventures, and associations.**

(A) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of section 802 of the Code and this Section, be considered loans or extensions of credit to each member of such partnership, joint venture, or association except as otherwise provided below.

(B) Loans or extensions of credit to members of a partnership, joint venture, or association shall, for purposes of section 802 of the Code and this Section, be attributed to the partnership, joint venture, or association where one or more of the tests set forth in (b)(1) of this ~~sub~~section is satisfied with respect to one or more such members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association ~~under this Section~~ unless one or more of the tests set forth in (b)(1) of this Section is satisfied with respect to such other members. The tests set forth in (b)(1) of this ~~sub~~section shall be deemed to be satisfied so that loans or extensions of credit to one person will be attributed to other persons when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such a partnership, joint venture, or association, in which case, such loans or extensions of credit made to members shall be attributed both to such members and the applicable partnership, joint venture, or association.

(C) The rule set forth in (b)(4)(A) of this Section is not applicable to limited partners in limited partnerships, participants in joint ventures, or to members of associations, where the terms of the partnership, joint venture, or membership agreement and applicable law state they are not to be held liable for the debts or actions of the partnership, joint venture, or association. However, the rule set forth in (b)(1) of this Section is applicable to such partners or members.

(c) **Provisos to exceptions to lending limits.**

(1) A bank or trust company must ensure that a security interest has been perfected in any ~~deposits made~~ segregated deposit account in the lending bank that serves as security pursuant to Section 802(B)(3) of the ~~Banking~~ Code~~, including the assignment of a specifically identified deposit~~.

(2) Each bank or trust company must institute adequate procedures to ensure that any collateral value fully supports the outstanding loan at all times.

(d) **Interpretations.**

(1) **Obligations of accommodation parties.** The liability of a drawer, endorser, or guarantor who does not receive any of the proceeds, or the direct benefit of the proceeds, of the loan or extension of credit is not a loan or extension of credit to such person for purposes of one of the tests set forth in (b) of this Section unless such loan or extension of credit is considered in default.

(2) **Federal Funds.** "Sale of Federal funds" means, for purposes of this Section, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(A) Sales of Federal funds with a maturity of one business day or under a continuing contract are not "loans and extensions of credit" for purposes of Section 802 of the Banking Code. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limits.

(B) A "continuing contract" refers to an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

(3) ~~**Overdrafts.** Overdrafts, whether or not prearranged, are "loans and extensions of credit" for purposes of this Section. This rule does not apply to "intra-day" or "daylight" overdrafts.~~ **Contractual commitments to advance funds.** Only those funds that have been advanced under the terms of a contractual commitment to advance funds will be considered a loan or extension of credit for purposes of section 802 of the Code and this section.

(4) **Loans charged off in whole or in part.** The lending limits apply to all existing loans or extensions of credit to a person by the bank, including loans or extensions of credit which have been charged off on the books of the bank in whole or in part. Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy, court order, or are no longer legally enforceable for other reasons are not loans and extensions of credit for purposes of this part.

(5) **Sale of loan participations.**

(A) When a bank or trust company sells a participation in a loan or extension of credit, including the discount of the institution's own acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the institution's lending limits. In order to remove a loan or extension of credit from an institution's lending limit, a participation must result in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders~~. This is so even where~~ regardless of whether the participation agreement provides that repayment must be applied first to the shares sold. In that case, the pro rata sharing may only be accomplished if the agreement also provides that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments

and collections in proportion to the percentage of participation at the time of the occurrence of the event.

(B) The provisions of (d)(5) (A) of this Section apply to all "loans and extensions of credit," including "contractual commitment(s) to advance funds," as defined in (a)(2) of this Section.

(6) **Nonconforming Loans.** Notwithstanding anything in this Section to the contrary:

(A) A loan, within a bank's legal lending limit when made, will not be deemed a violation of this section or section 802 of the Code but will be treated as nonconforming if the loan is no longer in conformity with the bank's lending limit because -

(i) the bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules have changed;

(ii) a default by the borrower or other event resulting in primary liability of an accommodation party under subsection (d)(1) of this Section; or

(iii) collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value.

(B) A bank must use reasonable efforts to bring a loan that is nonconforming as a result of paragraph (A)(i) or (ii) of this Section into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(C) A bank must bring a loan that is nonconforming as a result of circumstances described in paragraph (d)(6)(A)(iii) of this Section into conformity with the bank's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions including a Commissioner's exception under section 802 of the Code, or other extraordinary circumstances determined by the Commissioner to be beyond the bank's control prevent the bank from taking action.

(7) In the event a bank has violated any provision of this section or section 802 of the Banking Code, the bank may apply to request permission from the Commissioner for permission to cure the violation by divesting itself of so much of the debt as will bring the offending loan back within the bank's lending limit, or by other methods acceptable to the Commissioner. Provided, the Commissioner may permit the violation to be cured only if the Commissioner finds that the violation was inadvertent. A violation of section 802 of the Code or this section cured pursuant to the approval of the Commissioner shall absolve the bank's board members from liability exposure to the cured violation with respect to the offending loan or extension of credit.

(8) Loans to a company shall not be considered to be a direct benefit to any owner of the company unless the proceeds of the loan are used for purposes other than company business. However, the limitation for a "corporate group" will still apply to a person and all of the person's subsidiaries.

85:10-11-11. Split-dollar insurance Bank-owned life insurance

(a) The provisions of this Section are made applicable to trust companies in the same manner as to banks and each reference to "bank" or "bank's" shall include "trust company" or "trust company's" as if so worded.

(b) The Board has determined that Split-Dollar insurance is an acceptable form of benefit which may be made available to bank officers and employees. Split-Dollar insurance is, briefly, an arrangement whereby the cash value ownership and death benefits of a life insurance policy are split between a bank and a bank officer or employee. Split-Dollar insurance is primarily used to assist an officer or employee in purchasing life insurance protection he otherwise could not afford. It may be used to provide needed personal coverage, as an employee fringe benefit, to supplement deferred compensation, profit sharing and group life insurance plans and for other business purposes justifying selective benefit programs. A bank's involvement in offering a Split-Dollar insurance benefit involves the carrying of a non-earning asset. It may further involve expense and borrowing, depending upon the specific arrangement. While recognizing the propriety of the Split-Dollar concept, the Board is concerned that some Split-Dollar insurance might be so excessive in amount or be so represented as a banking asset that, in some circumstances, it would involve ultra vires acts or unsound banking practices. Accordingly, in the interest of safe and sound banking, the Board will consider adherence to the following guidelines by a state-chartered bank offering Split-Dollar insurance to constitute a valid exercise of the bank's approved powers.

(1) A state-chartered bank should not involve itself with an insurance company prior to investigation and approval of the company's financial condition.

(2) There should be limits set by the bank's board of directors as to the amount of Split-Dollar insurance made available to any specific class of officers or employees as it may determine. Any insurance benefits provided an officer or employee which exceed the bank's total capital stock and surplus accounts shall be considered excessive and beyond the corporation and banking powers of a state-chartered bank.

(3) Clear, accurate and complete records shall be maintained of the offering and the existence of such Split-Dollar insurance policies, together with records of the contractual arrangements.

(4) Ordinarily, premiums paid on any Split-Dollar policy should be at the expense of the officer or employee, except that portion of a policy represented by an increase in cash value. Stated conversely, the bank should pay no more of any premium of a Split-Dollar policy than it can validly capitalize. Any premium payment made by a bank beyond this would constitute "expense" for and on behalf of the officer or employee involved. However, the bank may capitalize as an asset the amount of premium paid to the extent of the cash value of the policy plus any amount guaranteed by the insured. Evidence of guaranty shall contain a conforming note obligation signed by the insured, pledged to assure guaranty performance. Any

~~amounts not represented by cash value of the policy or loan documents shall be expensed as remuneration in behalf of the officer or employee involved.~~

~~(5) A security interest in cash value or in death benefit shall not be represented as a bank asset. There must be no constraints on the bank's ability to cancel any Split Dollar insurance arrangement at any time the bank's board of directors may determine. At such time the Split Dollar insurance arrangement is cancelled, for whatever reason, the asset represented by cash value of the policy and the asset represented by guaranty and not of the insured for purposes of completing the premium payment shall be collected forthwith.~~

~~(6) Books of the bank shall reflect all drawings or borrowings against the cash value of a policy, as "other liabilities for borrowed money," or as a contra account charged against the related asset.~~

~~(7) Policies shall be owned, maintained by and in the possession of the bank.~~

A bank may purchase life insurance products in connection with employee compensation, employee benefit plans, and for other uses to the same extent and under the same circumstances allowed under federal law and guidelines.

85:10-11-12. Letter of credit; contingent liabilities

In order that the books and records of a bank or trust company reflect its contingent liabilities, the bank or trust company shall properly maintain records on all letters of credit issued and outstanding showing the following information:

(1) Controlled registration numbering system;

(2) Name of the account party for whom the letter of credit is established;

(3) the name of the beneficiary;

(4) the amount; and

(5) the expiration date~~;~~.

~~(6) the terms under which payment is authorized.~~

85:10-11-13. Loan participations

(a) The provisions of this Section are made applicable to trust companies in the same manner as to banks and each reference to "bank" or ~~"bank's"~~ "banks" shall include references to "trust company" or "trust ~~company's~~ companies" as if so worded.

(b) Both the selling bank and purchasing bank must maintain satisfactory control over risk from loan participations. Each bank must adopt written lending policies and procedures to govern participations and shall keep written documentation of recourse arrangements which outline the rights and obligations of each party. Failure to meet the requirements of this subsection may constitute an unsafe and unsound banking practice.

(c) The selling bank shall disclose complete and current credit information on the obligor during the term of the loan.

(d) The purchasing bank shall perform an analysis of the credit quality and documentation for obligations to be purchased, shall analyze the value and lien status of the collateral, and shall maintain current and complete credit information on the obligor during the term of the loan. Failure to comply with this subsection may be cited as a technical exception.

(e) If a loan is classified, either internally or externally, the originating bank shall notify all participants of the classification status within 30 days of classification.

85:10-11-14. Repurchase agreements of banks with security dealers and others

(a) Banks and other financial institutions involved with the purchase of United States Government and Agency Obligations under agreements to resell (reverse repurchase agreements) have sometimes incurred significant losses. The most important factors causing these heavy losses have been inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions.

(b) Standards of prudent banking with respect to repurchase agreements (the term as used herein also refers to Reverse Repurchase Agreements) with securities dealers and others are set forth in (c) of this Section.

(c) The following minimum guidelines address the need for managing credit risk exposure under securities repurchase agreements and for controlling the securities in those transactions.

(1) Definitions:

(A) "Repurchase agreement" means an arrangement in which a party that owns securities acquires funds by transferring the securities to another party under an agreement to repurchase the securities at an agreed upon future date.

(B) "Reverse repurchase agreement" means an arrangement in which a party provides funds by acquiring securities pursuant to an agreement to resell them at an agreed upon future date.

(2) All banks or trust companies that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing those activities.

(3) A bank or trust company doing business with an unregulated securities dealer should be certain that the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital guidelines. To be certain, the following three forms of certification are required:

(A) A letter of certification from the dealer that the dealer will adhere on a continuous basis to the capital adequacy standard;

(B) Audited financial statements which demonstrate that as of the audit date the dealer was in compliance with the standard and the amount of liquid capital; and

(C) A copy of a letter from the firm's certified public accountant stating that it found no material weakness in the dealer's internal systems and controls incident to adherence to the standard.

(4) Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

(5) Maximum position and temporary exposure limits for each approved counterparty should be established based upon credit analysis performed. Periodic review and updates of those limits are necessary.

(6) Except with respect to a bank or trust companies secured interest and control of securities held as collateral, a repurchase agreement transaction will be subject to lending limits.

(7) A bank must have a ~~A~~ written agreement specific to each repurchase agreement transaction specifying all the terms of the transaction.

(8) Possession or control of the underlying securities must be obtained.

(9) The amount paid by a bank or trust company under the repurchase agreement should be less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. Margin requirements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement.

(10) Counterparties should not be provided with excessive margin of collateralization. The excess market value of securities sold by a bank or trust company are viewed as an unsecured loan to the counterparty and should be treated accordingly for credit policy and control purposes.

85:10-11-15. Insurance

The ~~Banking~~ Code ~~in Section 402(12)~~ grants the power to state banks to engage in any banking activity conferred upon national banks. ~~12 U.S.C. §92 and 12 C.F.R. §7.7100~~ Federal law provides that national banks may act as agent for any fire, life, or other insurance company in any place the population of which does not exceed 5,000 inhabitants. This provision is hereby made applicable to any office of a state bank when the office is located in a place having a population of less than 5,000, even though the main office of such bank is located in a place whose population exceeds 5,000. If a bank acts as insurance agent in a place that, at the time the insurance agency was established, had a population of less than 5,000 but which has grown in size to exceed 5,000, the bank may continue to maintain the agency in such place without regard to its population. Insurance activities conducted through a financial subsidiary are not subject to the restrictions described in this section.

85:10-11-16. Deposit and safekeeping agreements and fees

(a) Each holding of property by a bank for a customer in deposit or safe keeping creates a debtor-creditor relationship as provided in the agreement between the bank and the customer. Such agreement is a contractual relationship which may be established by ~~the signature card signed only~~ any record executed or adopted by the customer under applicable law.

~~(1) The signature card of a customer of a bank is a contract between the bank and the customer.~~

(~~2~~b) Reasonable fees as determined by policy of the bank's board may be charged by a bank for any account and safe keeping services even if the specific terms of the contract between the bank and the customer are silent with regard to service charges.

(~~3~~c) Interest on a deposit may or may not be paid on a dormant account as determined by policy of the bank's board even if the specific terms of the contract between the bank and the customer are silent with regard to interest. A bank may determine by policy when an account is considered "dormant" and such policy may determine an account is dormant even though it may not be considered abandoned or unclaimed under applicable law.

(~~4~~d) No state government agency shall examine any accounts or safe keeping records of any bank without fifteen (15) days prior written notification of the scope of such examination to the ~~State Banking~~ Commissioner. No charge may be assessed the bank for any such examination by any such governmental agency and the bank is entitled to be paid costs of producing and copying records pursuant to the Oklahoma Financial Privacy Act.

85:10-11-17. Unsafe and unsound bank or trust practices

(a) Section 203(2) of the ~~Banking~~ Code provides that in addition to the other powers conferred by the Banking Code, the Board shall have the power to define any term not defined therein.

(b) State-chartered banks and trust companies are prohibited from engaging in unsafe or unsound practices. As used in the ~~Banking~~ Code, unsafe or unsound banking or trust practice shall be defined as any action, or lack of action, that is contrary to generally accepted standards of prudent operation of a bank or trust company which leads to an abnormal risk of loss or damage to a bank or trust company, its shareholders or depositors, or the insurance fund of the FDIC. The seriousness of each action or inaction, and its likely results, must be considered; an imprudent action or inaction is not automatically an unsafe or unsound banking practice.

(c) Whether a particular activity is an unsafe or unsound banking practice must be determined in light of all relevant facts. The Department furnishes the following list as a guideline only. The activities described herein are not irrebuttably presumed to be unsafe or unsound. Conversely, not all practices which might under the circumstances be termed unsafe or unsound are mentioned here:

(1) Operating with management whose policies and practices are detrimental to the bank or trust company and jeopardize the safety of the bank's or trust company's deposit.

(2) Operating with total adjusted capital and reserves that are inadequate in relation to the kind and quality of the assets of the bank or trust company.

(3) Operating in a way that produces a deficit in net operating income.

(4) Operating with a serious lack of liquidity, especially in view of the asset and deposit structure of the bank or trust company.

(5) Engaging in speculative and hazardous investment policies.
(6) Paying excessive cash dividends.
(7) Excessive reliance on purchased deposits.
(8) Excessive reliance on letters of credit either issued by the bank or accepted as collateral to loans advanced.
(9) Excessive amounts of loan participations sold.
(10) Paying interest on participations without advising participating institution that the course of interest was not from the borrower.
(11) Selling participations without disclosing to the purchasers of those participations material, non-public information known to the bank.
(12) Failure to limit, control and document contingent liabilities.
(13) Engaging in hazardous lending and lax collection policies and practices, as evidenced by:
(A) an excessive volume of loans subject to adverse classification,
(B) an excessive volume of loans without adequate documentation, including credit information,
(C) excessive net loan losses,
(D) an excessive volume of loans in relation to the total assets and deposits of the bank or trust company,
(E) an excessive volume of weak and self-serving loans to persons connected with the bank or trust company, especially if a significant portion of these loans are adversely classified,
(F) excessive concentrations of credit, especially if a substantial portion of this credit is adversely classified,
(G) indiscriminate participation in weak and undocumented loans originated by other institutions,
(H) failing to adopt written loan policies,
(I) an excessive volume of overdue loans, and
(J) failure to diversify the loan portfolio of the bank.
(14) Permitting officers to engage in lending practices beyond the scope of their position.
(15) Operating the bank with inadequate internal controls.
(16) Operating the bank with excessive volume of out-of-territory loans.
(17) Failure to heed warnings and admonitions of the supervisory authorities of the bank or trust company.
(18) Continued and flagrant violation of any laws, rules, regulations or written agreements between the bank or trust company and the Commissioner or the Board, or order of the Commissioner or Board.
(19) Any action likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or likely to seriously weaken the condition of the bank or trust company or otherwise seriously prejudice the interest of its depositors.

85:10-11-18. Persons qualified to sell title insurance for trust companies

(a) Any person who is employed or appointed by a trust company and who solicits applications for a policy of title insurance or negotiates a policy of title insurance shall comply with the ~~Insurance Agents Licensing Act, 36 O.S. §1421 et seq.~~ provisions of the Oklahoma Insurance Code.
(b) Trust companies which employ or appoint any such person shall obtain and maintain records from the Oklahoma Insurance Commissioner showing that each such person is duly licensed as an insurance agent for title insurance. Absence of the ~~said~~ necessary records shall be prima facie evidence of noncompliance with this subsection.
(c) Failure of the trust company to comply with this section may result in temporary suspension of its title insurance powers by the Commissioner or revocation of such powers by the Board.

85:10-11-19. Use of confusingly similar names

(a) As for any bank with a confusingly similar name as defined by ~~6 O.S. § 102(14)~~ section 102 of the Code, branches of said banks in a city or town other than where the main bank is located shall be identified as branches in all advertisements and signage, including electronic media, with the words "branch of" or the words "office of" followed by the name of the bank and the city or town where the main bank is located or shall, by the use of the term "home office" either preceded or followed by the city or town where the main bank is located, make clear that the branch location is not the main bank or not a separate charter.
(b) As used in ~~6 O.S. § 1417(A)and(B)~~ section 1417 of the Code "conspicuously" shall mean that lettering shall be no smaller than twenty-five percent (25%) of the size of the largest print (except for logos) used in the bank's name elsewhere in the advertisement or sign, but in no event smaller than ten (10) point type, and shall be at least as bold and legible as the remainder of the advertisement or signage. In the case of radio or television advertisements, the name of the main bank and its city or town, along with a designation of that entity as the main bank or home office, as described in subsection (a) of this section shall be stated in the advertisement. Novelties, gift items and other small tokens furnished to the public, shall not be considered advertisements subject to this section or the application of ~~6 O.S. § 1417~~ section 1417 of the Code.
(c) The advertisement or signage must not obfuscate that the location is a branch or what the name of the main bank is nor the town where the main bank is located.

85:10-11-20. Leasing

(a) **General provisions.**
(1) **Authority.**
(A) A bank may engage in lease financing transactions under Sections 402(17) and 805(C) of the Banking Code.
(B) On entering into a lease financing transaction in compliance with this Section, a bank must reasonably expect to realize a return of its full investment in

the leased property, plus the estimated cost of financing the property over the term of the lease, from -

(i) Rentals;

(ii) Estimated tax benefits; and

(iii) The estimated residual value of the property at the expiration of the term of the lease.

(2) **Net lease basis.**

(A) A net lease is a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term.

(ii) The purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value.

(iii) The loan of replacement or substitute property while the leased property is being serviced.

(iv) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

(v) The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financier of the property.

(B) If, in good faith, a bank believes that there has been an unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in subsection (a)(2)(A) of this Section shall not prevent the bank -

(i) As the owner and lessor under a net lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

(ii) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(C) The limitations contained in subsection (a)(2)(A) of this Section do not prohibit a bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in subsection (a)(2)(B) of this Section.

(D) The limitations contained in subsection (a)(2)(A) of this Section do not prohibit a bank from arranging for any of the services enumerated in subsection (a)(2)(A) of this Section to be provided by a third party to a lessee (at the expense of the lessee) with respect to property leased by the lessee.

(3) **Investment in personal property.**

(A) A bank may acquire specific property to be leased only after the bank has entered into either:

(i) A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property; or

(ii) A legally binding written commitment to lease the property on terms which comply with the provisions of this Section.

(B) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subsection (a) or subsection (b) of this Section, as soon as practicable, but in no event later than two years from the expiration of the lease. Property which the bank retains in anticipation of re-leasing must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(C) Notwithstanding the provisions of subsection (a)(3)(B) of this Section, on the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short-term bridge or interim lease is permissible if it otherwise conforms with the net lease requirements of subsection (a) of this Section. Such a short-term bridge or interim lease need not comply with the further requirements of subsection (b) of this Section. Short-term bridge or interim leases may be used pending the sale of off-lease property, or its release as a conforming long-term lease financing transaction.

(4) **Application of lending limits.** Leasing financing trans-actions entered into under this Section are subject to the limitations on loans or extensions of credit under Section 802(A)(1) of the Banking Code. The Commissioner reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling.

(b) **Leases.**

(1) **General rule.** A bank may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture for lease financing transactions on a net lease basis, or may become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease; provided that the requirements of subsection (a) of this Section and subsection (b) of this Section are met.

(2) **Lease term.**

(A) Lease financing transactions entered into under subsection (b)(1) of this Section must have an initial term of not less than 90 days.

(B) The minimum lease term provided for in ~~subsection (b)(1)~~ paragraph (2)(A) of this ~~Section~~ subsection, shall not be applicable to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that, at its

inception, such lease was in conformance with the requirements of this Section.

SUBCHAPTER 13. INVESTOR PROTECTION

85:10-13-1. Prohibition against deceptive advertising

State-chartered banks and trust companies are prohibited from engaging in false, deceptive or misleading advertising, and from publishing or representing, by any device whatsoever, statements tending to deceive or mislead the public.

85:10-13-2. Offering circular

(a) **Definitions.** ~~The following words and terms, when~~ When used in this ~~S~~subchapter, the word "security" shall have the following meaning, unless the text clearly indicates otherwise.

"Security" means any note, stock, bond, debenture, evidence of indebtedness, certificate of interest, trust certificate, thrift certificate, subscription, investment contract, voting trust certificate, certificate of deposit and other such instruments as defined in the ~~Oklahoma Statutes Title 71 (~~Oklahoma Securities ~~act)~~ Act. ~~For purposes of this Section, however,~~ However, the term security does not mean any deposit in an institution whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) **Offering circular requirements.**

(1) **General prohibition.** No bank or trust company shall, directly or indirectly, offer, offer to sell, offer for sale or sell any security of which it is the issuer unless the offer, offer to sell, offer for sale or sale is made through the use of an ~~Offering~~offering ~~Circular~~circular which has been filed with~~, and declared effective by,~~ the Bank Commissioner and that complies with the provisions of this section. Every sale must contain a statement that the offering circular was disclosed. Thereafter the bank or trust company shall be required to maintain permanent records to substantiate that the offering was made by the ~~Offering~~offering ~~Circular~~circular only.

(2) **New bank.** In the case of banks in organization, no subscriptions shall be taken, nor stock offered for sale, until and after the ~~Bank~~ Commissioner shall have accepted the ~~Offering Circular~~ offering circular and then offering can only be made by divulging to the prospective purchaser of the stock the ~~Offering Circular~~ offering circular and his/her subscription to the offering must contain a signed statement that said ~~Offering Circular~~ offering circular was disclosed. Thereafter, the bank or trust company shall be required to maintain permanent records to substantiate that the offering was made by ~~Offering Circular~~ offering circular only.

(3) **When effective-update.** The effective date of the ~~Offering Circular~~ offering circular shall be the date on which it is declared effective by the ~~Bank~~ Commissioner. The ~~Offering Circular~~ offering circular shall be effective for a period of six (6) months, which period may be extended for two (2) consecutive ninety (90) day periods upon request to the ~~Bank~~ Commissioner. The ~~Offering Circular~~ offering circular must be updated during the course of the offering period by attaching the most recent ~~Balance~~ Sheet balance sheet and ~~Statement~~statement of ~~Income~~income of the bank ~~and~~ or trust company filed with the ~~Bank~~ Commissioner as part of the most recent ~~call~~ report of condition.

(4) **Noninsured disclosure.** The noninsured status of non-equity securities issued and deposits received by institutions under the jurisdiction of ~~this~~ the ~~department~~Department must be disclosed to the public clearly, conspicuously, and prominently on the face of any ~~Offering Circular~~ offering circular required and on the face of any written communication acknowledging sale or receipt.

(5) **Exception-FDIC.** All deposit accounts of trust companies, and other securities of both banks and trust companies, whether representing an equity interest in, or debt of, the institution, are subject to the disclosure requirements of this ~~S~~section unless the individual security or deposit account being advertised, offered for sale, sold or accepted is insured by the Federal Deposit Insurance Corporation.

(6) **Effect of circumstances.** In no event shall an ~~Offering Circular~~ offering circular be used which is false or misleading in light of the circumstances then existing.

(c) **Exempt transactions.** This ~~part~~ section shall not apply to:

(1) Any ~~transaction~~ nonpublic offering by a bank or trust company ~~not involving a public offering~~. ~~A transaction by a bank or trust company involving the offer, offer to sell, offer for sale or sale of securities of a bank or trust company to its parent holding company, is per se exempt and a notice of nonpublic sale is not required~~.

(2) Any reorganization, merger, consolidation or acquisition of assets by a bank where constituent security holders who will receive securities in the transaction are furnished with a proxy statement or information statement prepared substantially in accordance with the requirements of this section.

(3) Any transaction by a bank or trust company with its existing security holders which involves an exchange of a security pursuant to the exercise of a right of conversion.

(4) Any transaction in which the securities of a bank or trust company are offered to its employees or directors pursuant to a stock purchase, stock option, stock warrant, or stock savings plan.

(5) Any offering by a bank or trust company of its securities solely to its existing equity security holders or where the amount of the securities offered for sale, when aggregated with the amount of all other sales by the bank or trust company of its securities within the twelve (12) months immediately preceding commencement of the subject offering, does not exceed ~~$500,000~~ $1,000,000. However, no offer of securities may be made in reliance on this paragraph (5) unless the bank or trust company prepares and distributes to all ~~Offerees~~offerees prior to sale a document describing the bank and the offer. The items of an offering circular should be used merely as a

guide. In addition, the offering document and a notice containing the following information shall be filed with the ~~Bank~~ Commissioner not later than twenty (20) days prior to commencement of the offering:

(A) The name of the bank or trust company and location of its principal place of business;

(B) The class of security to be offered;

(C) The aggregate offering price of the securities;

(D) The class and aggregate offering price of all securities sold within the months prior to the proposed commencement date of the offering; and

(E) The date on which the offering will commence and a brief statement of the bank or trust company's plan as to the use and distribution of the offering document and any other offering materials. ~~(6)~~ The offering document described in this paragraph (5) above shall be filed with the ~~Bank~~ Commissioner. While the offering document will not be declared effective by the Commissioner, the Commissioner has the right to review the document and take such regulatory action as is appropriate against a bank or trust company, its officers, directors or employees if basic disclosure has not been made or the document contains statements which are false or misleading in light of the circumstances.

(6) An offer, offer to sell, offer for sale or sale of securities of a bank or trust company to its parent holding company.

(d) **Nonpublic offerings.** Transactions by a bank or trust company involving the offer, offer to sell, offer for sale, or sale of securities of a bank or trust company shall be deemed to be transactions not involving any public offering if all of the following conditions are satisfied.

(1) The bank or trust company shall have reasonable grounds to believe the ~~O~~offeree has the knowledge or experience in financial matters capable of evaluating the risk of the prospective investments.

(2) All ~~Offerees~~offerees and sales are negotiated transactions through direct communication.

(3) Each ~~Offerree~~offeree shall have access to all the information generally contained in an ~~Offering Circular~~ offering circular.

(4) The securities are sold to not more than ~~fifteen (15)~~ twenty-five (25) persons during any continuous twelve (12) month period.

(5) The minimum denomination of any security shall be $100,000 and each ~~O~~offeree shall sign a statement that the securities are being purchased for investment and not distribution.

(6) Notice is given to the ~~Bank~~ Commissioner at least twenty (20) days prior to any such offering of the facts and the circumstances surrounding such an offer which will justify the exemption.

85:10-13-3. Advertising

(a) **Promotional materials/sales literature.** Sales Literature is defined as any promotional materials or displays used in any manner in connection with the offer or sale of any security whether or not the issuer of the security is identified in such materials or displays, including, but not limited to, the following:

(1) offering circulars, amended offering circulars and supplements thereto;

(2) pamphlets, brochures and question~~s~~ and answer sheets;

(3) form letters, circulars and mailers;

(4) press releases, public notices, interviews by the media, ~~and~~ newspaper or magazine advertisements, and advertisements on the internet;

(5) audio/visual displays and oral presentations at seminars or lectures;

(6) the text of any radio broadcast;

(7) the audio/video contents of any television broadcast; and

(8) the text of oral presentations by telephone solicitors.

(b) ~~**Prohibition.** No sales literature shall contain a reference to the Oklahoma State Banking Department unless such reference is approved by the Commissioner. Banks and trust companies are specifically prohibited from advertising that they are regulated by the State Banking Department as the level of supervision by the Department is not adequate to afford the protection implied by such statement.~~ **References to the Banking Department.** References to the Department in an offering circular may provide that the bank or trust company, or bank or trust company in organization, shall be subject to the jurisdiction of the Department and subject to periodic examination by the Department. However, no references to the Department may be made that would imply that the Department's supervision or examination will afford protection from loss on any investment in the bank or trust company's securities.

(c) **Mandatory noninsured disclosure.** The security document itself (except when the document is a stock certificate) and all promotional materials or displays listed in (a) of this ~~Section~~section which deal with uninsured deposits or investments shall contain on their face, in the case of written material, or clearly, prominently and conspicuously placed within the text, script or display in the case of any radio, television or other advertising media, the following statement or its equivalent: "THIS SECURITY IS NOT INSURED BY AN AGENCY OF THE GOVERNMENT"

(d) **Standards.** All ~~Offering Circulars~~ offering circulars required by this ~~Section~~ section and all promotional materials shall adhere to the standards of truth in fact and completeness.

85:10-13-4. Complaint procedure for violations

(a) Possible violations of any portion of this ~~Subchapter~~subchapter may be reported to the Commissioner by any interested person. The Commissioner shall investigate alleged violations and may, at his discretion, order an evidentiary hearing.

(b) When a hearing is ordered, the respondent bank or trust company shall have the opportunity to appear before the Commissioner at the hearing and show cause why the activity complained of should be allowed to continue.

(c) Following the hearing, the Commissioner shall enter findings of fact, conclusions of law, and an order. If the Commissioner orders the practice to cease or other appropriate sanction, the bank or trust company, within ten (10) days from the date of the ~~Order~~order, may request a hearing before the ~~Banking~~ Board. In those cases in which such a hearing is requested, the Board shall review the Commissioner's findings and conclusions and may enter an order which adopts, modifies, or rejects the Commissioner's ~~Findings~~findings of ~~Fact~~fact, ~~Conclusions~~conclusions of ~~Law~~law and ~~Order~~order.

[OAR Docket #08-739; filed 4-25-08]

TITLE 195. BOARD OF DENTISTRY CHAPTER 1. ORGANIZATION, OPERATION, AND PURPOSES

[OAR Docket #08-694]

RULEMAKING ACTION:
Permanent final adoption.
RULES:
195:1-1-6. Public inspection of certain records [AMENDED]
AUTHORITY:
Title 59 O.S. Supp. 1996, Section 328.15(A), Board of Dentistry
DATES:
Comment Period:
January 2, 2008 to February 7, 2008
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April 1, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2008.
Final adoption:
April 17, 2008
Effective:
July 1, 2008
ANALYSIS:
Board is deleting old rules now replaced by 59 O.S. Section 43a(H) citing information obtained and all contents of any investigation file shall be exempt from the provisions of the Oklahoma Open Records Act.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

195:1-1-6. Public inspection of certain records

~~(a)~~ All public records of the Board shall be made available for public inspection at the office during regular office hours. Copies of public records of the Board shall be made and certified upon pre-payment of the copying fee set forth in the fee schedule enacted by the Board.

~~(b) Records of the board are subject to mandatory privilege of confidentiality and shall not be released to the public unless ordered by a court of competent jurisdiction. The Principal Administrative Officer of the Board may, upon request, allow record, subject to a permissive privilege of confidentiality, to be open for public review and copying.~~

~~(c) Copies of complaints received by the Board shall be kept confidential pursuant to Title 51 Oklahoma Statutes. In the event a complaint from a citizen results in an individual proceeding, the respondent of the individual proceeding shall be provided a copy of the citizen complaint and any exculpatory information.~~

[OAR Docket #08-694; filed 4-22-08]

TITLE 195. BOARD OF DENTISTRY CHAPTER 3. COMPLAINTS, INVESTIGATIONS AND HEARINGS

[OAR Docket #08-695]

RULEMAKING ACTION:
Permanent final adoption.
RULES:
195:3-1-10. Request for declaratory ruling~~interpretation of rules~~
AUTHORITY:
Title 59 O.S. Supp. 1996, Section 328.15(A), Board of Dentistry
DATES:
Comment Period:
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Final adoption:
April 17, 2008
Effective:
July 1, 2008
ANALYSIS:
Board is accepting advice from the Attorney General and attempting to clarify process for declaratory rulings.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

195:3-1-10. Request for declaratory ruling ~~interpretation of rules~~

~~Any person who may be affected by the existence of application of any of the rules of this chapter may request in writing an interpretation or ruling regarding the application of such rule to the facts furnished with the inquiry. Any such request shall state fully the facts concerning which the rule may apply, and the particular rule about which the question exists. The request or inquiry will be added to the agenda for the next scheduled Board meeting but may if necessary be continued for further consideration to additional business meeting. The Board's interpretation of the rule will be furnished in writing to the person making the request, with a reasonable time thereafter.~~

(a) An individual or group may file a request with the Board for a declaratory ruling with respect to the application or enforcement of a rule or statute.

(1) The request shall be in writing and signed by the individual or director of group seeking the ruling.

(2) The request shall state the rule or statute involved.

(3) The request shall contain a concise statement of fact for which the ruling is sought.

(b) The Board may consider the request at the next meeting. In the event the question has been resolved prior to a ruling, the individual filing the request shall be notified of the applicable ruling

(c) The Board may defer action pending an investigation or hearing.

(d) The Board shall issue a written ruling or provide a written explanation to the individual filing the request as to why a ruling will not be issued.

(e) Unless otherwise specifically stated in the ruling, a ruling issued by the Board pursuant to the provisions of this Section shall constitute a precedent for the purpose of subsequent ruling on the same question until revoked or overruled by either the Board or a court of competent jurisdiction.

(f) The Board rulings shall be indexed by the number of the statute or rule for which the ruling interprets and shall be available for inspection by members of the public at the Board office.

[OAR Docket #08-695; filed 4-22-08]

TITLE 195. BOARD OF DENTISTRY
CHAPTER 25. RULES FOR CONTINUING DENTAL EDUCATION

[OAR Docket #08-696]

RULEMAKING ACTION:
Permanent final adoption.
RULES:
195:25-1-2. Continuing education required
195:25-1-7. Categories of continuing education
AUTHORITY:
Title 59 O.S. Supp. 1996, Section 328.15(A), Board of Dentistry
DATES:
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April 17, 2008
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July 1, 2008
ANALYSIS:
The Board will require an ethics course once in every three-year continuing education reporting cycle. There will be no designation of hours to encourage compliance. The Board will also begin to accept "Volunteer Service" for continuing education credit. Hour for hour credit will be granted for up to ten (10) hours for a dentist and five (5) hours for a dental hygienist per reporting cycle. Volunteer service will benefit the public by providing more dentists at free clinics, etc.
CONTACT PERSON:
Linda C. Campbell, Executive Director, (405) 524-9037

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

195:25-1-2. Continuing education required

(a) Pursuant to Title 59 O.S. 328.15 (11), the Board shall require continuing education as a prerequisite for renewal of registration of dentists and dental hygienists. Any course is acceptable that contributes to updating and maintaining the knowledge and skills of the dentist and dental hygienist in the treatment of the individual dental patient.

(b) Courses directly related to provision of services and patient care shall be considered for credit. Courses dealing substantially with other subjects of professional concern are outside the scope of the continuing dental education program. Such courses or programs would include money management, investments, and professional organizational business meetings. However, the Board may allow exception as specified in Category D.

(c) Proof of CPR course provided by the American Heart Association/Health Care Provider Level or the American Red Cross/Professional Rescuer shall be required for every licensed dentist and dental hygienist once in each three (3) year reporting cycle. Courses for the Professional Rescuer sponsored by the American Safety and Health Institute and Programs sponsored by the Veterans Administration or Armed Forces shall also be recognized for approval.

(d) Proof of a course in Ethics shall be required for every licensed dentist and dental hygienist once in each three (3) year reporting cycle. Courses shall be given hour for hour credit. Dentists and dental hygienists may obtain continuing education in ethics from any designated category.

195:25-1-7. Categories of continuing education

At least 50% of the continuing education requirement must be from category A and/or B. Not more than 50% of the requirement can be obtained from Category C. Continuing education must come from designated categories. A description of the categories of education programs is outlined below:

(1) Category A.

(A) Formalized structured learning situations at colleges or universities at regular undergraduate or college course levels will be allowed one (1) hour credit for each hour in attendance. Regular university or college courses are evaluated at semester hour, i.e.: A dentally related three (3) hour college credit course will be allowed three (3) hours of continuing education credit.

(B) Any university may co-sponsor a program within the State of Oklahoma. They must send a copy of the letter to the Board.

(C) Programs sponsored by the Veterans Administration or Armed Forces, given at a government facility will be granted hour for hour credit without university co-sponsorship.

(2) Category B.

(A) Formalized Meetings: Meetings of the following recognized groups will be granted hour for hour credit for the scientific portions of their programs:

(i) National professional organizations and their components

(ii) University sponsored professional Alumni clinical meetings

(iii) Organized Dental or Dental Hygiene Study Club Meetings

(iv) Seminars-sponsored by recognized Dental/Dental Hygiene constituent societies

(B) Advanced Study: Graduate study, internships, residencies, Dentists or hygienists engaged in acceptable full-time programs will fulfill their continuing education requirements for each calendar year in which they are actively participating in such programs by nature of these activities, and will have no additional formal requirements for that year. However, persons so engaged must notify the Board.

(3) Category C.

(A) Publishing Papers - Presenting clinics - Lecturing-Teaching: these activities will be granted six (6) hours credit for each hours of the original presentation, and hour for hour credit for additional presentation of the same material. Full or part-time teaching will receive credit for the semester credit hours. One (1) hour credit can be recorded for every 18 hours of clinical instruction.

(B) Self-Instructional Programs - Study Tapes-Correspondence Programs: These programs will be granted hour for hour credit. Only 50% of the total requirement may be obtained through this category. The dentists or dental hygienists must submit a certificate of registration from the sponsoring institution, organization or study club or have the participation in the course verified by the sponsoring agency in a manner specified by the Board Continuing Education Committee to be considered for approval.

(C) Volunteer Service - Licensees who donate their expertise for the dental care and treatment of indigent and needy persons shall be granted hour for hour credit for up to ten (10) hours for a dentist and five (5) hours for a dental hygienist within a reporting cycle. Dentists and dental hygienists must submit proof of actual volunteer work from a recognized entity approved by the Board. Volunteer service submitted for credit shall not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any dental care or treatment rendered.

(4) Category D. Exceptions: Exceptions will be considered at the discretion of the Board.

(A) No more than six (6) hours of the sixty (60) hour requirement for dentists can be from practice management type courses.

(B) No more than three (3) hours of the thirty (30) hour requirement for dental hygienists can be from practice management type courses.

[OAR Docket #08-696; filed 4-22-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE

[OAR Docket #08-645]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Environmental Permitting Process
Part 7. Water Quality Division Tiers and Time Lines
252:4-7-73. Water Quality Applications - Tier I [AMENDED]
252:4-7-74. Water Quality Applications - Tier II [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and Water Quality, 27A O.S. § 2-6-101 *et seq.*
DATES:
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July 1, 2008

SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed changes to the Water Quality Application Tier rules clean up language to make the classifications of Tier I permits consistent, clarify that modifications to or the addition of impoundments to an existing permitted industrial wastewater system is a Tier I application, and add language to clarify that a new industrial wastewater treatment system application is classified as a Tier II.
CONTACT PERSON:
Donald D. Maisch, don.maisch@deq.state.ok.us, at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

252:4-7-73. Water quality applications - Tier I

The following water quality authorizations require Tier I applications.

(1) Permit for flow-through impoundment(s) as part of the pretreatment process.
(2) Permit renewal for a facility with an expiring permit for industrial non-discharging impoundment or industrial septic tank system.
(3) Permit renewal for an expiring permit with minor or no change(s) for land application of sludge and/or wastewater for same site.
(4) New, modified or renewed authorization under a general permit.
(5) Approval of new pretreatment program.
(6) Closure plan approval.
(7) Certifications issued pursuant to Section 401 of the Clean Water Act.
(8) Approval of exemption for water line extensions.
(9) Approval of exemption for water distribution and wastewater collection systems.
(10) Approval for alternative individual on-site sewage treatment systems.
(11) Approval for alternative small public on-site sewage treatment systems.
(12) Residential development approval.
(13) Transfer of discharge permit.
(14) Minor modification of discharge permit.
(15) Modification of an existing individual municipal permit for land application of biosolids and/or wastewater.
(16) Modification of or addition to ~~a~~ an existing permitted municipal wastewater treatment system (including sewer line extensions).
(17) Modification of or addition to ~~a~~ an existing permitted public water supply treatment and/or distribution system (including line extensions).
(18) Modification of or addition to an existing permitted industrial non-discharging impoundment, ~~and/or~~ industrial septic tank system, and/or industrial wastewater treatment system ~~permit~~.
(19) Modification of an approved pretreatment program.
(20) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.
(21) New, modified or renewed individual categorical or significant industrial user pretreatment permit.
(22) Modification of or addition of impoundment(s) to an existing permitted industrial wastewater treatment system.

252:4-7-74. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) Permit to construct a new municipal wastewater treatment, and/or collection system, excluding line extensions.
(2) Permit to construct a new public water supply treatment and/or distribution system, excluding water line extensions.
(3) New discharge permit for minor facility.
(4) Individual storm water permit.
(5) New permit for industrial non-discharging impoundment, ~~or~~ industrial septic tank, or industrial wastewater system.
(6) New individual permit for land application of sludge, biosolids and/or wastewater.
(7) Permit renewal for a facility with expiring discharge permit.
(8) Permit renewal for a facility with expiring individual storm water discharge permit.
(9) Variance including thermal components of effluent limitations for an individual discharge permit.
(10) Major modification of discharge permit.
(11) Modification of an individual industrial permit for land application of sludge and/or wastewater.
(12) New, modified or renewed general permit.

[OAR Docket #08-645; filed 4-11-08]

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

[OAR Docket #08-646]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
252:100-1-3. Definitions [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions
252:100-8-1.1. Definitions [AMENDED]
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
Part 1. General Provisions
252:100-37-2. Definitions [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 1. General Provisions
252:100-39-2. Definitions [AMENDED]

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The Department is proposing amendments to the Chapter 100 definition sections 252:100-1-3, 252:100-8-1.1, 252:100-37-2 and 252:100-39-2 to clarify and/or remove redundant definitions from Chapter 100. Among the proposals is a refined definition for volatile organic compounds including an exemption for tert-butyl acetate (TBAc). These changes will clarify these terms as they are meant to be used in the Chapter.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"Act" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 *et seq*.

"Administrator" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"Air contaminant source" means any and all sources of emission of air contaminants~~,~~ (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"Air pollution abatement operation" means any operation which has as its essential purpose a significant reduction in:

(A) the emission of air contaminants, or
(B) the effect of such emission.

"Air pollution episode" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

"Ambient air standards" or **"Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

"Atmosphere" means the air that envelops or surrounds the earth.

"Best available control technology" or **"BACT"** means the best control technology that is currently available as determined by the Division Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

"Catalytic cracking unit" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the

catalyst during cracking are removed by burning off in the regenerator.

"Combustible materials" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

(A) Are under common control.

(B) Are located on one or more contiguous or adjacent properties.

(C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

"Gross particulate matter" or "GPM" means particulate matter with an aerodynamic diameter greater than 10 micrometers.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or **"LAER"** means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to

emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

"New installation", "New source", or **"New equipment"** means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or **"NSPS"** means those standards found in 40 CFR Part 60.

"Nonmethane organic compounds" or "NMOC" means nonmethane organic compounds, as defined in 40 CFR 60.754.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Organic compound" means any chemical compound containing the element carbon.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"PM-10 emissions" means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less ~~than or equal to a nominal 10 micrometers,~~ as measured ~~during a stack test of the source's emissions~~by applicable reference methods, or an equivalent or alternative method.

"PM-10 ~~(particulate matter - 10 micrometers)~~" means particulate matter with an aerodynamic diameter of 10 micrometers or less ~~than or equal to a nominal 10 micrometers as measured by a federal reference method based on Appendix J of 40 CFR Part 50~~.

"PM-2.5" means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

"Particulate matter" or "PM" means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Total Suspended Particulates" or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant

which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or **"VOC"** means any ~~compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonates,~~organic compound ~~which~~that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbolic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and ~~Any organic compound~~compounds listed in 40 CFR 51.100(s)(1) ~~will be~~are presumed to have negligible photochemical reactivity and ~~will~~are not ~~be~~ considered to be ~~a~~ VOC.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 1. GENERAL PROVISIONS

252:100-8-1.1. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

"A stack in existence" means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of any regulated air pollutant~~s~~ emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

"Adverse impact on visibility" means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

"Dispersion technique" means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

(A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(B) The merging of exhaust gas streams where:

(i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;

(ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(iii) before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.

(C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emission limitations and emission standards" means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

"Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

"Secondary emissions" means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or

modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(A) emissions from trains coming to or from the new or modified stationary source; and,

(B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

"Stack" means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

"Visibility impairment" means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

SUBCHAPTER 37. CONTROL OF EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS)

PART 1. GENERAL PROVISIONS

252:100-37-2. Definitions

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

"Acrylic" means a chemical coating containing polymers or co-polymers of acrylic or substitute acrylic acid in combination with resinous modifiers. The primary mode of cure is solvent evaporation.

"Alkyd primer" means a chemical coating composed primarily of alkyd applied to a surface to provide a firm bond between the substrate and any additional coating.

"Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at normal operating conditions.

"Custom product finish" means a proprietary chemical coating designed for a specific customer and use.

"Drilling or production facility" means all drilling and servicing equipment, wells, flow lines, separators, equipment, gathering lines, and auxiliary non-transportation-related equipment used in the production of petroleum but does not include natural gasoline plants.

"Effluent water separator" means any container in which any VOC floating on, entrained in, or contained in water entering the container is physically separated and removed from the water prior to discharge of the water from the container.

"Epoxy" means a chemical coating containing epoxy groups and suitable chemical cross-linking agents. The primary mode of cure involves a chemical reaction between the epoxy and the cross-linking agent.

"External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

"Lease custody transfer" means the transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other form of transportation.

"Maintenance finish" means a chemical coating that protects a given substrate from adverse chemical or physical conditions.

"Nitrocellulose lacquer (NC lacquer)" means a chemical coating containing nitrocellulose and suitable resinous modifiers . The primary mode of cure is solvent evaporation.

"Submerged fill pipe" means any fill pipe or discharge nozzle that meets any one of the following conditions.

(A) The bottom of the discharge pipe or nozzle is below the surface of the liquid in the receiving vessel for at least 95 percent of the volume filled.

(B) The bottom of the discharge pipe or nozzle is less than 6 inches from the bottom of the receiving vessel.

(C) The bottom of the discharge pipe or nozzle is less than 2 pipe or nozzle diameters from the bottom of the receiving vessel.

"Vinyl" means a chemical coating containing plasticized or unplasticized polymers and co-polymers of vinyl acetate, vinyl chloride, polyvinyl alcohols or their condensation products. The primary mode of cure is solvent evaporation.

~~**"Volatile organic compound (VOC)"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. Any organic compound listed in 40 CFR 51.100(s)(1) will be presumed to have negligible photochemical reactivity and will not be considered to be a VOC.~~

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 1. GENERAL PROVISIONS

252:100-39-2. Definitions

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

"Petroleum refinery" means any facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of crude oil or other hydrocarbons or through redistillation, cracking, rearrangement or reforming or unfinished petroleum derivatives.

"Refinery unit" means a set of components which are a part of a basic process operation, such as distillation, hydrotreating, cracking or reforming of hydrocarbons.

"Submerged fill pipe" means any fill pipe or discharge nozzle that meets any one of the following conditions.

(A) The bottom of the discharge pipe or nozzle is below the surface of the liquid in the receiving vessel for at least 95 percent of the volume filled.

(B) The bottom of the discharge pipe or nozzle is less than 6 inches from the bottom of the receiving vessel.

(C) The bottom of the discharge pipe or nozzle is less than 2 pipe or nozzle diameters from the bottom of the receiving vessel.

~~**"Volatile organic compound (VOC)"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. Any organic compound listed in 40 CFR 51.100(s)(1) will be presumed to have negligible photochemical reactivity and will not be considered to be a VOC.~~

[OAR Docket #08-646; filed 4-11-08]

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

[OAR Docket #08-647]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-2 [AMENDED]
Part 3. Construction Permits
252:100-7-15 [AMENDED]
Part 4. Operating Permits
252:100-7-18 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. 2005, §§ 2-5-101 *et seq*.
DATES:
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Department proposes to amend OAC 252:100-7-2, 252:100-7-15, and 252:100-7-18. The proposed revision to OAC 252:100-7-2(b)(1)(D) replaces reference to Subchapter 41 (which was revoked) with reference to Subchapter 42. The proposed changes to OAC 252:100-7-2(f) make the transfer of ownership of a stationary source or facility an administrative amendment and requires the owner or operator to notify the DEQ using a prescribed form within 30 days of the change. The ten-day period that is currently required is increased to 30 days for consistency with State statutes. The proposed revision to OAC 252:100-7-2(g) deletes the emissions calculation methods for determining if a facility requires an Air Quality permit. The limits in OAC 252:100-7-2(g)(2)(A) and (B) require updating to avoid conflict with the specifications in the definition of "permit exempt facility" in OAC 252:100-7-1.1. This is due to the availability of better emissions data. As more knowledge is obtained regarding emissions from this equipment, further updates may be required. That being the case, it seems prudent to remove these limits from the rule to avoid unnecessary rule revisions and SIP changes. Except for subparagraph 7-15(b)(1)(A), the proposed revision to OAC 252:100-7-15 consists of nonsubstantive changes in format for consistency with other Air Pollution Control Rules. The proposed change to OAC 252:100-7-15(b)(1)(A) replaces "less than 40 tons per year" with "of 40 TPY or less" for consistency with the permit exempt facility category. The proposed revision to OAC 252:100-7-18 provides for administrative amendments to operating permits for minor facilities by addition of new subsection 7-18(b) and new paragraph 7-18(e)(2).
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-4218, FAX (405) 702-4101, e-mail cheryl.bradley@deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 1. GENERAL PROVISIONS

252:100-7-2. Requirement for permits for minor facilities

(a) **Permit required.** Except as provided in OAC 252:100-7-2 and 252:100-7-18(b), no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For additional application and permitting procedures, see OAC 252:4, Subchapter 7. Environmental Permit Process.

(b) **Exceptions.**

(1) **De minimis facilities.** De minimis facilities are exempted from the permitting requirements of OAC 252:100-7. De minimis facilities remain subject only to the following air quality control rules:

(A) De minimis facilities must comply with OAC 252:100-13, Open Burning.

(B) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of 252:100-23, Control of Emissions from Cotton Gins or 252:100-24, Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-25, Visible Emissions and Particulates.

(C) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of 252:100-23, Control of Emissions from Cotton Gins or Subchapter 24 Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-29, Control of Fugitive Dust.

(D) De minimis facilities must comply with OAC ~~252:100-41~~ 252:100-42 Control of ~~Emission of Hazardous and~~ Toxic Air Contaminants.

(2) **Permit exempt facilities.** Permit exempt facilities are exempted from the permitting requirements of OAC 252:100-7, the requirement to submit an annual emission inventory as required by OAC 252:100-5-2.1, and the requirement to pay annual operating fees as required by OAC 252:100-5-2.2(b). Permit exempt facilities remain subject to all other applicable State and Federal air quality control rules and standards.

(c) **Permit application.**

(1) All applications shall be signed by the applicant.

(2) The signature on an application for a permit shall constitute an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of the draft permit.

(d) **Applicability determination.** Upon written request along with the required fee and any relevant information needed, the DEQ will make a determination of whether a permit is required.

(e) **Change in permit status.** The owner or operator of a permitted facility may at any time notify the DEQ that the facility:

(1) Is de minimis, requesting termination of the permit, or

(2) Qualifies for either a permit by rule or a general permit, submitting the appropriate application for such permit, or

(3) Is permit exempt, requesting termination of the permit.

(f) **Transfer of permit.** The transfer of ownership of a stationary source or a facility is an administrative amendment that shall subject the new owner or operator to existing permit conditions and/or compliance schedules. A new permit is not required. The transferor shall notify the ~~AQD in writing~~ DEQ using a prescribed form no later than ~~10~~ 30 days following the change in ownership.

(g) **Emission calculation methods.**

~~(1) Except as allowed by OAC 252:100-7-2(g)(2) of this subsection, the~~ The methods in OAC 252:100-5-2.1(d) shall be used when calculating regulated air pollutant emission rates for purposes of determining if ~~an Air Quality Division~~ a DEQ-issued air quality permit is required or what type of permit is required.

~~(2) In lieu of calculating regulated air pollutant emission rates to determine if emissions from a facility meet the emission limits in the definition of permit exempt facility, the owner or operator of an oil and gas exploration and production facility or a natural gas compressor facility may assume the facility is permit exempt without calculation if the equipment and throughput at the facility meet the following criteria.~~

~~(A) **Engines.** The facility's total maximum manufacturer's designed rated horsepower for all reciprocating internal combustion engines in compressor service equals 240 or less.~~

~~(B) **Other equipment.**~~

~~(i) For an oil and gas exploration and production facility operating a liquid hydrocarbon storage vessel with the potential for flash emissions and/or a glycol dehydrator, the facility-wide actual annual average natural gas throughput is less than 0.650 MMSCFD (650,000 standard cubic feet per day) and the actual annual average hydrocarbon liquid throughput is less than 250 barrels per day.~~

~~(ii) For a compressor facility that is a natural gas transmission and storage facility operating a glycol dehydrator that is the only HAP emission source at the facility other than reciprocating internal combustion engines, the facility-wide actual annual average natural gas throughput is less than 1.0 MMSCFD (1 million standard cubic feet per day).~~

PART 3. CONSTRUCTION PERMITS

252:100-7-15. Construction permit

(a) **Construction permit required.** ~~No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ issued air quality construction permit. A construction~~

~~permit is also required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category. In addition, a construction permit is required to add a piece of equipment or a process that is subject to NSPS or NESHAP or to add or physically modify a piece of equipment or a process that results in an increase in actual emissions of any one regulated air pollutant by more than 5 tpy at an existing facility covered by an individual permit.~~ A construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) to add a piece of equipment or a process that is subject to NSPS or NESHAP or

(ii) to add or physically modify a piece of equipment or a process that results in an increase in actual emissions of any one regulated air pollutant by more than 5 TPY.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions ~~less than 40 tons per year~~ of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility does not emit or have the potential to emit 10 ~~tons per year~~ TPY or more of any single HAP or 25 ~~tons per year~~ TPY or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The owner or operator of the facility certifies that it will comply with the applicable permit by rule.

(E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:

(A) The facility has actual emissions less than 100 ~~tons per year~~ TPY of each regulated air pollutant, except for HAPs.

(B) The facility does not emit or have the potential to emit 10 ~~tons per year~~ TPY or more of any single HAP or 25 ~~tons per year~~ TPY or more of any combination of HAPs.

(C) The DEQ has issued a general permit for the industry.

(3) **Individual permit.** The owners or operators of ~~Minor~~ minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.

(c) **Content of construction permit application.** Construction permit applications shall contain at least the data and information listed in OAC 252:100-7-15(c)(1) and (2).

(1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to: ~~site information, process description, emission data, and when required, BACT determination, modeling and sampling point data.~~

(A) site information,

(B) process description,

(C) emission data,

(D) BACT when required,

(E) sampling point data and

(F) modeling data when required.

(2) **General permit.** An applicant for authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), authorization under the general permit is effective upon receipt of the NOI.

(d) **Permit contents.** The construction permit:

(1) Shall require the permittee to comply with all applicable air pollution rules.

(2) Shall prohibit the exceedance of ambient air quality standards contained in OAC 252:100-3.

(3) May establish permit conditions and limitations as necessary to assure compliance with all rules.

(e) **Failure to comply with a construction permit.** A violation ~~by the owner or operator~~ of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.

(f) **Cancellation of authority to construct or modify.** A duly issued permit to construct or modify will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the

permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

PART 4. OPERATING PERMITS

252:100-7-18. Operating permit

(a) **Permit required.** An operating permit is required for a minor facility as specified in OAC 252:100-7-18(a)(1) and (2).

(1) **New facility.** No person shall cause or authorize the operation of a new ~~or modified~~ minor facility for more than a 60-day period without applying for a ~~DEQ~~ DEQ-issued air quality operating permit ~~to operate~~.

~~(2) No owner or operator shall cause or authorize the operation of a minor facility if the DEQ denies or revokes a permit to operate.~~

(2) **Modification of an existing facility.** No person shall cause or authorize the operation of a minor facility modified pursuant to OAC 252:100-7-15(a)(2) for more than a 60-day period without applying for a DEQ-issued air quality operating permit.

(b) **Administrative permit amendment.** An administrative permit amendment to an operating permit does not require a prior construction permit. Except for correction of typographical errors, application for an administrative permit amendment shall be made to the DEQ in writing within 30 days of the date the change occurred. Application for correction of typographical errors can be made at anytime. An administrative permit amendment can be made to:

(1) correct typographical errors;

(2) identify a change in name, address, or phone number of any person identified in the permit, or provide a similar minor administrative change at the facility;

(3) require more frequent monitoring or reporting by the permittee; and/or

(4) allow other permit amendments that are not physical or operational changes and that do not result in an increase in emissions.

(c) **Denial or revocation of a permit to operate.** No owner or operator shall cause or authorize the operation of a minor facility if the DEQ denies or revokes a permit to operate.

(~~b~~d) **Permit Categories.** Three types of operating permits are available. See OAC 252:100-7-15(b) for a complete description of the permit categories.

(~~c~~e) **Permit application requirements.** An operating permit application shall meet the following requirements.

(1) **New or modified facility.** An operating permit application must contain the following information.

(~~1~~A) **Application content.** Application shall be made on a form provided by the DEQ. An application shall contain:

(~~A~~i) The proposed operation start-up date, or phased dates when applicable.

(~~B~~ii) Revisions to the installation/construction, if any, that differed from the construction design and plan given in the permit application material, data and specifications.

(~~2~~B) **Emission tests.** Before a permit to operate a new or modified minor facility is granted, the applicant, if required by the DEQ, shall conduct emission tests in accordance with methods approved by the DEQ with the tests being made at the expense of the applicant. The DEQ shall be given advance notice of the tests, may monitor performance tests conducted by the applicant, and may also conduct emissions tests. The results of any required test must be provided to the DEQ along with supporting information as required.

(2) **Contents of an application for an administrative permit amendment.** The application may be made on the DEQ application form or it may be in letter form. The application shall:

(A) describe the change to be made to the permit,

(B) include the date the change occurred,

(C) identify the facility and source involved, and

(D) be signed by the applicant.

(~~d~~f) **Operating permit conditions.**

(1) Emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

[OAR Docket #08-647; filed 4-11-08]

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

[OAR Docket #08-648]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
Part 7. Control of Specific Processes
252:100-37-38. Pumps and compressors [REVOKED]
AUTHORITY:
Environmental Quality Board; 27A O.S. 2005, §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. 2005, §§ 2-5-101 *et seq.*
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
It is being proposed to revoke OAC 252:100-37-38, Pumps and compressors, because the provisions of this section are obsolete.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 37. CONTROL OF EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCS)

PART 7. CONTROL OF SPECIFIC PROCESSES

252:100-37-38. Pumps and compressors [REVOKED]

~~(a) Any pump or compressor handling VOCs shall meet the following conditions.~~

~~(1) Rotating type pumps and compressors are equipped with mechanical seals or other equipment of equal efficiency.~~

~~(2) Reciprocating type pumps and compressors are equipped with packing glands.~~

~~(3) Emissions from the drain recovery system do not exceed 2 in.3 of liquid VOC in any 15 minute period per pump or compressor at standard conditions.~~

~~(b) Pumps and compressors subject to the standards for pumps and compressors contained in 40 CFR 60 Subparts VV, GGG, or KKK are exempt from 252:100-37-38.~~

[OAR Docket #08-648; filed 4-11-08]

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

[OAR Docket #08-649]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix E. Primary Ambient Air Quality Standards [REVOKED]
Appendix E. Primary Ambient Air Quality Standards [NEW]
Appendix F. Secondary Ambient Air Quality Standards [REVOKED]
Appendix F. Secondary Ambient Air Quality Standards [NEW]
AUTHORITY:
Environmental Quality Board powers and duties; 27A O.S. Supp. 1999, §§ 2-2-101, 2-5-101 *et seq.*
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ANALYSIS:
The proposed amendments to Appendices E and F would change the primary and secondary ambient air quality standards for ozone to be consistent with the National Ambient Air Quality Standards.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max				40 mg/m^3 (2) 35 ppm			
8-hr. max				10 mg/m^3 (2) 9 ppm	(4) 0.08 ppm		
24-hr. max	365 ug/m^3 (2) 0.14 ppm	(7) 150 ug/m^3	(5) 35 ug/m^3				
Calendar Qtr.							(3) 1.5 ug/m^3
Annual	80 ug/m^3 (1) 0.030 ppm		(6) 15 ug/m^3			100 ug/m^3 (1) 0.053 ppm	

(1) Annual arithmetic mean

(2) Not to be exceeded more than once per year

(3) Maximum arithmetic mean averaged over a calendar quarter

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.08 ppm.

(5) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(7) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m3, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

APPENDIX F. SECONDARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX F. SECONDARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	(6) PM-10	PM 2.5	(6) Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max							
3-hr. max	1300 ug/m^3 (2) 0.5 ppm						
8-hr. max					(4) 0.08 ppm		
24-hr. max							
Calendar Qtr.							(3) 1.5 ug/m^3
Annual			(5) 15 ug/m^3			100 ug/m^3 (1) 0.053 ppm	

(1) Annual arithmetic mean

(2) Not to be exceeded more than once per year

(3) Maximum arithmetic mean averaged over a calendar quarter

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.08 ppm.

(5) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) PM-10 and Carbon Monoxide have no secondary standard.

[OAR Docket #08-649; filed 4-11-08]

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

[OAR Docket #08-650]

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Appendix Q. Incorporation by Reference [REVOKED]
Appendix Q. Incorporation by Reference [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S. 2005, §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. 2005 §§ 2-5-101, et seq.
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ANALYSIS:
The Department is proposing to revoke OAC 252:100 Appendix Q, Incorporation By Reference, and adopt a new OAC 252:100 Appendix Q. These proposals are part of the annual review of Title 40, Code of Federal Regulation (40 CFR) Incorporations by Reference (IBR).
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3(b)(2), the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on September 1, 2007.

PART	SUBPART	DESCRIPTION
50	Not Applicable	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).
50	Not Applicable	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM in the Atmosphere.
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements.
51	Not Applicable	Appendix S to Part 51 - Emission Offset Interpretative Ruling.
51	X	Appendix P to Part 51 - Minimum Emission Monitoring Requirements.
58	Not Applicable	Appendix B to Part 58 - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.
60	A	General Provisions. [Except 60.4, 60.9, 60.10 and 60.16]
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.
60	BB	Standards of Performance for Kraft Pulp Mills.
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry.
60	CC	Standards of Performance for Glass Manufacturing Plants.
60	CCCC	Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
60	Da	Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.
60	DD	Standards of Performance for Grain Elevators.

60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
60	E	Standards of Performance for Incinerators.
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994.
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
60	EE	Standards of Performance for Surface Coating of Metal Furniture.
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.
60	F	Standards of Performance for Portland Cement Plants.
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
60	G	Standards of Performance for Nitric Acid Plants.
60	GG	Standards of Performance for Stationary Gas Turbines.
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
60	H	Standards of Performance for Sulfuric Acid Plants.
60	HH	Standards of Performance for Lime Manufacturing Plants.
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities.
60	I	Standards of Performance for Hot Mix Asphalt Facilities.
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
60	IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines.
60	J	Standards of Performance for Petroleum Refineries.
60	JJJ	Standards of Performance for Petroleum Dry Cleaners.
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants.
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	L	Standards of Performance for Secondary Lead Smelters.
60	LL	Standards of Performance for Metallic Mineral Processing Plants.
60	LLL	Standards of Performance for Onshore Natural Gas Processing: SO2 Emissions.
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants.
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
60	Not Applicable	Appendix A to Part 60 - Test Methods.
60	Not Applicable	Appendix B to Part 60 - Performance Specifications.
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
60	NN	Standards of Performance for Phosphate Rock Plants.
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
60	O	Standards of Performance for Sewage Treatment Plants.
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants.
60	P	Standards of Performance for Primary Copper Smelters.
60	PP	Standards of Performance for Ammonium Sulfate Manufacture.
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants.
60	Q	Standards of Performance for Primary Zinc Smelters.
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing.
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
60	R	Standards of Performance for Primary Lead Smelters.
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
60	S	Standards of Performance for Primary Aluminum Reduction Plants.

60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances.
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities.
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
60	TT	Standards of Performance for Metal Coil Surface Coating.
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries.
60	V	V-Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants.
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60	WWW	Standards of Performance for Municipal Solid Waste Landfills.
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
60	XX	Standards of Performance for Bulk Gasoline Terminals.
60	Y	Standards of Performance for Coal Preparation Plants.
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61	A	General Provisions.
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations.
61	C	National Emission Standard for Beryllium.
61	D	National Emission Standard for Beryllium Rocket Motor Firing.
61	E	National Emission Standard for Mercury.
61	F	National Emission Standard for Vinyl Chloride.
61	FF	National Emission Standard for Benzene Waste Operations Mar. 7, 1990.
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene.
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants.
61	M	National Emission Standard for Asbestos.
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants.

61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters.
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources).
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels.
63	A	General Provisions.
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j).
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries.
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast.
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations.
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities.
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities.
63	GGG	National Emission Standards for Pharmaceuticals Production.
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation.
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium.
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating).
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations.
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
63	KK	National Emission Standards for the Printing and Publishing Industry.
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
63	L	National Emission Standards for Coke Oven Batteries.
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities.

63	OO	National Emission Standards for Tanks - Level 1.
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
63	PP	National Emission Standards for Containers.
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
63	PPPP	National Emission Standards for Hazardous Air Pollutants of Plastic Parts and Products.
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands .
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
63	QQ	National Emission Standards for Surface Impoundments.
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
63	RR	National Emission Standards for Individual Drain Systems.
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
63	T	National Emission Standards for Halogenated Solvent Cleaning.
63	TT	National Emission Standards for Equipment Leaks.
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.

63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards.
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units .
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators.
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting.
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations.
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
72	ALL	Permits Regulation.

[OAR Docket #08-650; filed 4-11-08]

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

[OAR Docket #08-651]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106
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N/A
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Incorporated standards:
Title 40 of the Code of Federal Regulations, Parts 124, 260 through 268, 270, 273, and 279 as amended through July 1, 2007.
Incorporating rules:
252:205-3-1
Availability:
From the contact person listed below
ANALYSIS:
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.
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.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean, ~~(~~unless otherwise specified~~)~~, ~~:~~

~~(1)~~ the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through ~~July 1, 2006;~~July 1, 2007~~;~~.

~~(2) the amendment to 40 CFR promulgated at 71 FR 40254-40280, "Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations;" and~~

~~(3) the amendment to 40 CFR promulgated at 71 FR 42928-42949, "Modification of the Hazardous Waste Program; Cathode Ray Tubes."~~

[OAR Docket #08-651; filed 4-11-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #08-652]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Operational Requirements
Part 13. Wheel Washes
252:515-19-132. [AMENDED]
252:515-19-133. [AMENDED]
252:515-19-134. [AMENDED]
252:515-19-135. [AMENDED]
252:515-19-136. [AMENDED]
252:515-19-137. [AMENDED]
AUTHORITY:
Environmental Quality Board and Solid Waste Management Advisory Council powers and duties: 27A O.S. §2-2-101, §2-2-201 and §2-10-802
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Part 13. Wheel Washes
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252:515-19-133. [AMENDED]
252:515-19-134. [AMENDED]
252:515-19-135. [AMENDED]

252:515-19-136. [AMENDED]
252:515-19-137. [AMENDED]

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INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

The proposed amendments to 252:515, Subchapter 19, arise from legislation enacted in 2007, effective July 1, 2007. Senate Bill 509 made significant changes to the wheel wash law by eliminating the provision for "recoupment" and providing instead for "reimbursement'. Therefore, no facility will be allowed to retain monies from the solid waste fee for recoupment of wheel wash costs.

The proposed rules mirror the current wheel wash rules relative to the requirements for installation, operation, proper invoicing and DEQ approvals. The proposed rule 19-133 eliminates the definition of recoupment. The word "recoupment" is replaced with the word Areimbursement@ in proposed rules 19-132, 19-134, 19-135, 19-136(a)(2) and 19-137(b). Any phrases related to "retaining of fees or funds" is replaced with the word "reimbursed" in proposed rules 19-137(a)&(b). Rules pertaining to the "recoupment process" were replaced with rules pertaining to the "reimbursement process" in proposed rule 19-136.

CONTACT PERSON:

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PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 19. OPERATIONAL REQUIREMENTS

PART 13. WHEEL WASHES

252:515-19-132. Eligibility deadlines

To be eligible for ~~recoupment~~ reimbursement of costs under this Part, the owner/operator must comply with the following statutory deadlines.

(1) **June 30, 2007.** The owner/operator must submit a notice of intent to claim allowance to the DEQ no later than June 30, 2007.

(2) **June 30, 2008.** The system must be installed and operational no later than June 30, 2008.

252:515-19-133. Definitions

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

"Proper invoice" means one which is complete in all requirements for processing for payment in accordance with 27A O.S. § 2-10-802 and the rules in this Part, including but not limited to such documentation as may be required.

~~**"Recoupment"** means the process of reimbursement of approved capital investment costs incurred by the owner/operator for the purchase and installation of a wheel wash system for use at the land disposal facility by retaining ten cents ($0.10) per ton from the solid waste fee.~~

"Wheel wash system" means a permanent installation that uses an immersion bath or spray of water to clean mud, soil, rock, debris and other extraneous material from the tires and undercarriage of vehicles.

252:515-19-134. Approved costs

Capital investment costs directly attributable to the purchase and installation of the wheel wash system that may be approved for ~~recoupment~~ reimbursement may include but not be limited to the following:

(1) materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

(2) rental costs of machinery and equipment necessary for installation and start-up, exclusive of hand tools;

(3) premiums for all bonds and insurance, permit fees and sales, use or similar taxes related to the installation and start-up;

(4) labor, including social security and unemployment insurance, for installation and start-up; fringe benefits required by agreement or custom, and workers' compensation insurance; and

(5) additional costs of supervision and field office personnel directly attributable to the installation and start-up.

252:515-19-135. Disapproved costs

Operating costs(electricity, water, flocculent, labor, and other miscellaneous recurring operating expenses) repair costs, general maintenance, and replacement of parts and equipment are not capital investment costs and are not approved for ~~recoupment~~ reimbursement.

252:515-19-136. ~~Recoupment~~ Reimbursement process

(a) **Installed and operational.** Once the wheel wash system is installed and operational, the owner/operator shall:

(1) **DEQ inspection.** Notify the DEQ. The DEQ may inspect the wheel wash to ensure that it meets the definition of "wheel wash system" in this Part and the water management and control standards in OAC 252:515-19-138; and

(2) **Proper invoice.** Provide the DEQ with a proper invoice and supporting documentation of the approved costs incurred.

(b) **DEQ review.** If the invoice is not a proper invoice or if costs submitted are not capital costs approved for ~~recoupment~~ reimbursement, the owner/operator shall be notified accordingly. The owner/operator may resubmit the invoice and documentation until the information submitted is acceptable.

(c) ~~**Recoupment**~~ **Reimbursement notice.** Within 45 days after receipt of a proper invoice for approved costs, including required documentation, the DEQ shall notify the owner/operator that the invoice as submitted is approved in an amount certain and that ~~recoupment may begin at the rate of ten cents~~

~~($0.10) per ton from the solid waste fee~~ the invoice amount is approved for reimbursement.

(d) ~~**Quarterly report.** The amount retained shall be recorded on the quarterly report required by 27A O.S. § 2-10-802.~~

(e) ~~**Discontinuance.** When the approved capital investment costs have been recouped, the owner/operator shall discontinue retention of ten cents ($0.10) per ton from the solid waste fee and shall remit the payment to the DEQ.~~**Reimbursement payments.** The DEQ shall reimburse eligible applicants in the order of approval of invoiced amounts until the state fiscal limitation is reached. During each subsequent fiscal year, the reimbursement to eligible applicants shall be apportioned in the percentage the approved invoice amount bears to the total reimbursements approved but not yet paid.

252:515-19-137. State fiscal limitation on funds

(a) **$300,000.00 total.** If the total amount ~~retained from solid waste permit fees by~~ reimbursed to all eligible owners and operators reaches Three Hundred Thousand Dollars ($300,000.00) within any state fiscal year (July 1 - June 30), ~~the~~ no owner/operator shall ~~not~~ be entitled to ~~retain further funds~~ reimbursement until the next state fiscal year.

(b) **Limitation notices.** If it appears that the total amount ~~retained~~ reimbursed will reach the $300,000.00 cap before the end of the fiscal year, limitation notices shall be sent to all eligible owner/operators. Notices of limitation may include pro rata ~~recoupment~~ reimbursement methods.

[OAR Docket #08-652; filed 4-11-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #08-653]

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RULES:
Appendix C. List of Hazardous Inorganic and Organic Constituents [REVOKED]
Appendix C. List of Hazardous Inorganic and Organic Constituents [NEW]

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Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2008
Final adoption:
March 27, 2008
Effective:
July 1, 2008

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed amendments to OAC 252:515, Appendix C, delete the suggested methods and PQL columns of Appendix C to update it to the current Federal Appendix II to 40 CFR 258. On October 30, 2002, EPA proposed to amend the testing and monitoring requirements under the hazardous and non-hazardous solid waste regulations. On June 14, 2005, EPA finalized those regulatory revisions as discussed in the Federal Register dated June 14, 2005 (Volume 70, Number 113), FR Doc 05-10197.

The "suggested methods" column in the current rules outlines SW-846 methods to be utilized by regulated entities to analyze for certain parameters. The column entitled "PQL" in the current rules is the practical quantitation limits that are required to be met for the method utilized from the suggested methods column. By deleting those two columns from the current rules, it will allow regulated entities to use any appropriate analytical test methods in demonstrating compliance with the RCRA regulations and not limit the methods to SW-846 methods except for those regulatory provisions involving method-defined parameters.

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PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

APPENDIX C. LIST OF HAZARDOUS INORGANIC AND ORGANIC CONSTITUENTS [REVOKED]

APPENDIX C. LIST OF HAZARDOUS INORGANIC AND ORGANIC CONSTITUENTS [NEW]

Common name[1]	CAS RN[2]	Chemical abstracts service index name[3]
Acenaphthene	83–32–9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208–96–8	Acenaphthylene
Acetone	67–64–1	2-Propanone
Acetonitrile; Methyl cyanide	75–05–8	Acetonitrile
Acetophenone	98–86–2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2-AAF	53–96–3	Acetamide, N–9H-fluoren-2-yl-
Acrolein	*107–02–8*	*2-Propenal*
Acrylonitrile	107–13–1	2-Propenenitrile
Aldrin	309–00–2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1,4,4a,5,8,8a)-
Allyl chloride	107–05–1	1-Propene, 3-chloro-
4-Aminobiphenyl	92–67–1	[1,1′-Biphenyl]-4-amine
Anthracene	120–12–7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71–43–2	Benzene
Benzo[a]anthracene; Benzanthracene	56–55–3	Benz[a]anthracene
Benzo[b]fluoranthene	205–99–2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207–08–9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191–24–2	Benzo[ghi]perylene
Benzo[a]pyrene	50–32–8	Benzo[a]pyrene
Benzyl alcohol	100–51–6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319–84–6	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5β,6β)-
beta-BHC	319–85–7	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2β,3α,4β,5α,6β)-
delta-BHC	319–86–8	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3α,4β,5α,6β)-
gamma-BHC; Lindane	58–89–9	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α, 3β, 4α,5α,6β)-
Bis(2-chloroethoxy)methane	111–91–1	Ethane, 1,1′-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether; Dichloroethyl ether	111–44–4	Ethane, 1,1′-oxybis[2-chloro-

Bis(2-chloro-1-methylethyl) ether; 2,2′-Dichlorodiisopropyl ether; *DCIP, See footnote 4*	108–60–1	Propane, 2,2′-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117–81–7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromochloromethane; Chlorobromethane	74–97–5	Methane, bromochloro-
Bromodichloromethane; Dibromochloromethane	75–27–4	Methane, bromodichloro-
Bromoform; Tribromomethane	75–25–2	Methane, tribromo-
4-Bromophenyl phenyl ether	101–55–3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85–68–7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75–15–0	Carbon disulfide
Carbon tetrachloride	56–23–5	Methane, tetrachloro-
Chlordane	See footnote 5	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
p-Chloroaniline	106–47–8	Benzenamine, 4-chloro-
Chlorobenzene	108–90–7	Benzene, chloro-
Chlorobenzilate	510–15–6	Benzeneacetic acid, 4-chloro- -(4-chlorophenyl)- -hydroxy-, ethyl ester.
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59–50–7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75–00–3	Ethane, chloro-
Chloroform; Trichloromethane	67–66–3	Methane, trichloro-
2-Chloronaphthalene	91–58–7	Naphthalene, 2-chloro-
2-Chlorophenol	95–57–8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005–72–3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126–99–8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218–01–9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol; 3-Methylphenol	108–39–4	Phenol, 3-methyl-
o-Cresol; 2-Methylphenol	95–48–7	Phenol, 2-methyl-
p-Cresol; 4-Methylphenol	106–44–5	Phenol, 4-methyl-
Cyanide	57–12–5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94–75–7	Acetic acid, (2,4-dichlorophenoxy)-
4,4′-DDD	72–54–8	Benzene 1,1′-(2,2-dichloroethylidene) bis[4-chloro-
4,4′-DDE	72–55–9	Benzene, 1,1′-(dichloroethenylidene) bis[4-chloro-

4,4′-DDT	50–29–3	Benzene, 1,1′-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303–16–4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.
Dibenz[a,h]anthracene	53–70–3	Dibenz[a,h]anthracene
Dibenzofuran	132–64–9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124–48–1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96–12–8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide; EDB	106–93–4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84–74–2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene; 1,2-Dichlorobenzene	95–50–1	Benzene, 1,2-dichloro-
m-Dichlorobenzene; 1,3-Dichlorobenzene	541–73–1	Benzene, 1,3-dichloro-
p-Dichlorobenzene; 1,4-Dichlorobenzene	106–46–7	Benzene, 1,4-dichloro-
3,3′-Dichlorobenzidine	91–94–1	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dichloro-
trans-1,4-Dichloro-2-butene	110–57–6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane; CFC 12	75–71–8	Methane, dichlorodifluoro-
1,1-Dichloroethane; Ethyldidene chloride	75–34–3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107–06–2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; 1,1-Dichloroethene;	75–35–4	Ethene, 1,1-dichloro-
Vinylidene chloride cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156–59–2	Ethene, 1,2-dichloro-(Z)-
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156–60–5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120–83–2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87–65–0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78–87–5	Propane, 1,2-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	142–28–9	Propane, 1,3-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	594–20–7	Propane, 2,2-dichloro-
1,1-Dichloropropene	563–58–6	1-Propene, 1,1-dichloro-
cis-1,3-Dichloropropene	10061–01–5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061–02–6	1-Propene, 1,3-dichloro-, (E)-

Dieldrin	60–57–1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β,6aα,7β,7aα)-
Diethyl phthalate	84–66–2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O–2-pyrazinyl phosphorothioate; Thionazin	297–97–2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.
Dimethoate	60–51–5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60–11–7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57–97–6	Benz[a]anthracene, 7,12-dimethyl-
3,3′-Dimethylbenzidine	119–93–7	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dimethyl-
alpha, alpha-Dimethylphenethylamine	122–09–8	Benzeneethanamine, α,α-dimethyl-
2,4-Dimethylphenol; m-Xylenol	105–67–9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131–11–3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99–65–0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534–52–1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51–28–5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121–14–2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606–20–2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88–85–7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117–84–0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122–39–4	Benzenamine, N-phenyl-
Disulfoton	298–04–4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
Endosulfan I	959–98–8	6,9-Methano-2,4,3-benzodiox-athiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,
Endosulfan II	33213–65–9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β, 9aα)-
Endosulfan sulfate	1031–07–8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72–20–8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα, 2β,2aβ, 3α,6α,6aβ,7β,7aα)-
Endrin aldehyde	7421–93–4	1,2,4-Methenocyclo-penta[cd]pentalene-5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-(1α,2β,2aβ,4β,4aβ,5β,6aβ,6bβ,7R*)-
Ethylbenzene	100–41–4	Benzene, ethyl-

Ethyl methacrylate	97–63–2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62–50–0	Methanesulfonic acid, ethyl ester
Famphur	52–85–7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester
Fluoranthene	206–44–0	Fluoranthene
Fluorene	86–73–7	9H-Fluorene
Heptachlor	76–44–8	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024–57–3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,-hexahydro-,(1aα,1bβ,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118–74–1	Benzene, hexachloro-
Hexachlorobutadiene	87–68–3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67–72–1	Ethane, hexachloro-
Hexachloropropene	1888–71–7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone; Methyl butyl ketone	591–78–6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193–39–5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78–83–1	1-Propanol, 2-methyl-
Isodrin	465–73–6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,1 0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α, 4α, 4aβ,5β,8β,8aβ)-
Isophorone	78–59–1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120–58–1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143–50–0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126–98–7	2-Propenenitrile, 2-methyl-
Methapyrilene	91–80–5	1,2,Ethanediamine, N,N-dimethyl-N′-2-pyridinyl-N′-(2-thienylmethyl)-
Methoxychlor	72–43–5	Benzene, 1,1′-(2,2,2,trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74–83–9	Methane, bromo-
Methyl chloride; Chloromethane	74–87–3	Methane, chloro-
3-Methylcholanthrene	56–49–5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methyl ethyl ketone; MEK; 2-Butanone	78–93–3	2-Butanone
Methyl iodide; Iodomethane	74–88–4	Methane, iodo-
Methyl methacrylate	80–62–6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66–27–3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91–57–6	Naphthalene, 2-methyl-

Methyl parathion; Parathion methyl	298–00–0	Phosphorothioic acid, O,O-dimethyl
4-Methyl-2-pentanone; Methyl isobutyl ketone	108–10–1	2-Pentanone, 4-methyl-
Methylene bromide; Dibromomethane	74–95–3	Methane, dibromo-
Methylene chloride; Dichloromethane	75–09–2	Methane, dichloro-
Naphthalene	91–20–3	Naphthalene
1,4-Naphthoquinone	130–15–4	1,4-Naphthalenedione
1-Naphthylamine	134–32–7	1-Naphthalenamine
2-Naphthylamine	91–59–8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline; 2-Nitroaniline	88–74–4	Benzenamine, 2-nitro-
m-Nitroaniline; 3-Nitroaniline	99–09–2	Benzenamine, 3-nitro-
p-Nitroaniline; 4-Nitroaniline	100–01–6	Benzenamine, 4-nitro-
Nitrobenzene	98–95–3	Benzene, nitro-
o-Nitrophenol; 2-Nitrophenol	88–75–5	Phenol, 2-nitro-
p-Nitrophenol; 4-Nitrophenol	100–02–7	Phenol, 4-nitro-
N-Nitrosodi-n-butylamine	924–16–3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55–18–5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62–75–9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86–30–6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621–64–7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethalamine	10595–95–6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100–75–4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930–55–2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99–55–8	Benzenamine, 2-methyl-5-nitro-
Parathion	56–38–2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester
Pentachlorobenzene	608–93–5	Benzene, pentachloro-
Pentachloronitrobenzene	82–68–8	Benzene, pentachloronitro-
Pentachlorophenol	87–86–5	Phenol, pentachloro-
Phenacetin	62–44–2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85–01–8	Phenanthrene
Phenol	108–95–2	Phenol
p-Phenylenediamine	106–50–3	1,4-Benzenediamine
Phorate	298–02–2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs	See footnote 6	1,1′-Biphenyl, chloro derivatives
Pronamide	23950–58–5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-

Propionitrile; Ethyl cyanide	107–12–0	Propanenitrile
Pyrene	129–00–0	Pyrene
Safrole	94–59–7	1,3-Benzodioxole, 5-(2- propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93–72–1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-
Styrene	100–42–5	Benzene, ethenyl-
Sulfide	18496–25–8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93–76–5	Acetic acid, (2,4,5- trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo- p-dioxin	1746–01–6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95–94–3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630–20–6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79–34–5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127–18–4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58–90–2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108–88–3	Benzene, methyl-
o-Toluidine	95–53–4	Benzenamine, 2-methyl-
Toxaphene	See footnote 7	Toxaphene
1,2,4-Trichlorobenzene	120–82–1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71–55–6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79–00–5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79–01–6	Ethene, trichloro-
Trichlorofluoromethane; CFC–11	75–69–4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95–95–4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88–06–2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96–18–4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126–68–1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99–35–4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108–05–4	Acetic acid, ethenyl ester
Vinyl chloride; Chloroethene	75–01–4	Ethene, chloro-
Xylene (total)	See footnote 8	Benzene, dimethyl-
Zinc	(Total)	Zinc

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
[2]Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.
[3]CAS index names are those used in the 9th Cumulative Index.
[4]This substance is often called bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, propane, 2,2"-oxybis[2-chloro-(CAS RN 39638–32–9).
[5]Chlordane: This entry includes alpha-chlordane (CAS RN 5103–71–9), beta-chlordane (CAS RN 5103–74–2), gamma-chlordane (CAS RN 5566–34–7), and constituents of chlordane (CAS RN 57–74–9 and CAS RN 12789–03–6).
[6]Polychlorinated biphenyls (CAS RN 1336–36–3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674–11–2), Aroclor-1221 (CAS RN 11104–28–2), Aroclor-1232 (CAS RN 11141–16–5), Aroclor-1242 (CAS RN 53469–21–9), Aroclor-1248 (CAS RN 12672–29–6), Aroclor-1254 (CAS RN 11097–69–1), and Aroclor-1260 (CAS RN 11096–82–5).
[7]Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001–35–2), i.e., chlorinated camphene.
[8]Xylene (total): This entry includes o-xylene (CAS RN 96–47–6), m-xylene (CAS RN 108–38–3), p-xylene (CAS RN 106–42–3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330–20–7).

[OAR Docket #08-653; filed 4-11-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 633. DRINKING WATER STATE REVOLVING FUND

[OAR Docket #08-654]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:633-1-1. Purpose [AMENDED]
252:633-1-4. Authority [AMENDED]
252:633-1-5. Definitions [AMENDED]
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252:633-3-3. Revenue program [AMENDED]
252:633-3-4. DWSRF Project Priority System [AMENDED]
252:633-3-8. Types of assistance [AMENDED]
252:633-3-9. Pre-application for funding [AMENDED]
252:633-3-13. Submittals~~Plans and specifications~~ [AMENDED]
252:633-3-14. Application for financial assistance [AMENDED]
252:633-3-16. Loan closing [AMENDED]
252:633-3-17. Refinancing construction loans [AMENDED]
252:633-3-19. Construction phase [AMENDED]
252:633-3-20. Project changes [AMENDED]
252:633-3-21. Building phase submittal [AMENDED]
252:633-3-22. Progress payments. [AMENDED]
252:633-3-25. Accounting [AMENDED]
Subchapter 5. Miscellaneous Provisions
252:633-5-5. Project or water project completion, inspection and audit [AMENDED]
Subchapter 7. Environmental Review Process
252:633-7-1. Requirement of environmental review [AMENDED]
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The proposed changes to the DEQ's Drinking Water State Revolving Fund (DWSRF) rules implement changes to the Priority Project System and the Finding Priority Formula necessary to meet federal and state requirements. Additionally, some of the proposed changes to this chapter reconcile the requirements in Chapter 633 of the DEQ rules with the DWSRF requirements of the Oklahoma Water Resources Board. The remaining changes correct typographical errors and make other language clarification changes.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

252:633-1-1. Purpose

The purpose of this subchapter is to implement the administrative and technical management of the Drinking Water Treatment Revolving Loan Account, referred to as the Oklahoma Drinking Water State Revolving Fund (DWSRF) as required by 82 O.S. ~~Supp. 1993,~~ § 1085.71 *et seq.* These regulations are necessary to determine the eligibility and priority of entities to receive financial assistance under the Federal Safe Drinking Water Act Amendments of 1996.

252:633-1-4. Authority

The DWSRF Regulations are authorized by 82 O.S.~~,~~ §§ 1085.71~~,~~ ~~§~~ and 1085.76 *et seq.* The Water Quality Council is authorized to recommend rules for promulgation to the Environmental Quality Board by 27A O.S. ~~Supp. 1997~~ § 2-2-201. The Environmental Quality Board is authorized to adopt rules for DWSRF regulation under 27A O.S. ~~Supp. 1997~~ §§ 2-2-201 and 2-6-303.

252:633-1-5. Definitions

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

"Applicant" means the entity applying or having applied to the DEQ for financial assistance under the provisions of this Chapter and 82 O.S. ~~1996,~~ §§ 1085.71-1085.84.

"Application" means the application process or procedure through which an applicant applies for financial assistance. In context, this word shall also be understood to refer to the written application document(s), with attachments, through which application for financial assistance is made.

"Binding commitment" means legal obligations by the State to the local recipient that define the terms and the timing for assistance under the DWSRF.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of drinking water systems.

"Capitalization grant" means an agreement between EPA and State by which federal dollars are made available to partially fund a Drinking Water State Revolving Fund (DWSRF).

"Comprehensive Project Priority List (Project Priority List)" means a list of all projects requesting funds from the DWSRF, ranked in order of priority for funding for which DWSRF assistance is expected during a five-year planning period.

"Construction" means any one or more of the following: Preliminary planning to determine the feasibility of drinking water systems, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, building, or the inspection or supervision of any of these items.

"Contingency section" means that portion of the fundable list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

"DBE" means disadvantaged business enterprise.

"DEQ" means Department of Environmental Quality.

"Drinking Water Treatment Project" means:

(A) any engineering undertaking or work to control or develop drinking water treatment facilities of eligible entities,

(B) any system necessary to improve or develop drinking water supply, treatment or distribution capabilities, or

(C) any implementation of water source protection programs as authorized by the federal Safe Drinking Water Act.

"DWSRF" means Drinking Water State Revolving Fund, sometimes referred to as the Fund.

"Eligible entity" means those applicants determined by the DEQ and OWRB to be eligible for financial assistance from OWRB to finance approved projects.

"Engineering services" means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"EPA" means the Environmental Protection Agency.

"Equivalency projects" means those projects, selected by the DEQ as meeting the requirements of the federal capitalization grant.

"Financial assistance" means the act, process or program of DEQ or OWRB participation in the loaning, granting of, or contracting for, financial assistance funds to an applicant for the financing of a DEQ approved project.

"Fundable List" means projects listed on the Project Priority List which have met all the requirements for funding and includes projects scheduled for financial assistance during the funding year.

"Funding year" means the first year of the planning period represented by a project priority list.

"Initiation of operation" means the date specified by the recipient on which use of the project begins.

"Intended Use Plan" (IUP) means a document prepared each year by the DEQ, which identifies the intended uses of the funds in the DWSRF and program set-asides and describes how those uses support the goals of the DWSRF.

"Loan" means an agreement between the OWRB and the local recipient through which the DWSRF provides funds for eligible assistance, and the recipient promises to repay the principal sum to the DWSRF over a period not to exceed ~~20 years~~ the length of the loan at an interest rate established at or below market rates (may be interest free).

"MBE" means minority business enterprise.

"MBE/WBE participation" means the federal requirement for negotiation of a "fair share" objective for minority and women owned businesses (MBE/WBE).

"MGD" means ~~millions~~ million of gallons per day.

"OAC" means the Oklahoma Administrative Code.

"Operation and maintenance" means activities required to assure the dependable and economical function of water systems.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive activities, corrective actions and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment that make up the drinking water system. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"O.S." means Oklahoma Statutes.

"OWRB" means Oklahoma Water Resources Board.

"Planning" means the process of evaluating alternative solutions to drinking water system problems, and through a systematic screening procedure, selecting the most cost effective alternative.

"Pledge" means the act or process through which an applicant commits, obligates and encumbers its property, real or personal, or its revenues, existing or anticipated, all being of or from the projects or otherwise, to the OWRB as security and means for repayment of the loan made to the applicant by the OWRB.

"Project" means the scope of work for which DWSRF assistance is provided.

"Project completion" means ~~the date operations of the water systems begin or are capable of beginning, whichever is earlier~~ the date of the final inspection of the project, certifying that the construction of the project is complete and that the constructed system is considered fully operational.

"Project cost" means applicant's direct and incidental costs of acquiring, constructing and furnishing the project.

"Project priority points" means the total number of points assigned to a project by using the priority ranking formula.

"Recipient" means a municipality or other entity that receives assistance under the DWSRF program.

"Revenue programs" means a formally documented determination of water use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

"State match" means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the DWSRF.

"User charge" means a charge levied on users of a water supply for the user's share of the cost of operation and maintenance (including replacement) of such works.

"Water System" means ~~any devices and systems used in the storage, treatment, and distribution of drinking water~~ a water treatment plant, water wells, intake structures, raw water lines and all related pipelines or conduits, pumping stations and mains and all other appurtenances and devices used for distributing drinking water to the public.

"WBE" means women business enterprise.

SUBCHAPTER 3. GENERAL PROGRAM REQUIREMENTS

252:633-3-3. Revenue program

To be eligible for the DWSRF the applicant will be required to demonstrate that it has technical, managerial and financial capability to construct, operate and maintain the water system pursuant to requirements of the Safe Drinking Water Act Amendments of 1996.

252:633-3-4. DWSRF Project Priority System

(a) **Preparation.** The DEQ shall prepare and maintain a current Project Priority List which ranks projects according to this priority ranking system.

(1) Priority for the use of the DWSRF funds shall be given to projects that:

(A) address the most serious risk to human health;

(B) are necessary to ensure compliance with the requirements of the Safe Drinking Water Act Amendments of 1996; and

(C) assist systems most in need, on a per household basis.

(2) Applicants shall be ranked according to the system in Appendix A of these rules with the projects ranked by points (the project with the most points) shall be first on the Project Priority List; the project with the least points shall be last.

(b) **Public participation.** The DEQ shall ~~insure~~ ensure that there is adequate public participation on the DWSRF Priority Ranking System and the Project Priority List. A public meeting shall be held to discuss the DWSRF IUP, the Project Priority List and any revisions that were made to the DWSRF Project Priority System. These public participation procedures shall follow the Oklahoma Administrative Procedures Act. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At ~~this~~ the time of the publication of the notice, the DEQ shall circulate information about the IUP and the Project Priority List including a description of each proposed project. Attendees of the public meeting will be allowed to express their views concerning the Project Priority List and the priority ranking system. A ~~30-day~~ 30-day public comment period shall follow the ~~each~~ meeting.

(c) **Project Priority List.** A Project Priority List shall become effective and supersede all previous lists upon completion of the public participation procedures. A Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(1) **Additional allotments.** Any sum made available to the DEQ by reallotment or the release of funds that were previously obligated shall follow these procedures.

(2) **Project removal.** The DEQ may remove a project from the Project Priority List when the project has been funded, is found to be ineligible, the applicant does not intend to continue in the DWSRF, or the OWRB has determined that the applicant does not have financial capability to ~~construct the project~~ qualify for funding. The applicant whose project is affected shall be given a written notice that the project is to be removed from the list.

(3) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose.

(4) **Addition of new projects to the Project Priority List.** The applicant must submit a request to the DEQ, including project description, estimated funds to be requested and a schedule for the proposed project to be included on the Project Priority List. The DEQ will evaluate the request for eligibility, and if it is determined that a project ~~could result which would be~~ is in-conformance with DWSRF requirements, the potential project will be ranked and added to the Project Priority List.

252:633-3-8. Types of assistance

(a) **Conditions.** The DWSRF may be used for the following purposes if:

(1) The applicant is the approved legal management agency;

(2) The project is included on the state's inventory of public water supplies, or meets the definition of a public water supply as defined in 27A O.S. §2-6-101;

(3) The project is listed on the Project Priority List following a request to the DEQ for placement on the list;

(4) The applicant has complied with these rules and the project has been approved by the DEQ; and

(5) The project has approved plans and specifications and a construction permit has been issued by the DEQ.

(b) **Loans.** The DWSRF may be used to make loans if:

(1) Loans are made at or below market interest rates, including interest free loans at terms not to exceed ~~20 years~~ the federal requirement;

(2) Principal and interest payments will commence not later than one year after project completion and all loans will be fully amortized ~~not later than 20 years~~ for the length of the loan after project completion; and

(3) The recipient of a loan will establish a dedicated source of revenue for repayment of loans.

(c) **Refinance.** The DWSRF may be used to buy or refinance the debt obligation of eligible applicants at or below market rates, when such debt obligations were incurred and construction started after July 1, 1993.

(d) **Insurance.** The DWSRF may be used to guarantee or purchase insurance for the applicant's local debt.

(e) **Revenue.** The DWSRF may be used as a source of revenue or security for payment of DWSRF debt ~~obligation~~ obligations.

(f) **Interest.** The DWSRF may be used to earn interest on fund accounts.

(g) **Appropriate uses.** The DWSRF may be used ~~as~~ for ~~such~~ other ~~purpose~~ purposes or in ~~such other~~ a manner as is determined by OWRB to be an appropriate use of the DWSRF and has been specifically approved by EPA pursuant to the federal Safe Drinking Water Act Amendments of 1996.

252:633-3-9. Pre-application for funding

~~(a)~~ ~~**Legal, managerial and financial capacity.**~~ To be eligible for a loan from the DWSRF the applicant must submit the pre-application for funding to the OWRB. The applicant must demonstrate that it has the technical, managerial and financial capacity to assure adequate construction, operation, and maintenance of the water system pursuant to the Safe Drinking Water Act Amendments of 1996 ~~requirements~~.

~~(b)~~ ~~**Acceptable pre-applications.** Pre-applications that are approved by OWRB will be sufficient to remain on the Project Priority List.~~

252:633-3-13. ~~Plans and specifications~~ Submittals

~~(a)~~ ~~**Submittal.**~~ The applicant shall prepare plans and specifications and a final engineering ~~design~~ report on all significant elements of the project. These documents shall conform to ~~252:625~~ OAC 252:626 Public Water Supply Construction Standards. This review will also include a review to ensure that the plans and specifications are ready to be advertised. A permit to construct must be obtained from the DEQ.

~~(b)~~ ~~**Additional requirements.**~~ The plans and specifications shall contain the following:

(1) Provisions assuring compliance with DEQ rules and a letter from an attorney certifying compliance with the Oklahoma Bidding Laws.

(2) Forms by which the bid, statutory, performance and maintenance bonds can be provided.

(3) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.

(4) Provisions giving authorized representatives of the DEQ access to all such construction activities, books, records, documents, and other evidence of the contractor for inspection, audit and copying during normal business hours.

(5) Those conditions, specifications, and other provisions provided by or requested by the DEQ to comply with State and Federal law.

(6) Bid proposal that separates eligible construction from ineligible construction.

252:633-3-14. Application for financial assistance

(a) **Filing.** ~~An application shall be filed with OWRB.~~ The applicant ~~must provide information on the~~ shall file an application for financial assistance with the OWRB which meets the requirements of DEQ and OWRB rules. Applications will only be accepted from applicants listed on the fundable portion of the Project Priority List. ~~A copy of the adopted revenue generating program necessary to meet local debt service requirement must be submitted with the application.~~

(b) **Action on application.**

(1) After a preliminary recommendation for approval of a pre-application is made as provided in 252:633-3-9 and an application is filed as provided in (a) of this section, the OWRB shall conduct an in-depth review and evaluation of the application.

(2) The DEQ shall consider the following general and nonexclusive criteria for application approval:

(A) **Compliance with laws.** The application and proposed water project must be in compliance with applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(B) **Eligibility.** The applicant and proposed water project must be determined to be eligible for the assistance sought.

(C) **Availability of funds.** The DEQ shall consider the current and anticipated availability of ~~assistance~~ funds needed to provide the financial assistance requested.

~~(3) upon determination of compliance with applicable and relevant state and federal laws, and eligibility requirements, DEQ will approve and forward the application and necessary documents to OWRB with the recommendation that the loan be made to the applicant.~~

~~(4) Once OWRB completes its financial review, the matter will be placed on the OWRB Board Meeting agenda for consideration. OWRB may approve the application, reject the application, or request additional information. OWRB shall notify the applicant of any rejection of a loan application. Notification of OWRB approval of a loan will be sent to DEQ.~~

(c) **Continuing review after approval of application.** After final approval, the OWRB, the DEQ, and the applicant will set a time and place for the loan closing.

252:633-3-16. Loan closing

(a) **Documentation to be submitted before loan closing.** The applicant will submit to the DEQ ~~a detailed project budget and~~ the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with OAC 252:633-3-20;

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(3) An executed construction contract contingent upon DEQ ~~and OWRB~~ approval containing the appropriately executed bonds, insurance certificates, assurances, and other documents required by this Chapter;

(4) Other engineering data and information, as requested by DEQ staff;

(5) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built;

(6) Documentation that the applicant has obtained required permits and other financing, if any, to ~~build the water facilities~~ construct the project;

(7) Information requested by the OWRB regarding loan closing documents;

(8) When there are bid protests, a certification from the applicant that all bid protests have been resolved;

(9) A detailed project budget which limits the contingency to 5% of contracted amounts; and

(10) Copies of all legal, financial, engineering, and inspection contracts that will be paid from the loan proceeds.

(b) **Evidence of indebtedness.** The financial assistance loans shall be provided by the OWRB for approved water projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the OWRB may require.

(c) **Security for a water project loan.**

(1) As security for the assistance loan provided by the OWRB to an approved applicant, the applicant must provide if required by the OWRB, a mortgage on any or all facilities of the water project for which application is made.

(2) The OWRB shall require a pledge and lien on revenues to be derived from the operation of the water project.

(3) If the specific water project is not a revenue producing unit, then a pledge of a lien on other revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the OWRB.

(4) The OWRB may require additional security that the OWRB deems necessary. Additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems.

(d) **Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met before funds are released:

(1) Applicant, the OWRB, and all other necessary parties shall have executed all necessary and incidental instruments and documents for loan closing, including all mortgages, notes, financing statements and pledges of project security and revenues.

(2) Recipient must send disbursement requests based on costs incurred to the DEQ for review and appropriate action.

252:633-3-17. Refinancing construction loans

If the project includes the refinancing of a loan, the applicant shall submit all of the items specified in 252:633-3-14 and any records, assurances, or appraisals concerning the construction of the project that was commenced after July 1, 1993 and meets the requirements of OAC 252:633-7-1 and the requirements of the Safe Drinking Water Act Amendments of 1996. A DEQ final construction inspection must verify that the project was constructed in accordance with the DEQ approved plans and specifications for the project to be eligible.

252:633-3-19. Construction phase

(a) **Awarding construction contracts.** The recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the DEQ approved plans and specifications and addenda to the plans and specifications for which the Permit to Construct has been issued.

(b) **Engineering during construction.** During the building phase of the project, the recipient shall provide engineering services necessary to assure completion of the project according to the loan agreement and the approved plans and specifications.

(c) **Resident inspection.** After the construction contract is awarded, the recipient shall provide for adequate full-time resident inspection of the project and require assurance that the work is being performed in a satisfactory manner according to the approved plans and specifications, approved alterations, and sound engineering principles and building practices. The DEQ shall, to the extent practicable, alert the recipient and the project engineer of any variances from the approved plans and specifications. The recipient and the project engineer shall immediately initiate necessary action rectifying construction deficiencies.

(d) **Quality of materials.** The applicant shall ~~insure~~ ensure that materials used by their contractors meet or exceed the requirements of the approved specifications.

252:633-3-20. Project changes

(a) ~~**Minor.** Changes in the project work that are consistent with the objectives of the project and within the scope of the assistance agreement do not require the approval of DEQ before the applicant's implementation of the change. However, the amount of the funding provided by the assistance agreement may only be increased by a formal amendment with DEQ and OWRB approval in writing.~~

~~(b)~~ ~~**Major.**~~ After an application for financial assistance has been approved by the OWRB and ~~after~~ the DEQ has approved the plans and specifications for the project, no change from the approved plans and specifications which would materially or significantly affect total project or cost, estimated revenues, or design shall be made without the prior written approval. ~~If the applicant's engineer certifies to DEQ that such change will not materially or significantly affect the total cost, estimated revenues, or design, that change may be allowed~~ Additionally, the amount of the funding provided may only be increased through an amended application for financial assistance.

(~~c~~b) ~~**Implementation.**~~ The recipient must receive approval from the DEQ ~~and OWRB~~ before implementing changes which:

(1) Alter the project performance standards;

(2) Alter the type of water treatment provided by the project;

(3) Significantly delay or accelerate the project schedule; or,

(4) Substantially alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

252:633-3-21. Building phase submittals

The following submittal and accompanying actions by the recipient are required during and upon the completion of the ~~building phase~~ construction of the project;

(1) ~~A complete set of as-built drawings shall be submitted to DEQ upon completion of construction~~ Any change order shall be submitted to the DEQ for approval;

(2) ~~Notice of completion of construction~~ Once construction is completed, notice shall be submitted to the DEQ ~~upon completion of construction~~; and

(3) ~~Any other building phase submittal required as part of the financial assistance documents shall be submitted for DEQ's approval~~ A complete set of as-built drawings shall be submitted to the DEQ upon completion of construction.

252:633-3-22. Progress payments

Certified requests for payment and documentation shall be submitted to the DEQ monthly.

252:633-3-25. Accounting

(a) **Instrument.** The recipient shall agree to the following:

(1) That project accounts shall be maintained in accordance with standards set forth by the Governmental Accounting Standards, the OWRB and the DEQ;

(2) A fund in the project account shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate;

(3) All proceeds acquired by the recipient to plan, design and construct the project shall be placed in the project account;

(4) All proceeds in the project account shall be used for the sole purpose of planning, designing and building the project as approved by the OWRB and the DEQ;

(5) That an annual audit of the recipient, prepared by a certified public accountant, ~~or licensed public accountant~~ be provided to the OWRB;

(6) That the recipient shall maintain adequate insurance coverage on the project in an amount adequate to protect the State's interest;

(7) That the recipient will comply with any special conditions specified by the DEQ environmental determination, required pursuant to OAC 252:633-7-1, until all financial obligations to the State have been discharged; and

(8) That the recipient covenants to continually abide by the terms of the financial assistance agreement~~, DEQ rules,~~ and relevant State statutes and regulations for operation and maintenance of the facility.

(b) **Final accounting.** The applicant shall make a final accounting to the DEQ of the total cost of the project. If the project is completed at a total cost less than the amount of available funds for building the project the recipient shall immediately, with filing the final accounting, return to the DWSRF the amount of any such excess. If the DEQ disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the recipient shall immediately return to the DWSRF the ineligible amount.

SUBCHAPTER 5. MISCELLANEOUS PROVISIONS

252:633-5-5. Project or water project completion, inspection and audit

(a) **Notification.** Upon completion of any project, the applicant shall notify the DEQ in writing.

(b) **Final inspection.** Upon receipt of such notification, the DEQ ~~may~~ shall conduct a final on-site inspection of the project and may conduct an audit of all financial assistance funds furnished to the applicant.

SUBCHAPTER 7. ENVIRONMENTAL REVIEW PROCESS

252:633-7-1. Requirement of environmental review

The DEQ Water Quality Division Director shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Drinking Water Treatment Revolving Loan Account (DWTRLA). This review will ~~insure~~ ensure that the project will comply with the applicable local, state and federal laws and DEQ regulations and procedures relating to the protection and enhancement of the environment. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. The DEQ will establish procedures for the environmental review process. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the DEQ.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Drinking Water Treatment Revolving Loan Account. These are:

(A) a determination to categorically exclude a project from a formal environmental review;

(B) a Finding of No Significant Impact (FNSI) based upon a formal environmental review supported by an Environmental Information Document (EID); and

(C) a determination to provide or not to provide financial assistance based upon a Record of Decision following the preparation of an Environmental Impact Statement (EIS).

(2) **Other determinations that are available to the Water Quality Division Director.** An applicant may request advance authority to construct part of the proposed water treatment project before completion of the necessary environmental review when the part of the project will:

(A) immediately remedy a severe public health problem where violations of primary drinking water standards threaten health of the public,
(B) not preclude any reasonable alternatives identified for the complete system,
(C) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project, and
(D) not be highly controversial.

[OAR Docket #08-654; filed 4-11-08]

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

[OAR Docket #08-655]

RULEMAKING ACTION:
PERMANENT final adoption
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]
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The proposed changes to the Waterworks and Wastewater Works Operator Certification rules modify Appendix A to add clarifying language. The clarifying language adds the words "and/or collection system" to the Wastewater Works column of the appendix. The change makes clear that an operator is required to operate a wastewater collection system.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

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]

Classes	Laboratories	Waterworks	Wastewater works
Class A	Optional for laboratories using gas chromatography, mass spectrometry and atomic absorption or similar instrumentation plus requirements for Class B and C.	(1) Water treatment plants, distribution systems, or chlorinated groundwater systems serving populations greater than 50,000; and (2) All water treatment plants classified as an "A" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works and/or collection systems serving populations greater than 50,000; and (2) All wastewater works classified as an "A" facility by complexity by the Operator Certification Section of the Department.
Class B	Required for supervision of bacteriological testing plus requirements for Class C.	(1) Water treatment plants, distribution systems or chlorinated groundwater systems serving populations between 15,000 and 50,000; and (2) All water treatment plants classified as a "B" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works and/or collection systems serving populations between 15,000 and 50,000; and (2) All wastewater works classified as a "B" facility by complexity by the Operator Certification Section of the Department.
Class C	Required for supervision of process control testing. (1) Wastewater: BOD, TSS, pH, Residual Chlorine, COD, DO, Ammonia, Oil and Grease; (2) Water: pH, Residual Chlorine, Turbidity, Alkalinity, Hardness, Stability and Fluoride	(1) Water treatment plants, distribution systems, and chlorinated or nonchlorinated groundwater systems serving populations greater than 1,500 and less than 15,000; (2) Surface water treatment plants serving a population of 15,000 or less; and (3) Groundwater systems utilizing any form of chemical treatment other than chlorination for disinfection only; and (4) All water treatment plants classified as a "C" facility by complexity by the Operator Certification Section of the Department.	(1) Wastewater works and/or collection system facilities serving populations between 1,500 and 15,000; and (2) Discharging wastewater facilities serving 15,000 or less; and (3) All wastewater works classified as a "C" facility by complexity by the Operator Certification Section of the Department.
Class D	None	Distribution systems or chlorinated groundwater systems serving populations of 1,500 or less.	Total retention lagoons and/or collection systems serving populations of less than 1,500.

[OAR Docket #08-655; filed 4-11-08]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 521. CONTROL AND TREATMENT OF COMMUNICABLE DISEASE

[OAR Docket #08-663]

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RULES:
Subchapter 1. General Provisions
310:521-1-1 [AMENDED]
310:521-1-2 [AMENDED]
Subchapter 3. Tuberculosis
310:521-3-1 through 310:521-3-5 [AMENDED]
Subchapter 7. Isolation or Quarantine [NEW]
310:521-7-1 through 310:521-7-9 [NEW]
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ANALYSIS:
Changes to the existing Subchapters broadens the definitions to be applicable to all communicable diseases affected by this rule and updates language related to tuberculosis treatment. The new Subchapter increases the ability of the OSDH to control and treat communicable diseases, thus decreasing the likelihood of spread of infectious agents and infection of the susceptible population, and reducing threats to the public health.
CONTACT PERSON:
Lauri Smithee, M.E.S., M.S., Chief, Acute Disease Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4030

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:521-1-1. Purpose and authority

The purpose of this chapter is to establish the rules for the control and treatment of communicable disease in Oklahoma. The Commissioner of Health has the authority to control, suppress, or prevent the occurrence or spread of any communicable, contagious or infectious disease, provide for the segregation and isolation of persons having or suspected of having any such disease, and may designate places of quarantine or isolation under Title 63 O.S. §1-106. The Board of Health has authority to adopt rules to aid in the prevention and control of communicable diseases under ~~section 1-502 of~~ Title 63 ~~of the Oklahoma Statutes~~O.S. §1-502.

310:521-1-2. Definitions

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

"Biologic public health threat" means an infectious, communicable disease, the agent of which may be readily transmitted from an infectious person to a susceptible person without their knowledge or consent, and the infectious nature of which is known to cause increasing incidence of infection and disease upon transmission such that there is a threat to the general public health.

"Clinical case" means a case of an infectious disease as defined by the presence of signs and symptoms compatible with the disease and the absence of laboratory confirmation, which may be considered communicable.

"Commissioner" means the State Commissioner of Health or any other person delegated specific authority by the Commissioner to act under this Chapter.

"Communicable disease" means an infectious disease that is transmissible (as from person to person) by direct contact with an affected individual or by indirect contact with the individual's bodily discharges.

"Compliance order" means an order issued by the Commissioner enforcing treatment, isolation, quarantine, ~~and/~~or other behavioral expectations.

"Contagious" means the ability to spread a communicable disease agent, as determined by the Commissioner.

"Department" means the Oklahoma State Department of Health.

"Directly observed therapy" or **"DOT"** means disease treatment administered by a Public Health Nurse, DOT Provider or other person authorized by the Commissioner who observes the patient ingest each dose of oral medication and/or witnesses the administration of each dose of parenteral medication.

"Infectious disease" means a disease caused by the entrance into the body of microorganisms (as bacteria, protozoans, fungi, or viruses) that grow and multiply therein.

"Isolation" means the confinement of an individual or group of individuals who have or are suspected of having an infectious disease constituting a biologic public health threat to an appropriate facility or location to prevent the transmission of disease.

"Laboratory criteria for diagnosis" means that appropriate laboratory testing has been conducted which has identified the likely presence of the infectious agent.

"Non-compliant behavior" means behavior on the part of the person with the suspected or confirmed infectious disease which results in failure to comply with the ordered or prescribed diagnostic procedures, treatment, therapy, isolation, quarantine, or control measures.

"Non-contagious" means an infectious or suspected infectious disease that is no longer considered communicable because one or more of the following have occurred: 1) full passage of the maximum period of infectivity for that disease; 2) completion of a minimum treatment regimen; 3) certain clinical criteria are no longer present; or 4) certain laboratory criteria have been met.

"Order for Examination" means an order issued by the Commissioner instructing a person suspected or confirmed to have an infectious disease to undergo testing to determine the presence of a communicable disease.

"Order for Isolation" means an order issued by the Commissioner instructing a person suspected or confirmed to have a communicable disease to cease all public or other prohibited contact.

"Order for Quarantine" means an order issued by the Commissioner that restricts the movement or activities of a person suspected or confirmed to have been exposed to and potentially incubating an infectious disease of public health importance.

"Order for Treatment" means an order issued by the Commissioner instructing a person suspected or confirmed to have a communicable disease to undergo treatment for that disease.

"Quarantine" means restricting the movement or activities of an individual or group of individuals who are known or suspected to have been exposed to an infectious disease constituting a biologic public health threat, generally for the duration of the maximum incubation period of the known or suspected disease.

"Respondent" means the person(s) or legal entity(ies) named in an order, petition or other pleading for an individual proceeding or other administrative hearing, against whom relief is sought.

"Suspect case" means a person with symptoms and/or signs consistent with an infectious disease, and the likelihood of appropriate exposure to have been infected with the infectious agent, as judged in the opinion of an experienced public health professional.

SUBCHAPTER 3. TUBERCULOSIS

310:521-3-1. Specific authority

Tuberculosis control and treatment is specifically delegated to the Oklahoma State Department of Health in 63 O.S. 1-401 ~~et seq~~through 1-410.

310:521-3-2. Definitions

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

~~**"Clinical case definition"** means a reactive tuberculin skin test, other signs and symptoms compatible with tuberculosis (e.g., an abnormal, unstable [i.e., worsening or improving] chest x-ray, or clinical evidence of current disease), treatment with two or more anti-tuberculosis medications and completed diagnostic evaluation.~~

~~**"Directly observed therapy" or "DOT"** means tuberculosis therapy administration by a Public Health Nurse, DOT Provider or other person authorized by the Commissioner who watches the TB patient swallow each dose of medication.~~

~~**"Isolation"** means the confinement of a person with suspected or active tuberculosis to his home or other quarters as specified by the Commissioner or designee.~~

~~**"Laboratory criteria for diagnosis"** means isolation of *M. tuberculosis* from a clinical specimen or demonstration of *M. tuberculosis* from a clinical specimen by nucleic acid amplification test, or demonstration of acid-fast bacilli in a clinical specimen when a culture has not been or cannot be obtained.~~

~~**"Non-contagious"** means a person with active or suspected tuberculosis who has completed a minimum of two weeks tuberculosis treatment, has a minimum of three (3) documented consecutive negative sputum AFB smear results, and the occurrence of a clinical response to therapy.~~

~~**"Non-compliant behavior"** means behavior on the part of the person with active or suspected tuberculosis which results in failure to comply with established tuberculosis therapy, isolation or clinical, laboratory and x-ray monitoring.~~

~~**"Order for Examination"** means an order issued by the Commissioner instructing a Tuberculosis suspect to undergo testing for Tuberculosis, to include Tuberculin Skin Testing, chest or other x-ray, and/or sputum examination.~~

~~**"Tuberculosis" or "TB"** means a chronic bacterial infection caused by *Mycobacterium tuberculosis*, characterized pathologically by the formation of granulomas.~~

~~**"Tuberculosis contagious person"** means a person diagnosed with active or suspected pulmonary or laryngeal tuberculosis who is not receiving therapy, has just started therapy, or has a poor clinical or bacteriologic response to therapy.~~

~~**"Tuberculosis disease"** means active tuberculosis is established by meeting the Clinical Case Definition or Laboratory Criteria for Diagnosis.~~

~~**"Tuberculosis suspect"** means a person with symptoms or signs of active tuberculosis, an abnormal chest x-ray with changes compatible with tuberculosis, and/or preliminary mycobacteriology results suggestive of TB.~~

"Tuberculosis treatment" means tuberculosis therapy with an American Thoracic Society/Centers for Disease Control and Prevention recommended regimen or other regimen as prescribed or approved by the Commissioner. ~~The initial tuberculosis treatment regimen frequently contains Isoniazid, Rifampin, Pyrazinamide, Ethambutol and Pyridoxine (Vitamin B6).~~

310:521-3-3. Standards of ~~TB therapy~~tuberculosis treatment

(a) The Commissioner shall establish surveillance to identify all cases of tuberculosis in Oklahoma. All tuberculosis suspects shall be investigated to establish or exclude the diagnosis of tuberculosis disease.

(b) ~~The contagious tuberculosis~~A person with tuberculosis in a contagious state will remain in isolation until non-contagious criteria are met.

(c) The Commissioner shall:

(1) Review the Tuberculosis treatment regimen for each person with active or suspected tuberculosis,

(2) Make recommendations for change, as indicated, and

(3) Establish the anticipated length of therapy.

(d) Directly Observed Therapy (DOT) shall be the standard ~~of therapy for tuberculosis~~for treatment of persons determined to have active tuberculosis disease. Exceptions may be granted by the Commissioner when necessary and for cause.

(e) Compliance orders will be issued to tuberculosis patients to establish behavioral expectations in regard to treatment, isolation and monitoring.

(f) Tuberculosis treatment shall continue by DOT until a~~n accepted~~prescribed course of therapy has been completed.

(g) Non-compliant behavior in regard to treatment, isolation or patient monitoring will be reported to the Commissioner. Action will be taken to eliminate the non-compliant behavior when possible or to pursue enforcement action, as ~~is appropriate~~determined by the Commissioner.

310:521-3-4. Completion of ~~therapy~~tuberculosis treatment

Completion of ~~Tuberculosis~~tuberculosis ~~Therapy~~treatment occurs when ~~therapy has been taken for an adequate length of time (or an adequate~~the prescribed number of doses ~~of drugs~~ have been taken~~)~~ within the appropriate length of time for the established regimen, as determined by the Commissioner.

310:521-3-5. Alteration to treatment regimen

Alteration in the ~~preferred~~prescribed treatment regimen may be necessitated based on drug hypersensitivity, drug resistance, drug toxicity, concurrent therapy with ~~identified HIV~~other drugs, ~~and~~or other disease conditions.

SUBCHAPTER 7. ISOLATION OR QUARANTINE

310:521-7-1. Examination

The Commissioner may issue an order for the examination of any individual upon the suspicion or confirmation that said individual has a communicable disease. Such examination may include a clinical examination, a specific diagnostic test or tests, or a specific laboratory test or tests. The purpose of such examination(s) and/or test(s) is to determine the presence of the suspected infectious organism or the presence of indicators of the suspected infectious organism, and to determine the contagious state of the individual to the extent possible.

310:521-7-2. Treatment

The Commissioner may issue an order for the treatment of any individual suspected or confirmed to have a communicable disease. The Commissioner may also order the treatment of any individual or individuals exposed to certain infectious agents. Such treatment plans will be according to procedures developed within the Department.

310:521-7-3. Isolation or quarantine

(a) **Isolation.** The Commissioner may issue an order for the isolation of any individual or group of individuals upon determination:

(1) That such individual or individuals who are reasonably known or suspected to have a communicable disease constituting a biologic public health threat and who remain within the transmission period for said disease; and

(2) That isolation is the necessary means to control the spread of the agent and the disease constituting a biologic public health threat.

(b) **Quarantine.** The Commissioner may issue an order for the quarantine of any individual or group of individuals upon determination:

(1) That such individual or individuals who are reasonably known or suspected to have been exposed to a communicable disease constituting a biologic public health threat and who remain within the incubation period for said disease; and

(2) That quarantine is the necessary means to contain the communicable disease constituting a biologic public health threat to which an individual or individuals have been or may have been exposed.

(c) **Affected area.** The Commissioner may issue an order for the quarantine of a facility, complex, or campus including but not limited to an apartment complex, dormitory, health care facility, hotel, correctional facility, or the individuals therein.

310:521-7-4. Means of isolation or quarantine

The Department shall recommend to the Commissioner the appropriate means of isolation or quarantine, which shall generally be the least restrictive means that effectively protects unexposed and susceptible individuals. The place of isolation selected shall meet such infection control standards that it effectively complies with nationally accepted guidelines for the prevention of transmission of the infectious agent. The place of quarantine selected shall allow the most freedom of movement and communication with family members and other contacts without allowing transmission of the suspected infectious agent to others.

310:521-7-5. Delivery of orders

A representative of the Department shall deliver orders of examination, treatment, quarantine, or isolation, or shall ensure

the delivery of the order by an appropriate party, to the affected individual or individuals in person to the extent practicable.

310:521-7-6. Administrative hearings and court enforcement

(a) Any person who is subject to an order of the Commissioner for isolation or quarantine and who contests such an order may request an individual proceeding or hearing. In order to uphold a quarantine order the Department must prove by a preponderance of the evidence that the Respondent was, or was suspected of having been, exposed to an infectious disease constituting a biologic public health threat. In order to uphold an isolation order the Department must prove by a preponderance of the evidence that the Respondent has, or is suspected of having, an infectious disease constituting a biologic public health threat. If requested, an individual proceeding pursuant to this subsection shall be convened as quickly as reasonably possible, which may be held telephonically or by other electronic means. A Respondent may request a hearing verbally or in writing. If the request for hearing is verbal, it shall be the duty of the hearing officer to take a statement for the record of the Respondent's reason for contesting the Commissioner's order. If the Commissioner's order is upheld at the conclusion of the hearing, the Respondent may appeal the administrative decision pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

(b) Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of examination, treatment, isolation, or quarantine has failed to or refuse to comply with such order, the Commissioner may request an emergency order from the district court to enforce the Commissioner's order. If granted, the emergency order shall require the individual or individuals to be taken immediately into custody by law enforcement officials for the purpose of examination or treatment or to be detained for the duration of the order of isolation or quarantine or until the Commissioner determines that the risk of transmission of a biologic public health threat is no longer present.

(c) Subsections a or b of this section may be suspended in the event of a declaration of emergency by the Governor pursuant to Oklahoma law or upon written directive of the Commissioner of Health to employ a constitutionally-sufficient alternative process due to exigent circumstances during such emergency. Such suspension of subsections a and b shall only exist for the duration of the emergency.

310:521-7-7. Health status monitoring

A representative of the Department shall monitor the health status of those under quarantine or isolation according to means dictated through procedure of the Department. Such means may include use of appropriate data collection forms, use of appropriate medical tests and or procedures, regular telephone calls, visits by local health personnel or other pre-determined providers, self-reports, reports of caregivers or healthcare providers, or by other means. If an individual or individuals under quarantine develop symptoms compatible with a disease constituting a biologic public health threat, then such individual or individuals may be further ordered into isolation.

310:521-7-8. Essential needs

A representative of the Department shall conduct an assessment to determine the essential needs of those isolated or quarantined as required by procedure of the Department.

310:521-7-9. Release from isolation or quarantine

The Commissioner will determine when an individual or individuals are determined to no longer be at risk of developing disease and becoming infectious or to no longer pose a risk of transmission of the infectious agent constituting a biologic public health threat to other individuals. The individuals under the order of quarantine or isolation shall be so notified by the Commissioner and shall be released from quarantine or isolation immediately upon notification.

[OAR Docket #08-663; filed 4-16-08]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 526. DENTAL SERVICES

[OAR Docket #08-664]

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Subchapter 3. Oklahoma Dental Loan Repayment Program
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ANALYSIS:
This proposal amends the existing rule providing definitions and requirements of the Oklahoma Dental Loan Repayment Program (Program). It is apparent existing language may become a barrier to participation in the

Program. This proposal makes it possible for the 30% minimum Medicaid recipient requirement to be met either by an unduplicated count of the patients treated or a count of patient visits.

CONTACT PERSON:

Susan L. Potter, Dental Health Service, Oklahoma State Department of Health, 405-271-5502

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:526-1-3. Definitions

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

"Advisory Committee" means a committee utilized during an Oklahoma Dental Loan Repayment Program (ODLRP) selection process whose responsibilities and makeup are described in these Rules.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health or his/her designee.

"Contract" means a written agreement between the participating dentist and the Oklahoma State Department of Health upon the dentist's acceptance into the Oklahoma Dental Loan Repayment Program (ODLRP.)

"Dental Health Professional Shortage Area" or **"DHPSA"** means a location in Oklahoma that has been officially designated, on or about January 1 of each year, as experiencing special dental health problems and dentist practice patterns that limit access to dental care.

"Dental Service" means the Dental Program of the Oklahoma State Department of Health.

"Dental services" means the provision of diagnostic, preventive, restorative, emergency and palliative services provided by licensed general or pediatric dentists. The provision of dental services includes a reasonable amount of time for performing tasks related to the service, such as record-keeping.

"Dentist" means a person who is licensed to practice dentistry by the Oklahoma Board of Dentistry.

"Dentistry" means the practice of dentistry by a dentist as defined in the latest editions of the Oklahoma State Dental Act and the Oklahoma Board of Dentistry Rules and Regulations.

"Department" means the Oklahoma State Department of Health.

"Educational expenses" means all or part of the principal and interest of an educational loan which has been taken out by an individual that meets eligibility criteria for the Program.

"Medicaid dental provider" means a dentist who has fulfilled the Oklahoma Health Care Authority requirements to be reimbursed fees for services provided to the Title XIX Medicaid population.

"Medicaid patient" means a patient enrolled, at the time of dental treatment, in the State Title XIX Medicaid Program as administered by the Oklahoma Health Care Authority.

"New dental school graduate" means a dentist who has graduated from an accredited U.S. dental school during the last three years prior to the effective funding cycle for which applicant is submitting an application for the ODLRA Program.

"ODLRA" means the Oklahoma Dental Loan Repayment Act.

"ODLRP" means the Oklahoma Dental Loan Repayment Program.

"Oklahoma Health Care Authority" or **"OHCA"** means the state agency responsible for the Title XIX Medicaid Program in Oklahoma.

"Participating dentist" or **"participant"** means a dentist selected to participate in the Program and who has an effective ODLRP contract with the Department.

"Patient" means the ~~unduplicated count of~~ individuals treated at an approved practice site.

"Program" means the Oklahoma Dental Loan Repayment Program.

"Service obligation" means the terms established by the contract as defined by the Department and may include options to renew for up to a total participation in the Program of five (5) years.

SUBCHAPTER 3. OKLAHOMA DENTAL LOAN REPAYMENT PROGRAM

310:526-3-3. Eligibility to participate in the Program

(a) **Eligibility requirements common to both non-faculty and faculty participants.** Eligibility for repayment assistance for non-faculty and faculty participants requires compliance with the following requirements:

(1) receipt or award of a dental degree from an accredited United States dental school within the previous three (3) years;

(2) completion of all requirements to receive or be awarded an active unrestricted license to practice dentistry in the State of Oklahoma at the time the service obligation begins; and,

(3) a financial need with outstanding eligible dental school loans.

(b) **Additional eligibility requirements for non-faculty participants.** Eligibility for repayment assistance for non-faculty participants requires compliance with the following additional requirements:

(1) an established practice, or the commitment to establish a practice, located in an Oklahoma DHPSA;

(2) fulfillment of all applicable requirements of the Oklahoma Health Care Authority to qualify as a Medicaid Dental Provider at the time the service obligation begins;

(3) ~~agree that a minimum of 30% of patients treated during the service obligation/contract period are Medicaid recipients at the time of treatment~~agree that during the

service obligation/contract period, a minimum 30% of patients treated are Medicaid recipients at the time of treatment, or 30% of patient visits are by Medicaid recipients; and,

(4) maintain a full time general or pediatric dental practice at the established practice described in the service contract.

(c) **Additional eligibility requirements for faculty participants.** Eligibility for repayment assistance for faculty participants requires compliance with the additional requirement of abiding by the rules and regulations for a faculty member, and the job duties assigned by the Dean of the University of Oklahoma College of Dentistry.

(d) **Limitations upon eligibility common to both non-faculty and faculty participants.** A non-faculty or faculty participant's eligibility may be rescinded or terminated if any of the following conditions occur:

(1) a breach of an obligation for service to a federal, state, or local government entity;

(2) an obligation for service to a federal, state, or local government entity that will interfere with the fulfillment of the requirements of the Program that remains unsatisfied; or,

(3) default or material breach of an agreement to repay a higher education loan or borrowing agreement.

(e) **Additional considerations.**

(1) Preference will be given to graduates of the University of Oklahoma College of Dentistry.

(2) An eligible practice site is a solo, group, or incorporated private practice, and any federal, state, local, or private for-profit or nonprofit dental facility.

(3) To qualify for the 30% minimum Medicaid recipient requirement the participant must use an unduplicated count of the patients treated or a count of patient visits during the service obligation. The 30% requirement will be monitored monthly, but the participant will be deemed to be compliant if the yearly average is 30% or greater.

(f) **Eligible loans.** Loans eligible for repayment assistance are any loans for educational expenses while attending dental school from a college, university, government, commercial source, or an organization, institution, association, society, or corporation that is exempt from taxation under 501(c)(3) or (4) of the Internal Revenue Code of 1986. The ODLRP participant must be able to provide, upon request, documentation that commercial loans were used for payment of educational expenses.

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TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 550. NEWBORN SCREENING PROGRAM

[OAR Docket #08-665]

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310:550-1-2 [AMENDED]
Subchapter 3. Testing of Newborns
310:550-3-1 [AMENDED]
Subchapter 5. Specimen Collection
310:550-5-1 [AMENDED]
Subchapter 7. Hospital Recording
310:550-7-1 [AMENDED]
Subchapter 13. Parent and Health Care Provider Education
310:550-13-1 [AMENDED]
Subchapter 17. Follow-Up for Physicians
310:550-17-1 [AMENDED]
Subchapter 19. Reporting
310:550-19-1 [AMENDED]
Subchapter 21. Information
310:550-21-1 [AMENDED]
Appendix B. Report Form [REVOKED]
Appendix B. Report Form [NEW]
Appendix C. Refusal of the Newborn Screening Blood Test - Religious Tenets and Practices Refusal [REVOKED]
Appendix C. Refusal Form [NEW]

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Oklahoma State Board of Health; 63 O.S. Sections 1-105 and 1-2710 et seq.

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Subchapter 3. Testing of Newborns
310:550-3-1 [AMENDED]
Subchapter 5. Specimen Collection
310:550-5-1 [AMENDED]
Subchapter 7. Hospital Recording
310:550-7-1 [AMENDED]
Subchapter 13. Parent and Health Care Provider Education
310:550-13-1 [AMENDED]
Subchapter 17. Follow-Up for Physicians
310:550-17-1 [AMENDED]
Subchapter 19. Reporting
310:550-19-1 [AMENDED]
Subchapter 21. Information
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Appendix B. Report Form [REVOKED]
Appendix B. Report Form [NEW]
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ANALYSIS:
This proposal amends the existing rule. This action will establish a more encompassing and expanded newborn screening panel commensurate with the uniform panel recommended by the American College of Medical Genetics (ACMG) and the Oklahoma Genetics Advisory Council (OGAC). These amendments require all newborns be screened for additional genetic disorders of biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health and clarifies definitions, testing of newborns, specimen collection requirements, physician follow-up and reporting and program information.
CONTACT PERSON:
John Corpolongo MS, Chief, Screening, Special Services, and SoonerStart (405) 271-6617

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

310:550-1-1. Purpose

Under 63 O.S., Sections 1-533 and 1-534 the following rules and regulations are established concerning the screening of all infants born in Oklahoma for the disorders of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, ~~and after June 30, 2004, upon completion of validation studies and establishment of short-term follow-up services, infants shall be screened for~~ cystic fibrosis, congenital adrenal hyperplasia, ~~and~~ medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD)~~.~~, and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, infants shall be screened for biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health.

310:550-1-2. Definitions

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

"Amino Acid Disorders" refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process amino acids properly due to a defective enzyme function. This causes an amino acid or protein build up in the body. If not treated early in life these defects can cause disability, mental retardation or death. Each amino acid disorder is associated with a specific enzyme deficiency. Treatment depends on the specific amino acid disorder.

"Biotinidase Deficiency" means an inherited disease caused by the lack of an enzyme that recycles the B vitamin biotin, which if not treated may cause serious complications, including coma and death.

"Certified Laboratory" refers to the Oklahoma State Public Health Laboratory and/or a laboratory approved by the Oklahoma State Department of Health to conduct newborn screening.

"CLIA '88" means the Clinical Laboratory Improvement Amendments of 1988, public law 100-578. This amendment applies to the Federal Law that governs laboratories who examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

"Confirmatory Testing" means definitive laboratory testing needed to confirm a diagnosis.

"Congenital Adrenal Hyperplasia" or "CAH" will refer to the most common form of CAH, 21-hydroxylase deficiency. This genetic disorder is caused by the lack of an enzyme that the adrenal gland uses to process hormones. Serious loss of body salt and water can result in death. In girls the genitalia may appear as a male's, and can result in incorrect sex assignment. Hormone treatment is required for life.

"Congenital Hypothyroidism" means a disease caused by a deficiency of thyroid hormone (thyroxine) production, which if not treated leads to mental and physical retardation.

"Cystic Fibrosis" means a multisystem genetic disorder in which defective chloride transport across membranes causes dehydration of secretions. The result is a production of a thick, viscous mucus that clogs the lungs. This leads to chronic lung infections, fatal lung disease, and also interferes with digestion. Early detection and treatment can prevent malnutrition, and enhance surveillance and treatment of lung infections.

"Days of Age" means the age of a newborn in 24-hour periods so that a newborn is one day of age 24 hours following the hour of birth.

"Department" refers to the Oklahoma State Department of Health.

"Discharge" means release of the newborn from care and custody of a perinatal licensed health facility to the parents or into the community.

"Disorder" means any condition detectable by newborn screening that allows opportunities, not available without screening, for early treatment and management to prevent mental retardation and/or reduce infant morbidity and mortality.

"Fatty Acid Oxidation Disorders" refers to a group of inherited metabolic conditions in which the body is unable to oxidize (breakdown) fatty acids for energy due to a defective enzyme function. If not treated early in life this defect may cause mental retardation or death.

"Form Kit" or **"Newborn Screening Form Kit"** is a FDA approved (or licensed) filter paper kit bearing a stamped lot number that has been approved by the Commissioner of Health. For an example of a FDA approved kit, see Appendix A, Oklahoma Health Department (OHD) Form Kit #450.

"Galactosemia" means an inherited disease caused by the body's failure to break down galactose due to a defective enzyme function, which if not treated early in life may cause mental retardation or death.

"Hemoglobinopathy" means an inherited hemoglobin disorder.

"Infant" means a child 6 months of age and under.

"Infant's Physician" means the licensed medical or osteopathic physician responsible for the care of the newborn.

"Initial Specimen" means the first blood specimen collected subsequent to birth, pursuant to these procedures.

"Long-term Follow-up" means follow-up services that begin with diagnosis and treatment and continues throughout the lifespan, including parent education, networking, referral, and case coordination.

"Medium-chain acyl coenzyme A dehydrogenase deficiency or **"MCAD"** means a genetic disorder of fatty acid metabolism. This disorder can cause metabolic crisis when an infant/child fasts. This crisis can lead to seizures, failure to ~~breath~~breathe, cardiac arrest and death. Treatment is effective by preventing fasting.

"Newborn" means an infant 30 days of age and under.

"Newborn Screening" or "newborn screening tests" means screening infants for the disorders of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, ~~and after June 30, 2004, upon completion of validation studies and establishment of short-term follow-up services, screening infants for~~ cystic fibrosis, congenital adrenal hyperplasia, ~~and~~ medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health.

"Newborn Screening Laboratory" means a laboratory operated by the Department or a laboratory certified by the Department to conduct the tests and carry out the follow-up required by these procedures.

"Newborn Screening Program" refers to the Public Health Laboratory and Family Health Services Short-term Follow-up Program at the Oklahoma State Department of Health.

"Newborn Screening Program Coordinator" refers to the coordinator of the Family Health Services Short-term Follow-up Program at the Oklahoma State Department of Health.

"Organic Acid Disorders" refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process organic acids properly. Each organic acid disorder is associated with a specific enzyme deficiency that causes the accumulation of organic acids in blood and urine. The accumulated compounds or their metabolites are toxic, resulting in the clinical features of these disorders including mental retardation and death.

"Pediatric Sub-Specialist" means a physician licensed in Oklahoma, board certified in pediatrics and board certified in a pediatric sub-specialty of pediatric endocrinology, pediatric pulmonology, or pediatric hematology; or a physician licensed in Oklahoma, board certified in pediatrics whose primary area of practice is pediatric endocrinology, pediatric hematology, pediatric pulmonology, or metabolic specialist.

"Phenylketonuria" or **"PKU"** means an inherited disease caused by the body's failure to convert the amino acid phenylalanine to tyrosine due to defective enzyme function, which if not treated early in life, causes mental retardation.

"Planned Health Care Provider" or "Medical Home" means the health care provider who will be providing health care for the infant after discharge from the hospital.

"Premature Infant" means an infant weighing less than 2500 grams or any live birth before the thirty-seventh week of gestation.

"Repeat Specimen" means an additional newborn screening specimen to be collected after the initial specimen.

"Satisfactory Specimen" means a specimen collected using a single form kit which is suitable in both blood quantity and quality to perform screening for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, ~~and~~ medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health. All requested demographic information on the form kit must be completed. Federal CLIA '88 regulations require that the form kit's laboratory requisition contain sufficient patient data that must include patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting the test.

"Screened" means a specimen that has been collected and tested on an infant less than 6 months of age.

"Screening" means a test to sort out apparently well persons who probably have a disease from those who probably do not. A screening test is not intended to be diagnostic.

"Short-term Follow-up" includes services provided by the Department and the health care provider that begins when the laboratory reports an abnormal or unsatisfactory screen result and ends with a diagnosis of normal, lost (repeat testing not achieved), or affected with appropriate treatment and referral has been initiated.

"Sick Infant" means an infant with any condition or episode marked by pronounced deviation from the normal healthy state; illness.

"Sickle Cell Disease" means an inherited disease caused by abnormal hemoglobin(s) which if not treated early in life may result in severe illness, mental retardation or death (one variation is commonly referred to as sickle cell anemia).

"Specimen" means blood collected on the filter paper Newborn Screening Form Kit.

"Submitter" means a hospital, other facility, or physician submitting a Newborn Screening specimen.

"Transfer" means release of the newborn from care and custody from one licensed health facility to another.

"Unsatisfactory Specimen" means a specimen which is not collected on a form kit and/or is not suitable in blood quantity and quality to perform screening for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, ~~and~~ medium-chain acyl coenzyme A dehydrogenase deficiency

(MCAD), and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health and/or Federal CLIA '88 regulations are not followed and the form kit's laboratory requisition does not include patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting test.

SUBCHAPTER 3. TESTING OF NEWBORNS

310:550-3-1. Testing of newborns

(a) All newborns in Oklahoma shall be tested by a Certified Newborn Screening Laboratory for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, ~~and after June 30, 2004, upon completion of validation studies and establishment of short-term follow-up services, infants shall be screened for~~ cystic fibrosis, congenital adrenal hyperplasia, ~~and~~ medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD) and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, infants shall be screened for biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health; a parent or guardian may refuse screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices.

(b) A parent or guardian who refuses the newborn screening blood test of their newborn on the grounds that such examination conflicts with their religious tenets and practices shall also indicate in writing this refusal utilizing the Newborn Screening Program Parent Refusal Form as illustrated in Appendix C of this Chapter. This signed refusal form shall be placed in the newborn's medical record with a copy sent to the Newborn Screening Program Coordinator.

SUBCHAPTER 5. SPECIMEN COLLECTION

310:550-5-1. Specimen collection

(a) **Specimen collection for hospital births.** For all live hospital births, the physician, licensed or certified birth attendant shall order the collection of a newborn screening specimen on all newborns prior to transfusion, as early as possible after 24 hours of age or immediately prior to discharge, whichever comes first. Due to the need to identify infants at risk for the disorders quickly, the specimen should be collected as early as possible after 24 hours of age. Specimens shall be collected on a single Newborn Screening Form Kit using capillary or venous blood. Cord blood is unacceptable. The hospital is responsible for collecting specimens on all infants.

(1) If the initial specimen for any infant is collected prior to 24 hours of age, the hospital and the physician are responsible for notifying the infant's parents verbally and in writing, utilizing the parent educational form on the Newborn Screening Form Kit, that a repeat specimen is necessary at three to five days of age. The infant's physician is responsible for insuring that the repeat specimen is collected.

(2) The hospital is responsible for submitting a Satisfactory Specimen and for documenting all requested information on the form kit including the parent/guardian's name, address, phone or contact phone number and the planned health care provider who will be providing well care for the infant after discharge or if the infant is to be hospitalized for an extended period of time the name of the infant's physician.

(3) The hospital is responsible for documenting specimen collection and results in the infant's hospital record.

(4) Infants who are transferred from one hospital to another during the newborn period shall have specimen collection documented in the infant's hospital record. It is the responsibility of the physician and the receiving hospital to ~~insure~~ensure the specimen is collected.

(5) It is the responsibility of the hospital and physician to ~~insure~~ ensure that all infants are screened prior to discharge. If an infant is discharged prior to specimen collection, the Newborn Screening Program Coordinator shall be notified. The physician is responsible for ~~insuring~~ensuring the specimen is collected as required.

(b) **Screening for premature/sick infants.** For all premature/sick infants, the physician shall order the collection of a newborn screening specimen prior to red blood cell transfusion, at three to seven days of age or immediately prior to discharge, whichever comes first. Due to the need to identify infants at risk for the disorders quickly, the specimen should be collected as early as possible after 24 hours of age. It is recommended that a repeat newborn screening specimen be collected at 14 days of age. Specimens shall be collected on the Newborn Screening Form Kit using capillary or venous blood. The hospital and the physician are responsible for ensuring that specimens are collected on all premature/sick infants.

(1) Premature/sick infants screened prior to 24 hours of age must be re-screened between 7-14 days of age.

(2) Premature/sick infants who could not be screened prior to a red blood cell transfusion should be screened by the 7th day of life, with a repeat specimen collected when plasma and/or red cells will again reflect the infant's own metabolic processes and hemoglobin type (the accepted time period to determine hemoglobin type is 90 to 120 days after transfusion).

(3) The recommended follow-up study for an abnormal thyroid screen in a premature infant is a serum free T4 (measured by direct dialysis or an equivalent method) at 7-14 days of age.

(c) **Specimen collection for out-of-hospital births.**

(1) All infants who are not born in a hospital shall be tested ~~at~~ as early as possible after 24 hours of age. The infant's physician, licensed or certified birth attendant

is responsible for submitting a Satisfactory Newborn Screening Specimen. If there is not a physician, licensed or certified birth attendant involved in a non-hospital birth, the person attending the birth and the parents of the infant are responsible for submitting a Satisfactory Newborn Screening Specimen.

(2) If a physician examines a child in the first three months of life who was not born in a hospital, or born out of state, the physician will verify that the child has been screened. If the child has not been screened or if results of screening are not available, the physician should submit a Satisfactory Newborn Screening Specimen.

SUBCHAPTER 7. HOSPITAL RECORDING

310:550-7-1. Hospital recording

(a) The hospital shall implement a procedure to ~~assure~~ensure that a newborn screening specimen has been collected on every newborn and transported to the Newborn Screening Laboratory within 24 - 48 hours of collection.

(b) The hospital shall immediately notify the infant's physician, parents or guardians, and Newborn Screening Program Coordinator if an infant is discharged without a sample having been collected. This notification shall be documented in the infant's hospital record.

(c) If no test results are received within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Screening Laboratory to verify that a specimen had been received. If no specimen has been received, the hospital shall notify the physician.

(d) Any hospital or any other laboratory which collects, handles or forwards newborn screening samples shall keep a log containing name and date of birth of the infant, name of the attending physician, name of the planned health care provider who will be providing well care for the infant after discharge, medical record number, serial number of the Newborn Screening Form Kit used, date the specimen was drawn, date the specimen was forwarded, date the test results were received and the test results.

(e) Specimens should be transported in the manner designated by the Department.

SUBCHAPTER 13. PARENT AND HEALTH CARE PROVIDER EDUCATION

310:550-13-1. Parent and Health Care Provider education

(a) The infant's physician or designee shall have the responsibility to ~~assure~~ensure that at least one of each newborn's parent or legal guardian is notified about newborn screening and is provided information about the disorders and instructed to obtain screen results from the planned health care provider or Newborn Screening Program.

(b) The hospital will be responsible or designate a responsible party to distribute the Newborn Screening Program's written educational materials on newborn screening provided by the Department to at least one of each newborn's parent or legal guardian.

(c) Hospitals shall provide ongoing training programs for their employees involved with newborn screening procedures. These training programs shall include methods of collecting a Satisfactory Newborn Screening Specimen.

(d) The hospital is responsible for ~~assuring~~ensuring that employees who collect, handle or perform newborn screening tests are informed of their responsibilities with respect to screening procedures.

SUBCHAPTER 17. FOLLOW-UP FOR PHYSICIANS

310:550-17-1. Follow-up for physicians

(a) If a physician examines a child in the first three months of life, the physician will verify that the child has been screened, and document results in the infant's medical record. If the child has not been screened or if results of screening are not available, the physician should submit a Satisfactory Newborn Screening Specimen within 48 hours or as soon as possible.

(b) On written notification by the Newborn Screening Program of follow-up requirements for a newborn screen result of abnormal, unsatisfactory and less than 24 hours of age at time of collection; the infant's physician or designee will obtain required repeat screening, confirmatory testing, or diagnostic studies, in the timeframe specified so that therapy, when indicated, can be initiated expediently.

(c) The infant's physician may selectively rescreen infants as clinically indicated.

(d) Because patients may relocate without a forwarding address or contact information, where these rules place responsibility upon physicians and hospitals to follow-up or notify parents, then that shall be deemed to require only that a reasonable search be made and that if the parents are not contacted that the Newborn Screening Program Coordinator be notified of the non-follow-up or non-notification after efforts to contact the parents have been exhausted.

(e) For appropriate comprehensive medical care, all confirmed cases of congenital hypothyroidism, galactosemia, phenylketonuria, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health, should have a referral to a pediatric sub-specialist, and the parent should be referred for enrollment in newborn screening long-term follow-up services as designated by the Newborn Screening Program. For referral information, please contact the Newborn Screening Short-term Follow-up Program at (405) 271-6617 or 1-800-766-2223, ext. 6617.

SUBCHAPTER 19. REPORTING

310:550-19-1. Physician Reporting

(a) If confirmatory or follow-up testing is not performed by the Newborn Screening Laboratory or through a contract laboratory designated by the Newborn Screening Program, the infant's physician must report to the Newborn Screening Program Coordinator the results within 7 days after the completion of the medical evaluation, using the Department's Newborn Screening Report Form as illustrated in Appendix B of this Chapter. A copy of the confirmatory test results must accompany the report form.

(b) For all diagnosed cases of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, ~~and~~ medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, and organic acid disorders detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health, the infant's physician shall report treatment date if applicable, and referral information to the Newborn Screening Program Coordinator by completing the Department's Newborn Screening Report Form as illustrated in Appendix B of this Chapter.

(c) These reports shall be confidential and may be utilized only for the purpose of ~~assuring~~ ensuring service delivery, program administration, data analysis, and evaluation.

SUBCHAPTER 21. INFORMATION

310:550-21-1. Information

(a) For information regarding laboratory procedures, or results of laboratory tests or to order form kits, contact Public Health Laboratory Service, Oklahoma State Department of Health, P.O. Box 24106, Oklahoma City, Oklahoma 73124-0106, (405) 271-5070, FAX (405) 271-4850.

(b) For general information or information regarding follow-up, contact Newborn Screening Short-term Follow-up Program, Family Health Services, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299, (405) 271-6617, FAX (405) 271-4892, 1-800-766-2223, ext. 6617. General information about the Newborn Screening Program is available on the OSDH Web site at ~~www.health.state.ok.us~~www.health.ok.gov.

APPENDIX B. REPORT FORM [REVOKED]

APPENDIX B. REPORT FORM [NEW]

Newborn Screening Program Report Form

Infant's Name:_____ Infant's Birth Date__ __ / __ __ / __ __

Newborn Screening Program Lab #:_____ Mother's Name:_____

[ ] Diagnosis pending, Follow-up Plan:

Final Diagnosis (please attach confirmation lab results)
[ ] Normal
[ ] Trait Condition (specify carrier status)_____
[ ] Classic Galactosemia (GG phenotype/genotype)
[ ] Duarte/Galactosemia Compound Heterozygote (DG phenotype/genotype)
[ ] Congenital Adrenal Hyperplasia due to 21-Hydroxylase Deficiency
[ ] Cystic Fibrosis
[ ] Classic Phenylketonuria (PKU)
[ ] Hyperphenylalaninemia (not clinically significant)
[ ] Hyperphenylalaninemia (clinically significant treatment required)
[ ] Congenital Hypothyroidism
[ ] Medium-chain Acyl Coenzyme A Dehydrogenase Deficiency (MCAD)
[ ] Sickle Cell Disease (specify type)_____
[ ] Hemoglobin disease (specify type)_____
[ ] Biotinidase deficiency
[ ] Fatty Acid Oxidation Disorder (specify)_____
[ ] Organic Acid Disorder(specify)_____
[ ] Amino Acid Disorder(specify)_____
[ ] Other(specify)_____

Treatment Indicated? [ ] yes [ ] no
Date treatment started __ __ / __ __ / __ __

Referred to pediatric sub-specialist:
[ ] Endocrinologist (specify name):_____
[ ] Hematologist (specify name):_____
[ ] Metabolic Specialist (specify name):_____
[ ] Pulmonologist (specify name):_____

Family referred for (check all that apply):
[ ] Genetic counseling (check provider):
__ Sickle Cell Association __ Geneticist __ Other
[ ] Enrollment in Newborn Screening Long-term Follow-up Program
[ ] Early Intervention Services

Print Physician's Name _____Telephone _____

Physician Signature_____ Date __ __ / __ __ / __ __

Mail or Fax this follow-up form with complete diagnostic information and confirmation lab results to: Oklahoma State Department of Health
Family Health Services
ATT: Newborn Screening Program Coordinator
1000 NE Tenth Street
Oklahoma City, OK 73117-1299
Fax: (405) 271-4892

For questions or referral information, please call the Newborn Screening Program Coordinator at (405) 271-6617 or 1-800-766-2223.

APPENDIX C. REFUSAL OF THE NEWBORN SCREENING BLOOD TEST - RELIGIOUS TENETS AND PRACTICES REFUSAL [REVOKED]

APPENDIX C. REFUSAL FORM [NEW]

Oklahoma State Department of Health
Refusal of the Newborn Screening Blood Test
Religious Tenets and Practices Refusal

Infant's Name:_____ Medical Record Number:_____

Date of Birth: __ __ / __ __ / __ __

Attending Physician or Provider, print name:_____

Place of Birth:
__ Hospital, print name_____

__ Birthing Facility, print name_____

__ Home Birth

I have received and read the parent educational brochure printed by the Oklahoma Department of Health on the Newborn Screening blood test. I understand that these disorders are easily detected by testing a small blood sample from my baby's heel.

I have been informed that all newborns are required by law (under 63 O.S. 2002, Sections 1-533 and 1-534) to have a newborn screening test collected.

I have been informed and I understand that this screening is done to detect these disorders because symptoms sometimes do not appear for several weeks or months, and irreversible damage can occur before symptoms become apparent to a family or a physician.

I have been informed and I understand that, if untreated, these conditions may cause permanent damage to my child, including mental retardation, growth failure, and even death. This permanent health damage can be prevented through early detection and treatment.

I have discussed the newborn screening test with my physician or health care provider and I understand the risks to my child if the screening test is not completed.

I understand that the law allows a parent or guardian to refuse newborn screening based on the grounds that such examination conflicts with a person's religious tenets and practices. I elect to refuse newborn screening on that such testing of my infant conflicts with my religious tenets and practices. My decision was made freely and I accept the legal responsibility for the consequences of this decision.

_____	_____	__ __ / __ __ / __ __
Print Parent/legal Guardian's Name	Signature of Parent/legal Guardian	Date
_____	_____	__ __ / __ __ / __ __
Print Witness Name	Signature of Witness	Date

Original to infant's record, provide a copy to parent, and forward copy by fax or mail to: Oklahoma State Department of Health, Newborn Screening Program Coordinator, 1000 NE Tenth Street, Oklahoma City, OK 73117-1299, (405) 271-6617 or 1-800-766-2223; Fax (405) 271-4892.

[OAR Docket #08-665; filed 4-16-08]

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

[OAR Docket #08-693]

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Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-18. [AMENDED]
317:30-5-22. [AMENDED]
317:30-5-22.1. [NEW]
Part 3. Hospitals
317:30-5-44. [AMENDED]
Part 5. ~~Pharmacists~~Pharmacies
317:30-5-86.1. [REVOKED]
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]
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317:30-5-96.2. [AMENDED]
Part 16. Maternal and Infant Health Licensed Clinical Social Workers [NEW]
317:30-5-204. through 317:30-5-209. [NEW]
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]
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Part 18. Genetic Counselors [NEW]
317:30-5-219. through 317:30-5-223. [NEW]
Part 61. Home Health Agencies
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Part 63. Ambulatory Surgical Centers
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317:30-5-95.19. [AMENDED]
317:30-5-95.22. [AMENDED]
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317:30-5-211. [REVOKED]
317:30-5-211.1. through 317:30-5-211.12. [NEW]
317:30-5-211.14. 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]

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Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-22.1. [NEW]
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Subchapter 5. Individual Providers and Specialties
Part 16. Maternal and Infant Health Licensed Clinical Social Workers [NEW]
317:30-5-204. through 317:30-5-209. [NEW]
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Subchapter 5. Individual Providers and Specialties
Part 18. Genetic Counselors [NEW]
317:30-5-219. through 317:30-5-223. [NEW]
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Part 17. Medical Suppliers
317:30-5-211.13. [NEW]
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Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-210. [AMENDED]
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Part 1. Physicians
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Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
Part 3. Hospitals
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INCORPORATIONS BY REFERENCE:
N/A
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 managment rules are revised and relocated from pharmacy specific to general coverage rules and allows expansion of Disease Managment 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.

Agency rules are revised to allow providers to use any form that is federally approved for sterilization consent. Current rules require providers to submit the OHCA ADM-71 form for sterilization consent in order to receive SoonerCare payment for the sterilization procedure. Providers who perform sterilization procedures funded through federally assisted public health programs such as Indian health facilities are required to submit a federal sterilization consent form to obtain federal reimbursement in addition to the OHCA ADM-71 for SoonerCare payment. Indian Health Services (IHS) providers have reported that the requirement to use both the federal sterilization form and the OHCA sterilization form causes confusion among SoonerCare members and IHS staff and results in denied SoonerCare claims for not submitting the appropriate form. By eliminating the requirement of a specific sterilization form to be used and allowing providers to use any federally approved form, providers will be in compliance with both OHCA rules and federal regulations without duplicate administrative effort.

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.

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. Further revisions delete obsolete language and forms and clarify coverage for oxygen, nutritional support, prosthetic devices, and supplies.

Additional revisions include wording changes to the prior authorization and oxygen rental sections, and move the requirement that the supplier include

a copy of the invoice documenting the supplier's cost from the reimbursement section to the billing section. Both are for clarification purposes.

Rules are revised to add enhanced services for medically high risk pregnancies and allow additional reimbursement to an obstetrical care provider treating a member who is confirmed to be medically/obstetrically "high risk". Enhanced services are available for pregnant women eligible for SoonerCare and are in addition to services for uncomplicated maternity cases. Women deemed high risk based on criteria established by the OHCA may receive prior authorization for medically necessary enhanced benefits which include prenatal at risk ante partum management, non stress test(s), and additional ultrasounds not covered under routine obstetrical care. Proposed rule revisions are a result of the Oklahoma State Department of Health and the Oklahoma Health Care Authority Perinatal Task Force. The focus of this task force is to study issues concerning pregnant women covered by SoonerCare and other public funding sources and to develop programs and plans to target those areas for positive outcomes. These rule revisions will ensure high risk pregnant SoonerCare members receive appropriate prenatal care in an effort to significantly reduce the possibility of poor birth outcomes.

Rules are revised to add Maternal and Infant Health Licensed Clinical Social Workers (MIHLCSWs) to individual providers and specialties who provide health care to SoonerCare members. Services provided by MIHLCSWs consist of supportive counseling, education, and case management toward the goal of reducing poor perinatal outcomes and optimizing early maternal infant health, attachment and bonding. The emphasis is on providing support, motivation, education and assistance in accessing appropriate care. The addition of MIHLCSWs will increase access to counseling services for pregnant/postpartum SoonerCare members who may be at risk due to drug/alcohol use, domestic violence, and/or problems in the post partum environment that interfere with infant health and bonding. Proposed rule revisions are a result of the Oklahoma State Department of Health and the Oklahoma Health Care Authority Perinatal Task Force. The focus of this task force is to study issues concerning pregnant women covered by SoonerCare and other public funding sources and to develop programs and plans to target those areas for positive outcomes. This revision will allow MIHLCSWs to contract directly with the OHCA and expand the number of providers allowed to provide services to SoonerCare members.

Rules are revised to add Licensed Genetic Counselors (LGCs) to individual providers and specialties who provide health care to SoonerCare members. The field of genetics has developed tests and procedures that have significant impact on perinatal care. Genetic counseling is a process by which critical family history, patient history, and other factors are gathered, analyzed and shared with the member in order to help them understand and adapt to the medical psychosocial and familial contributions to potential or realized birth defects. Proposed rule revisions are a result of the Oklahoma State Department of Health and Oklahoma Health Care Authority Perinatal Task Force. The focus of this task force is to study issues concerning pregnant women covered by SoonerCare and other public funding sources and to develop programs and plans to target those areas for positive outcomes. This revision to rules will allow Genetic Counselors to contract directly with the OHCA and expand the number of providers allowed to provide services to SoonerCare members.

Rules are revised to allow an exception for coverage of external breast prosthesis in instances where a woman with breast cancer receives reconstruction following a mastectomy, but the breast implant fails or ruptures and circumstances are such that an implant replacement is not recommended by the surgeon and/or desired by the member. Currently, OHCA rules state that external breast prostheses are not covered once breast reconstruction is performed. Studies have shown that about 20% of modern implants rupture within 10 years of cosmetic augmentation. This rule revision will give SoonerCare members who have had a failed implant or other complications the option to receive an external breast prosthesis in lieu of further more costly reconstructive surgery as well as allow members, who are not candidates for further reconstructive surgery, to obtain external breast prostheses for comfort and balance.

Agency rules are revised to delay the SoonerCare requirement of accreditation by a Medicare deemed accreditation organization for quality standards for providers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). In May, 2007, the agency revised rules effective July 1, 2007, to require this accreditation by January 1, 2008; however, it has now been determined that the accreditation organizations will be unable to complete the accreditation process for current SoonerCare contracted providers for two more years. Therefore, the deadline for DMEPOS providers to obtain this accreditation in order to receive reimbursement from SoonerCare is being delayed until January 1, 2011.

Agency rules are revised to allow SoonerCare providers to bill and receive payment for an evaluation and management (E&M) service and an amniocentesis on the same date of service. Amniocentesis is a diagnostic test that detects chromosome abnormalities, neural tube defects and genetic disorders with high levels of accuracy (98-99%). Down syndrome or Trisomy 21 is the most common chromosome abnormality. Genetic disorders include disorders like cystic fibrosis. The most common neural tube defect is spina bifida. Current rules do not allow a SoonerCare provider to provide an E&M service and an amniocentesis on the same day. By allowing both services on the same day, pregnant SoonerCare members, whose fetus may be at risk for genetic defects, are more likely to use this diagnostic tool than if they must return on another day for this procedure. Performing the tests and confirming the diagnosis provides members with certain opportunities. Members may pursue potential interventions (i.e. fetal surgery for spina bifida), planning for a child with special needs and/or identifying support groups and resources. Rule revisions are needed to allow early detection and improve member access to this essential service.

Rules are being revised to eliminate the requirement that an Explanation of Medicare Benefits (EOMB) be attached to a cross-over claim before it can be processed. Cross-over claims are claims filed with Medicare Part B that in most cases, automatically cross over to OHCA. However, if it does not, a claim for coinsurance and deductible must be filed with OHCA within 90 days of the date of the Medicare payment or within one year of the date of service in order to be considered timely filed. Current policy requires that the EOMB must be attached to the claim to be considered for payment. This process is administratively burdensome and adversely impacts the providers. The proposed rule revisions would eliminate the requirement that an EOMB be attached to the claim thus facilitating acceptance of cross-over claims via the internet.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

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~~ 15) 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~~ 16) 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~~ 17) Free-standing ambulatory surgery centers.
(~~19~~ 18) 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~~ 19) Rental and/or purchase of durable medical equipment.

(~~21~~ 20) Adaptive equipment, when prior authorized, for members residing in private ICF/MR's.

(~~22~~ 21) Dental services for members residing in private ICF/MR's in accordance with the scope of dental services for members under age 21.

(~~23~~ 22) 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~~ 23) Standard medical supplies.

(~~25~~ 24) Eyeglasses under EPSDT for members under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.

(~~26~~ 25) Blood and blood fractions for members when administered on an outpatient basis.

(~~27~~ 26) 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~~ 27) Nursing facility services, limited to members preauthorized and approved by OHCA for such care.

(~~29~~ 28) 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~~ 29) 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~~ 30) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.

(~~32~~ 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) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(E) 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 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA's) medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

(A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgicenter or a Medicare certified hospital that offers outpatient surgical services. Refer to the List of Covered Surgical Procedures.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies or opportunistic infections.

(G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the authorization, OKDHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and, executes the federally mandated consent form ~~(ADM-71)~~ with his/her physician . A copy of the consent form must be attached to the claim form. Separate payment is allowed for I.U.D. insertion during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.

(P) Genetic counseling (requires special medical review prior to approval).

(Q) Weekly blood counts for members receiving the drug Clozaril.

(R) Complete blood count (CBC) and platelet count prior to receiving chemotherapeutic agents, radiation therapy or medication such as DPA-D-Penacillamine on a regular basis for treatment other than for malignancy.

(S) Payment for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

(U) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing members without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma SoonerCare provider number.

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(V) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and sign off on the billed encounter;

(ii) Attending physician present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(W) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;

(ii) The contact must be documented in the medical record.

(X) Payment to a physician for supervision of CRNA services unless the CRNA bills directly.

(Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Z) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adult are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(iv) Procedures considered experimental or investigational are not covered.

(AA) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.

(ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.

(BB) Total parenteral nutritional therapy (TPN) for identified diagnoses and when prior authorized.

(CC) Ventilator equipment.

(DD) Home dialysis equipment and supplies.

(EE) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(FF) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the member to describe their smoking use;

(II) Advising the member to quit;

(III) Assessing the willingness of the member to quit;

(IV) Assisting the member with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, nurse practitioners, nurse midwives, dentists, and Oklahoma State Health Department and FQHC nursing staff. It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP capitation payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note and signature along with the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(GG) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

(2) General coverage exclusions include the following:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery.

(C) Services of two physicians for the same type of service to the same member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the member's status. If the consultant physician initiates treatment at the initial consultation and participates

thereafter in the member's care, the procedure codes for subsequent hospital care must be used.

(D) Refractions and visual aids.

(E) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomy.

(I) Medical services considered to be experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per member except those visits in connection with family planning, or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician supervision of hemodialysis or peritoneal dialysis.

(N) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury, or illness related to a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or when the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(R) Night calls or unusual hours.

(S) Speech and Hearing services.

(T) Mileage.

(U) A routine hospital visit on the date of discharge unless the member expired.

(V) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(W) Inpatient chemical dependency treatment.

(X) Fertility treatment.

(Y) Payment for removal of benign skin lesions unless medically necessary.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not ~~be~~ SoonerCare compensable.

(A) Effective October 1, 1993, all residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25,317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members under age 21. These services include medical, dental, vision, hearing and

other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: *Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above. Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.*

(7) **General exclusions.** The following are excluded from coverage for members under the age of 21:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the codes for subsequent hospital care must be used.

(D) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of persons who are under 21 years of age.

(G) Non-therapeutic hysterectomy.

(H) Medical Services considered to be experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician supervision of hemodialysis or peritoneal dialysis.

(L) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out in OHCA rules.

(N) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Night calls or unusual hours.

(Q) Mileage.

(R) A routine hospital visit on date of discharge unless the member expired.

(S) Tympanometry.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. ~~For in-State physicians, claims~~ Claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment or within one year of the date of service in order to be considered timely filed. ~~The Medicare EOMB must be attached to the claim. If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare".~~

(1) ~~Out of state claims will not~~ In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment or within one year from the date of service. ~~The Medicare EOMB must be attached to the claim.~~

(2) ~~Claims filed under SoonerCare must be filed within one year from the date of service. For dually eligible members, to be eligible for payment of coinsurance and/or deductible under SoonerCare, a claim must be filed with Medicare within one year from the date of service.~~ If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for the denial.

317:30-5-18. Elective sterilizations

(a) Payment is made for elective sterilizations performed in behalf of eligible individuals if all of the following circumstances are met:

(1) The patient must be at least 21 years of age at the time the consent form is signed;

(2) The patient must be mentally competent, and not presently institutionalized;

(3) A properly completed ~~Federally~~ federally mandated consent for sterilization form is attached to the claim; and

(4) The form is signed and dated at least 30 days, but not more than 180 days prior to surgery.

(b) When a sterilization procedure is performed in conjunction with a C-Section, the appropriate HCPC coding is used to report the procedures performed. A consent form is required when the sterilization procedure is performed.

(c) Reversal of sterilization procedures for the purpose of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim.

~~(d) The ADM 71 consent form was developed to meet federal requirements.~~

317:30-5-22. Obstetrical care

(a) Obstetrical (OB) care is billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery is used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the ante partum visits. The ante partum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total obstetrical care are listed in (1) - (6) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form and the most recent version of the Oklahoma Health Care ~~Authority (OHCA),~~ Authority's Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one assessment per provider and no more than two per pregnancy.

(2) Medically necessary real time ante partum diagnostic ultrasounds will be paid for in addition to ante partum care, delivery and post partum obstetrical care under defined circumstances. To be eligible for payment, ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One abdominal or vaginal ultrasound will be covered in the first trimester of pregnancy. The ultrasound must be performed by a board certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with a certification in Obstetrical ultrasonography.

(B) One ultrasound after the first trimester will be covered. This ultrasound must be performed by a board certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with certification in Obstetrical ultrasonography.

(C) Additional ultrasounds, including detailed ultrasounds and re-evaluations of previously identified or suspected fetal or maternal anomalies, must be performed by an active candidate or Board Certified diplomat in Maternal-Fetal Medicine.

(3) Standby attendance at Cesarean Section (C-Section), for the purpose of attending the baby, is compensable when billed by a physician not participating in the delivery.

(4) Spinal anesthesia administered by the attending physician is a compensable service and is billed separately from the delivery.

(5) Amniocentesis is not included in routine obstetrical care and is billed separately. Payment may be made for an evaluation and management service and amniocentesis on the same date of service. This is an exception to general information regarding surgery found at OAC 317:30-5-8.

(6) Additional payment is not made for the delivery of twins. If one twin is delivered vaginally and one is delivered by C-section by the same physician, the higher level procedure is paid. If one twin is delivered vaginally and one twin is delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at C-Section.

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section ~~should~~ bill separately for the prenatal and the six weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total obstetrical care.

(1) ~~An additional allowance is not be made for induction of labor, double set-up examinations, fetal stress and non-stress tests, or pudendal anesthetic. Do not bill separately for these procedures.~~ Non-stress tests except as described in OAC 317:30-5-22.1.

(2) Standby at C-Section is not compensable when billed by a physician participating in delivery.

(3) Payment is not made for assistant surgery for obstetrical procedures which include prenatal or post partum care.

(4) ~~Pitocin induction of labor is considered part of the delivery and separate payment is not made.~~ An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.

(5) Fetal scalp blood sampling is considered part of the total OB care.

(e) Obstetrical coverage for children is the same as for adults with additional procedures being covered due to EPSDT provisions if determined to be medically necessary.

(1) Services, deemed medically necessary and allowable under federal Medicaid regulations, are covered by the EPSDT/OHCA Child Health program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.

(2) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-22.1. Enhanced services for medically high risk pregnancies

(a) **Enhanced services.** Enhanced services are available for pregnant women eligible for SoonerCare and are in addition to services for uncomplicated maternity cases. Women deemed high risk based on criteria established by the OHCA may receive prior authorization for medically necessary enhanced benefits which include:

(1) prenatal at risk ante partum management;

(2) a combined maximum of 12 fetal non stress test(s) and biophysical profiles (additional units must be prior authorized for multiple fetuses); and

(3) a maximum of 6 repeat ultrasounds not covered under OAC 317:30-5-22(b)(2).

(b) **Prior authorization.** In order to receive enhanced services, the following documentation must be received by the OHCA Medical Authorizations Unit for review/approval:

(1) ACOG or other comparable comprehensive assessment;

(2) chart note identifying and detailing the qualifying high risk condition; and

(3) an OHCA CH-17 High Risk Ob Treatment Plan/Prior Authorization Request signed by the primary provider of obstetric care and a Maternal Fetal Medicine specialist who has agreed to provide collaborative care.

(c) **Reimbursement.** Enhanced benefits will be reimbursed as follows:

(1) ante partum management for high risk will be reimbursed to the primary provider of obstetrical care.

(2) reimbursement for enhanced at risk ante partum management will not be available to physicians who already qualify for enhanced reimbursement as state employed physicians.

(3) reimbursement for enhanced at risk ante partum management will not be made during an in-patient hospital stay.

PART 3. HOSPITALS

317:30-5-44. Medicare eligible individuals

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section.

(1) ~~**Individuals eligible for part A and part B.**~~

~~(A) Payment is made utilizing the Medicaid allowable for comparable Part B services.~~ Claims filed with Medicare automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment or within one year of the date of service in order to be considered timely filed.

(~~B~~ 2) ~~Payment is made for the coinsurance and/or deductible for Part A services for categorically needy individuals.~~ If payment is denied by Medicare and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for denial.

(3) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment or within one year from the date of service.

(4) For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

~~(2) **Individuals who are not eligible for part A services.**~~

~~(A) The Part B services are to be filed with Medicare. Any monies received from Medicare and any coinsurance and/or deductible monies received from OHCA must be shown as a third party resource on the appropriate claim form for inpatient per diem. The inpatient per diem should be filed with the fiscal agent along with a copy of the Medicare Payment Report.~~

~~(B) For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.~~

PART 5. ~~PHARMACISTS~~ PHARMACIES

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.~~

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;

(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.

(~~6~~ 7) **"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.

(~~7~~ 8) **"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 ~~an~~ 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 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.

(~~1~~ 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.

(~~2~~ e) ~~**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.

(~~3~~ f) ~~**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~~ LBHP)"** 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 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~~ LBPH 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 ~~10~~ 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

(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~~ 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~~ 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 instate or border facilities.

"Community-Based extended" means a PRTF that provides an extended environment for individuals who have completed a more intense treatment program and are preparing for full transition into the community, but who are not yet ready for independent living due to unresolved clinical issues, or unmet needs for personal, social, or vocational skills, that is furnished in a large campus residential setting.

"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 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.

"Transportation" means the service, provided by the PRTF, of transporting a member for necessary patient care and furnishing transportation for the member's family to attend required family therapy at the facility.

"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.

PART 16. MATERNAL AND INFANT HEALTH LICENSED CLINICAL SOCIAL WORKERS

317:30-5-204. General information

The emphasis of maternal and infant health licensed clinical social work services is on providing psychosocial support, health and behavior assessment and intervention focused on biopsycho-social factors related to the member's perinatal health status. These services are intended for women who are at risk due to drug/alcohol use, domestic violence, lack of stable food/shelter, have high risk medical conditions, problems in the post partum environment that interfere with the infant health and bonding and/or other psychosocial concerns.

317:30-5-205. Eligible providers

Eligible providers are Licensed Clinical Social Workers (LCSWs) with a minimum of six hours of continuing education or technical assistance in the area of Maternal and Infant Health. LCSWs must have a current contract on file with the Oklahoma Health Care Authority and be licensed in the state in which the service is being provided. Services may also be provided through the Department of Health or other county health departments. Services provided through the health departments must be provided by a LCSW. In the event of a post-payment audit, LCSWs providing Maternal and Infant Health Clinical Social Work services must be able to demonstrate that they have completed at least six hours of continuing education or technical assistance for each calendar year of providing care to SoonerCare members. The continuing education or technical assistance must be in the area of Maternal and Infant Health relevant to the provision of Social Work Services.

317:30-5-206. Coverage

Maternal and infant health social work services are covered for pregnant and postpartum women for whom a psychosocial condition exists that may negatively impact the pregnancy and/or well being of the newborn infant. SoonerCare members may self-refer or be referred by any provider. Identification of the condition may be based on a CH-16 or the Licensed Clinical Social Worker's initial assessment. Psychosocial assessment/counseling is appropriate in order to develop a social work care plan based upon the health risks due to psychosocial factors.

317:30-5-207. Limitations

Coverage limitations for maternal and infant health social work services are as follows:

(1) Services are only covered when performed in the LCSWs' office setting, patient's home or other confidential clinic setting.

(2) No separate reimbursement will be made to a facility.

(3) Services billed by a contracted LCSW must be provided face-to-face and in an individual setting.

317:30-5-208. Reimbursement

(a) Maternal and infant health social work services must be billed using appropriate CPT codes and guidelines.

(b) SoonerCare does not allow more than 32 units (15 minutes = 1 unit) during the pregnancy which includes 60 days postpartum.

(c) LCSWs that are employed by or remunerated by another provider may not bill the SoonerCare program directly for services if that billing would result in duplicate payment for the same service.

(d) Only the LCSW directly performing the care or a county health department may bill the SoonerCare Program.

(e) The time indicated on the claim form must be the time actually spent with the member.

317:30-5-209. Documentation

All services must be reflected by documentation in the patient records. All assessment and treatment services must include the following:

(1) date;
(2) start and stop time for each timed treatment session;
(3) signature of the service provider;
(4) credentials of service provider;
(5) documentation of the referral source;
(6) problems(s), goals and/or objectives identified on the treatment plan;
(7) methods used to address the problem(s), goals and objectives;
(8) progress made toward goals and objectives;
(9) patient response to the session or intervention; and
(10) any new problem(s), goals and/or objectives identified during the session.

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, 2011, 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) osteogensis 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,~~

~~(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 prosteses 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 transcutaneous 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 PO_2 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, 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.

(b) **Requirements.** Billing must follow correct coding guidelines as promulgated by CMS or per uniquely and publicly promulgated OHCA guidelines. DME claims must include the most appropriate HCPCS code as assigned by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) or its successor. Authorizations for services not properly coded will be denied. **The following services require prior authorization:**

(1) services that exceed quantity/frequency limits;

(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 DME-POS 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 coverage guidelines.

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 means 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.

(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-CAP 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 (pO2). 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 or resting oximetry results. The arterial blood saturation can not exceed 89% at rest on room air; the pO2 level can not exceed 59mm Hg.

(B) **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, SaO2 level equal to or less than 94%; and

(ii) ages four and above, SaO2 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 based on medical necessity.

(1) Oxygen concentrators are covered items for members residing in their home or in a nursing facility.

(2) For members who meet medical necessity criteria, SoonerCare covers portable oxygen and portable oxygen content. The need for 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 except in instances where a woman with breast cancer receives reconstructive surgery following a mastectomy, but the breast implant fails or ruptures and circumstances are such that an implant replacement is not recommended by the surgeon and/or desired by the member.

(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.

(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) **Medical necessity.** 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 OKDHS county 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 for the supply or equipment are submitted with the most appropriate HCPCS code as assigned by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) or its successor. 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, an invoice is required which must contain a full description of the equipment or supply.

(~~a~~ b) **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.

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

(~~c~~ 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.

~~(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.

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

PART 18. GENETIC COUNSELORS

317:30-5-219. General information

Genetic counseling gathers critical family history, patient history, and other factors to be analyzed and shared with the member to help them understand and adapt to the medical, psychosocial and familial contributions to potential or realized birth defects.

317:30-5-220. Eligible providers

Eligible providers must be Licensed Genetic Counselors. Genetic Counselors must have a current contract on file with the Oklahoma Health Care Authority and be licensed in the state in which the service is being provided.

317:30-5-221. Coverage

(a) Services for pregnant/postpartum SoonerCare members must be referred by a provider involved in the provision of obstetric or pediatric care. Members are eligible for genetic counseling during pregnancy which includes 60 days postpartum. Reasons for genetic counseling include but are not limited to the following:

(1) advanced maternal age;

(2) abnormal maternal serum first or second screening;

(3) previous child or current fetus/infant with an abnormality;

(4) consanguinity/incest;

(5) parent is a known carrier or has a family history of a genetic condition;

(6) parent was exposed to a known or suspected reproductive hazard;

(7) previous fetal demise, stillbirth, or neonatal death involving known/suspected abnormalities;

(8) history of recurrent pregnancy loss; or

(9) parent(s) are in an ethnic or racial group associated with an increased risk for specific genetic conditions.

(b) These services may be provided in an office or outpatient setting.

317:30-5-222. Reimbursement

(a) Counseling services must be billed using appropriate CPT codes and guidelines and must be medically necessary. SoonerCare does not allow more than six units (30 minutes = 1 unit) per pregnancy including 60 days postpartum care.

(b) Genetic Counselors who are employed by or remunerated by another provider may not bill the SoonerCare program directly for services if that billing would result in duplicate payment for the same service.

317:30-5-223. Documentation

All services must be documented in the member's medical record. All prenatal and postpartum genetic counseling sessions must at a minimum include the following:

(1) date of service;

(2) start and stop time for each treatment session;

(3) practitioner's signature;

(4) pedigree, and/or review and interpretation of family history; and

(5) recommendation and plan of care.

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.

~~(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.

PART 63. AMBULATORY SURGICAL CENTERS

317:30-5-568. Elective sterilizations

Payment is made to ambulatory surgical centers for elective sterilizations performed in behalf of eligible individuals if all of the following circumstances are met:

(1) The patient must be at least 21 years of age at the time the consent form is signed,

(2) The patient must be mentally competent,

(3) A properly completed ~~Federally~~ federally mandated consent for sterilization form ~~(ADM 71)~~ is attached to the claim, and

(4) The form is signed and dated at least 30 days, but not more than 180 days prior to surgery. ~~A supply of the form (ADM 71) can be obtained from the local Department of Human Services county office.~~

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

[OAR Docket #08-691]

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Part 1. Physicians
317:30-5-9. [AMENDED]
317:30-5-20. [AMENDED]
Part 5. ~~Pharmacists~~Pharmacies
317:30-5-70.2. [AMENDED]
317:30-5-72.1. [AMENDED]
Part 8. Rehabilitation Hospitals
317:30-5-111. [AMENDED]
Part 27. ~~Registered~~Independent Licensed Physical Therapists
317:30-5-290. [REVOKED]
317:30-5-290.1. [NEW]
317:30-5-291. [AMENDED]
317:30-5-291.1. through 317:30-5-291.2. [NEW]
Part 28. Occupational Therapy Services [NEW]
317:30-5-295. through 317:30-5-298. [NEW]
Part 43. ~~Adult~~Agency Companion, Specialized Foster Care, Daily Living Supports, Group Homes, and Community Transition Services
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ANALYSIS:
Agency rules are revised to update drug categories that are covered under SoonerCare as well as drug categories that are excluded or subject to limitations. Rules are also revised to allow coverage of certain non-prescription medications when they are used as part of a step therapy or other therapeutic algorithm. For example, current SoonerCare rules do not allow coverage for over-the-counter products used to treat lice infestation of the hair or body. This may require a physician visit in addition to a more toxic

and expensive prescription product. One of the many intended benefits of the rule revisions will specifically allow SoonerCare payment for non-prescription medications used to treat head lice. Revisions are needed to allow SoonerCare members access to certain over-the-counter products as well as appropriate drug categories.

Physician rules are revised to eliminate the potential for improper billing and reimbursement for venipuncture and catheterization by clarifying that a separate payment is made to physicians for specimen collections using catheterization and routine venipuncture. In addition, a revision of Laboratory services rules is needed to clarify that a separate payment is not made to laboratories for specimens obtained as it is considered part of the laboratory analysis. A Surveillance Utilization Review System (SURS) audit discovered the contradiction. These revisions are needed to clarify that these are allowable separate reimbursements for physicians in their offices but not for laboratories. If this is not changed, there is potential for improper billing or reimbursement based on inconsistency in the rule and how the rule is interpreted. Additional revisions revise language to agree with current SoonerCare language.

Agency rules are revised to remove the prior authorization requirement for the initial evaluation for physical therapy services for children. Currently, rules state that all physical therapy services, including the initial evaluation, for children must be prior authorized. As an evaluation is needed to determine if therapy services are medically necessary and compensable, provider prior authorization requests for an evaluation are routinely approved. By removing the prior authorization requirement, children will be able to more promptly receive needed services. Provider specific rules for outpatient occupational therapy services are issued to consolidate information regarding payment for services, provider eligibility, coverage, payment rates and procedure codes. Rules regarding speech therapy for children are revised to clarify prior authorization requirements.

Agency rules are revised to: (1) reflect current residential support options through the OKDHS Developmental Disabilities Services Division (DDSD) Home and HCBS Waiver program as approved by CMS; and (2) provide a new residential support option known as Community Transition Services. On April 25, 2007, the Centers for Medicare and Medicaid approved an amendment to Oklahoma's Community Waiver which added Community Transition Services to the waiver program. The revisions will provide Oklahomans with disabilities additional community-based service options. Community Transition Service is a one-time setup expense for members transitioning from an intermediate care facility for the mentally retarded or provider-operated residential setting to the member's own home or apartment. Limited to one service over the member's lifetime, Community Transition Service's maximum benefit is $2,400 per eligible member and must be authorized in the member's Individual Plan. Rule revisions are needed to support recent amendments to Oklahoma's Community Waiver and allow payment for Community Transition Services.

Agency rules are revised to remove inconsistencies in rules for payment of adult therapies in the inpatient and outpatient hospital settings. Therapy services for adult SoonerCare members are only compensable when provided on an inpatient or outpatient hospital basis. In addition, language regarding the post-payment utilization review conducted by the OHCA's designated Quality Improvement Organization is updated to reflect current practice. Revisions are needed to clarify the rules used by SoonerCare providers who provide therapy services to adults in the inpatient and outpatient hospital settings.

Agency rules are revised to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 requiring prescriptions in written form to be executed on tamper-resistant prescriptions pads in order to qualify for reimbursement by SoonerCare. Currently, there is no rule in place to require certain types of paper for prescriptions. This federal requirement mandates that written prescriptions be printed on certain types of paper which cannot be copied. The requirement does not apply to prescriptions transmitted by telephone, facsimile, or electronic prescribing. Effective October 1, 2007, federal financial participation will not be available for written prescriptions to SoonerCare members that are not written on tamper-resistant prescription pads.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-59. General program exclusions - adults

The following are excluded from ~~Medicaid~~ SoonerCare coverage for adults:

(1) Inpatient diagnostic studies that could be performed on an outpatient basis.

(2) Services or any expense incurred for cosmetic surgery.

(3) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(4) Refractions and visual aids.

(5) ~~Separate~~ A separate payment for ~~pre and post-operative care when payment is made for surgery~~ pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.

(6) Reversal of sterilization procedures for the purposes of conception.

(7) Non therapeutic hysterectomies. Therapeutic hysterectomies require that the following information to be attached to the claim:

(A) a copy of an acceptable acknowledgment form signed by the patient, or,

(B) an acknowledgment by the physician that the patient has already been rendered sterile, or,

(C) a physician's certification that the hysterectomy was performed under a life-threatening emergency situation.

(8) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest.

(9) Medical services considered to be experimental.

(10) Services of a Certified Surgical Assistant.

(11) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.
(12) Services of ~~a Registered~~ an independent licensed Physical Therapist.
(13) Services of a Psychologist.
(14) Services of ~~a~~ an independent licensed Speech and Hearing Therapist.
(15) Payment for more than four outpatient visits per month (home, office, outpatient hospital) per patient, except those visits in connection with family planning or emergency medical condition.
(16) Payment for more than two nursing home visits per month.
(17) More than one inpatient visit per day per physician.
(18) Payment for removal of benign skin lesions unless medically necessary.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-9. Medical services

(a) **Use of medical modifiers.** The Physicians' Current Procedural Terminology (CPT) and the second level HCPCS provide for 2-digit medical modifiers to further describe medical services. Modifiers are used when appropriate.

(b) **Covered office services.**

(1) Payment is made for four office visits (or home) per month per ~~patient~~ member, for adults (over age 21), regardless of the number of physicians involved. Additional visits per month are allowed for services related to emergency medical conditions.
(2) Visits for the purpose of family planning are excluded from the four per month limitation.
(3) Payment is allowed for insertion of IUD in addition to the office visit.
(4) Separate payment will be made for the following supplies when furnished during a physician's office visit.
(A) Casting materials
(B) Dressing for burns
(C) Intrauterine device
(D) IV Fluids
(E) Medications administered by IV
(F) Glucose administered IV in connection with chemotherapy in office
(5) Payment is made for routine physical exams only as prior authorized by the ~~County DHS office~~ OKDHS and are not counted as an office visit.
(6) Medically necessary office lab and X-rays are covered.
(7) Hearing exams by physician for ~~persons~~ members between the ages of 21 and 65 are covered only as a diagnostic exam to determine type, nature and extent of hearing loss.
(8) Hearing aid evaluations are covered for ~~persons~~ members under 21 years of age.
(9) IPPB (Intermittent Positive Pressure Breathing) is covered when performed in physician's office.
(10) Payment is made for both office visit and injection of joints performed during the visit.
(11) Payment is made for an office visit in addition to allergy testing.
(12) Separate payment is made for antigen.
(13) Eye exams are covered for ~~persons~~ members between ages 21 and 65 for medical diagnosis only.
(14) If a physician personally sees a ~~patient~~ member on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.
(15) Separate payment is made for ~~The~~ the following specimen ~~collection fees are covered~~ collections:
~~(A) Catheterization for collection of specimen, multiple patients.~~
(~~B~~ A) Catheterization for collection of specimen~~, single patient member, all places of service.~~; and
(~~C~~ B) Routine Venipuncture.
(16) The Professional Component for electrocardiograms, electroencephalograms, electromyograms, and similar procedures are covered on an inpatient basis as long as the interpretation is not performed by the attending physician.
(17) Cast removal is covered only when the cast is removed by a physician other than the one who applied the cast.

(c) **Non-covered office services.**

(1) Payment is not made separately for an office visit and rectal exam, pelvic exam or breast exam. Office visits including one of these types of exams should be coded with the appropriate office visit code.
(2) Payment cannot be made for prescriptions or medication dispensed by a physician in his office.
(3) Payment will not be made for completion of forms, abstracts, narrative reports or other reports, separate charge for use of office or telephone calls. The agency considers such services to be simple administrative services in accordance with the American Medical Association H-385.984 and is the responsibility of the attending provider. SoonerCare members may not be charged for simple administrative services.
(4) Additional payment will not be made for night calls, unusual hours or mileage.
(5) Payment is not made for an office visit where the ~~patient~~ member did not keep appointment.
(6) Refractive services are not covered for persons between the ages of 21 and 65.
(7) Removal of stitches is considered part of post-operative care.
(8) Payment is not made for a consultation in the office when the physician also bills for surgery.
(9) Separate payment is not made for oxygen administered during an office visit.

(d) **Covered inpatient medical services.**

(1) ~~For persons between ages 21 and 65, payment is made for 24 days hospital care per state fiscal year. For persons under 21 years of age, payment is made for medically necessary inpatient care.~~ Payment is allowed for inpatient hospital visits for all SoonerCare covered admissions. Psychiatric admissions must be prior authorized.

(2) Payment is allowed for the services of two physicians when supplemental skills are required and different specialties are involved. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the ~~patient's~~ member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the ~~patient's~~ member's care, the codes for subsequent hospital care ~~should be~~ are used.

(3) Certain medical procedures are allowed in addition to office visits.

(4) Payment for critical care is all-inclusive and includes payment for all services that day. Payment for critical care, first hour is limited to one unit per day and 4 units per month. Payment for critical care, each additional 30 minutes is limited to two units per day/month.

(e) **Non-covered inpatient medical services.**

(1) For inpatient services, all visits to a ~~patient~~ member on a single day are considered one service except where specified. Payment is made for only one visit per day.

(2) A hospital ~~admit~~ admittance or visit and surgery on the same day would not be covered if post-operative days are included in the surgical procedure. If there are no post-operative days, a physician can be paid for visits.

(3) Drugs administered to inpatients are included in the hospital payment.

(4) Payment will not be made to a physician for an admission or new patient work-up when ~~patient~~ the member receives surgery in out-patient surgery or ambulatory surgery center.

(5) Payment is not made to the attending physician for interpretation of tests on his own patient.

(f) **Other medical services.**

(1) Payment will be made to physicians providing Emergency Department services.

(2) Payment is made for two nursing home visits per month. The appropriate CPT code ~~should be~~ is used.

(3) When payment is made for "Evaluation of arrhythmias" or "Evaluation of sinus node", the stress study of the arrhythmia includes inducing the arrhythmia and evaluating the effects of drugs, exercise, etc. upon the arrhythmia.

(4) When the physician bills twice for the same procedure on the same day, it ~~should~~ must be supported by a written report.

317:30-5-20. Laboratory services

This Section covers the guidelines for payment of laboratory services by a ~~physician~~ provider in his/her office, a certified laboratory and for a pathologist's interpretation of laboratory procedures.

(1) **Covered lab services.** ~~Physicians~~ Providers may be paid for covered clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a ~~physician~~ provider refers specimen to a certified laboratory or a hospital laboratory serving outpatients, the certified laboratory or the hospital must bill for performing the test.

(A) Effective September 1, 1992, reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from HCFA and have a current contract on file with ~~this Authority~~ the OHCA. Payment is made only for those services which fall within the approved specialties/subspecialties.

(B) Effective May 1, 1993, reimbursement rate for laboratory procedures is the lesser of the HCFA National 60% fee or the local carrier's allowable (whichever is lower).

(C) All claims for laboratory services are considered medically necessary unless specifically disallowed in this Chapter.

(2) **Compensable outpatient laboratory services.** Medically necessary laboratory services are covered. Genetic counseling requires special medical review prior to approval.

(3) **Noncompensable laboratory services.**

(A) Separate payment is not made for blood specimens obtained by venipuncture or urine specimens collected ~~through catheterization~~ by a laboratory. These services are considered part of the ~~physician's office visit~~ laboratory analysis. ~~The exception to this limitation is for specimens for lead screenings for children under EPSDT. Payment will be made to the lab under the appropriate procedure code for obtaining specimen.~~

(B) Claims for inpatient full service laboratory procedures are not covered since this is considered a part of the hospital ~~per diem~~ rate.

(4) **Covered services by a pathologist.**

(A) A pathologist may be paid for interpretation of inpatient surgical pathology specimen. The appropriate CPT procedure code and modifier is used.

(B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or Ambulatory Surgery Center setting.

(5) **Non-compensable services by a pathologist.** The following are non-compensable pathologist services:

(A) Tissue examinations for identification of teeth and foreign objects.

(B) Experimental or investigational procedures.

(C) Interpretation of clinical laboratory procedures.

PART 5. ~~PHARMACISTS~~ PHARMACIES

317:30-5-70.2. Record retention/post payment review

Post-payment audits of the SoonerCare program are performed routinely by state and federal agencies. This Section applies to any post-payment audit regardless of the agency performing the audit. Pharmacies are selected at random for audits. The Pharmacy is required to provide original written prescriptions and signature logs as well as purchase invoices and other records necessary to document their compliance with program guidelines at the time of the audit. Written prescriptions must conform with the standards set forth in 42 USC 1396b(i) and related federal regulations requiring the use of a tamper-resistant prescription pad. These standards do not apply to prescriptions transmitted via telephone, facsimile or electronic prescription systems. Original written prescriptions are defined as any order for drug or medical supplies written or signed, or transmitted by word of mouth, telephone or other means of communication by a practitioner licensed by law to prescribe such drugs and medical supplies intended to be filled, compounded, or dispensed by a pharmacist. Signature logs are defined as any document which verifies that the prescription was delivered to the member or their representative. This may include electronic forms of tracking including but not limited to scanning a bar code of the filled prescription. The electronic tracking system must be able to produce a copy of the scan for audit purposes. Failure to provide the requested information to the ~~Authority~~ Reviewer may result in a recommendation ranging from a potential recoupment of ~~Medicaid~~ SoonerCare payments for the service to contract termination.

317:30-5-72.1. Drug benefit

OHCA administers and maintains an Open Formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The ~~Authority~~ OHCA covers ~~any~~ a drug ~~for its approved purpose~~ that has been approved by the Food and Drug Administration (FDA) and whose ~~for~~ manufacturers ~~who~~ have entered into a drug rebate agreement with the Centers for Medicare and Medicaid Services (CMS), ~~formerly known as the Health Care Financing Administration (HCFA)~~ subject to the following exclusions~~,~~ and limitations.

(1) The following drugs, classes of drugs, or their medical uses are excluded from coverage:

(A) Agents used to promote fertility.

(B) Agents primarily used to promote hair growth.

(C) Agents used for cosmetic purposes.

~~(D) Agents used for the symptomatic relief of coughs and colds. Cough and cold drugs are not covered.~~

~~(E) Vitamins and Minerals.~~

(~~F~~ D) Agents used primarily for the treatment of anorexia or weight gain. Drugs used primarily for the treatment of obesity, such as appetite suppressants are not covered. Drugs used primarily to increase weight are not covered unless otherwise specified.

~~(G) Agents used for smoking cessation. Nicotine replacement products are not covered.~~

~~(H) Food supplements.~~

(~~I~~ E) Agents that are experimental or whose side effects make usage controversial.

(~~J~~ F) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or designee.

~~(K) Over the counter drugs. Over the counter medications are not covered except for those medications listed in Paragraph (3) of this subsection.~~

(2) ~~The exceptions to the exclusions provided in subsection OAC 317:30-5-72.1(1) are as follows~~ The drug categories listed in (A) through (E) of this paragraph are covered at the option of the state and are subject to restrictions and limitations. An updated list of products in each of these drug categories is included on the OHCA's public website.

(A) Agents used for the systematic relief of cough and colds. Antihistamines for allergies or antihistamine use associated with asthmatic conditions may be covered when medically necessary and prior authorized.

(B) Vitamins and Minerals. Vitamins and minerals are not covered except under the following conditions:

(i) prenatal vitamins are covered for pregnant women up to age 50;

(ii) fluoride preparations are covered for persons under 16 years of age or pregnant; and

(iii) ~~calcifediol/calciferol~~ vitamin D, metabolites, and analogs when used to treat end stage renal disease are covered.

~~(C) Agents used primarily for the treatment of anorexia or weight gain. There is limited coverage under the scope based prior authorization.~~

(~~D~~ C) Agents used for smoking cessation. A limited smoking cessation benefit is available ~~through OAC 317:30-5-77.2(e)(1)(B)(ii)~~.

(~~E~~ D) Coverage of non-prescription or ~~Over~~ over the counter drugs~~.~~ is limited to:

(i) Insulin, PKU formula and amino acid bars,

(ii) certain smoking cessation products, ~~and the following~~

(iii) family planning products, and ~~are covered.~~

~~(i) Male and Female Condoms.~~

~~(ii) Contraceptive sponges.~~

~~(iii) Diaphragms.~~

~~(iv) Spermicidal jellies, creams, suppositories, and foams.~~

(iv) OTC products may be covered if the particular product is both cost-effective and clinically appropriate.

(E) Coverage of food supplements is limited to Phenylketonuria (PKU) formula and amino acid bars for members diagnosed with PKU.

(3) All covered outpatient drugs are subject to prior authorization as provided in OAC 317-30-5-77.2 and 317:30-5-77.3.

(4) All covered drugs may be excluded or coverage limited if:

(A) the prescribed use is not for a medically accepted indication as provided under 42 U.S.C. § 1396r-8; or

(B) the drug is subject to such restriction pursuant to the rebate agreement between the manufacturer and ~~the Health Care Financing Administration;~~ CMS.

~~(C) OHCA has excluded coverage of the drug from its formulary established by the State as provided under 42 U.S.C. § 1396r-8.~~

PART 8. REHABILITATION HOSPITALS

317:30-5-111. Coverage for adults

For persons 21 years of age or older, payment is made to hospitals for inpatient services as described in this section.

(1) All general inpatient hospital services which are not provided under the Diagnosis Related Group (DRG) payment methodology for all persons 21 years of age or older is limited to 24 days per person per state fiscal year (July 1 through June 30). The 24 day limitation applies to both hospital and physician services. No exceptions or extensions will be made to the 24 day inpatient services limitation.

(2) All inpatient ~~services~~ stays are subject to post-payment utilization review by the ~~Oklahoma Health Care Authority, or its~~ OHCA's designated ~~agent~~ Quality Improvement Organization (QIO). These reviews ~~will be~~ are based on ~~OHCA's, or its designated agent's, admission criteria on~~ severity of illness and intensity of treatment.

(A) It is the policy and intent of OHCA to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a ~~Medicaid~~ SoonerCare ~~recipient~~ member. If the ~~OHCA, or its designated agent~~ QIO, upon their initial review determines the admission should be denied, a notice is ~~sent~~ issued to the facility and the attending ~~physician(s)~~ physician advising them of the decision. This notice also advises that a reconsideration request may be submitted within ~~60 days~~ the specified time frame on the notice and consistent with the Medicare guidelines. Additional information submitted with the reconsideration request ~~will be~~ is reviewed by the ~~OHCA, or its designated agent, who~~ QIO that utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, ~~OHCA is informed. At that point, OHCA~~ the QIO sends ~~a letter~~ written notification of the denial decision to the hospital, ~~and~~ attending physician ~~requesting refund of the Medicaid payment previously made on the denied admission.~~ and the OHCA. Once the OHCA has been notified, the overpayment is processed as per the final denial determination.

(B) If the hospital or attending physician did not request reconsideration ~~by the OHCA, or its designated agent~~ from the QIO, the ~~OHCA, or its designated agent,~~ QIO informs OHCA ~~that~~ there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, ~~sends a letter to the hospital and physician requesting refund of the amount of Medicaid payment previously made on the denied admission~~ processes the overpayment as per the denial notice sent to the OHCA by the QIO.

(C) If an OHCA, or its designated agent, review results in denial and the denial is upheld throughout the appeal process and refund from the hospital and physician is required, the ~~Medicaid recipient~~ member cannot be billed for the denied services.

(3) If a hospital or physician believes that a hospital admission or continued stay is not medically necessary and thus not ~~Medicaid~~ compensable but the ~~patient~~ member insists on treatment, the ~~patient~~ member should be informed that he/she will be personally responsible for all charges. If a ~~Medicaid~~ claim is filed and paid and the service is later denied, the patient is not responsible. ~~If a Medicaid claim is not filed and paid, the patient can be billed.~~

(4) Payment is made to a participating hospital for hospital based physician's services. The hospital must have a Hospital-Based Physician's contract with OHCA for this method of billing.

(5) Outpatient services for adults are covered as listed in OAC 317:30-5-42.1.

PART 27. ~~REGISTERED~~ INDEPENDENT LICENSED PHYSICAL THERAPISTS

317:30-5-290. Payment for outpatient services [REVOKED]

~~Payment is made for compensable services to the individual physical therapist for outpatient services. Payment for inpatient services provided by a registered licensed physical therapist is included in the hospital's per diem rate.~~

~~(1) In order to be eligible for payment, the RPT must have a current Memorandum of Agreement on file with this the Authority.~~

~~(2) Claims should be filed using the appropriate HCPCS procedure codes which are included in the HCPCS Supplemental Coding book which is maintained by the local Medicare Carrier.~~

317:30-5-290.1. Eligible providers

(a) Eligible physical therapists must be appropriately licensed in the state in which they practice.

(b) All eligible providers of physical therapy services must have entered into a Provider Agreement with the Oklahoma Health Care Authority to perform physical therapy services.

317:30-5-291. Coverage by category

Payment is made to registered physical ~~therapist's~~ therapists as set forth in this Section

(1) **Children.** ~~Coverage for children is as authorized.~~ Initial therapy evaluations do not require prior authorization. All therapy services following the initial evaluation must be prior authorized for continuation of service.

(2) **Adults.** There is no coverage for adults.

(3) **Individuals eligible for Part B of Medicare.** ~~Payment is made utilizing the Medicaid allowable for comparable services.~~ Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

317:30-5-291.1. Payment rates

Payment is made in accordance with the current allowable Medicaid fee schedule.

317:30-5-291.2. Procedure codes

The appropriate procedure codes used for billing physical therapy services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.

PART 28. OCCUPATIONAL THERAPY SERVICES

317:30-5-295. Eligible providers

(a) Eligible occupational therapists must be appropriately licensed in the state in which they practice.

(b) All eligible providers of occupational therapy services must have entered into a Provider Agreement with the Oklahoma Health Care Authority to perform occupational therapy services.

317:30-5-296. Coverage by category

Payment is made for occupational therapy services as set forth in this Section.

(1) **Children.** Initial therapy evaluations do not require prior authorization. All therapy services following the initial evaluation must be prior authorized for continuation of service.

(2) **Adults.** There is no coverage for adults.

(3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

317:30-5-297. Payment rates

Payment is made in accordance with the current allowable Medicaid fee schedule.

317:30-5-298. Procedure codes

The appropriate procedure codes used for billing occupational therapy services are found in the Physicians' Current Procedural Terminology (CPT) Coding Manual.

PART 43. ~~ADULT~~ AGENCY COMPANION, SPECIALIZED FOSTER CARE, DAILY LIVING SUPPORTS, GROUP HOMES, AND COMMUNITY TRANSITION SERVICES

317:30-5-420. ~~Introduction to waiver services and eligible providers~~ Home and Community-Based Services Waivers for persons with mental retardation or certain persons with related conditions

~~(a)~~ ~~**Introduction to waiver services.**~~ The Oklahoma Health Care Authority (OHCA) administers ~~two home and community based waivers for services to individuals~~ Home and Community-Based Services (HCBS) Waivers for persons with mental retardation ~~or~~ and certain persons with related conditions that are operated by the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD). ~~Both waivers are enacted under Section 1915(c) of the Social Security Act. Each waiver allows~~ The Community Waiver and Homeward Bound Waiver allow payment for ~~services provided to eligible individuals that are not covered through Oklahoma's Medicaid program~~ residential supports as defined in the waiver approved by the Centers for Medicare and Medicaid Services (CMS). ~~Waiver services, when utilized with services normally covered by Medicaid, provide for health and developmental needs of individuals who otherwise would not be able to live in a home or community setting. The first waiver, implemented in 1988, provides home and community based services for mentally retarded individuals who otherwise require the level of care in an Intermediate Care Facility for the Mentally Retarded. The second waiver, implemented in 1991, provides home and community based services to persons with mental retardation or related conditions who are inappropriately placed in nursing facilities. The specific services provided are the same in each waiver and may only be provided to Medicaid eligible individuals outside of a nursing facility. Any waiver service should be appropriate to the client's needs and must be written on the client's Individual Habilitation Plan (IHP). The IHP is developed annually by an interdisciplinary team (IDT). The IHP contains detailed descriptions of services provided, documentation of frequency of services and types of providers to provide services.~~

~~(b)~~ ~~**Eligible providers.**~~ ~~All Adult Companion Service providers must have entered into contractual agreements (MA-S-342) with the Oklahoma Health Care Authority to supply Home and Community-Based Waiver Services (HCBWS) for the Mentally Retarded. Adult Companion Service providers must complete the Developmental Disabilities Services Division (DDSD) sanctioned Direct Contact Training curriculum in accordance with the schedule authorized by DDSD.~~

317:30-5-421. Coverage

~~All Adult Companion Services will~~ Residential supports must be included in the ~~IHP and reflected in the approved plan of care~~ member's Individual Plan (IP). Arrangements for care under this program ~~will~~ must be made through the ~~individual client's~~ member's case manager.

317:30-5-422. Description of services

~~Adult Companion Service is an individualized living arrangement offering 24 hour per day supervision, peer companionship, supportive assistance and training in daily living skills, lodging and nourishment to eligible individuals 18 and older. Services are provided to one to three recipients in the home in which the service provider resides or in the beneficiary's home. Three levels of adult companion service, based upon the service recipient's level of need as determined by an interdisciplinary team, are recognized~~ Residential supports include:

(1) ~~Maximum supervision for those individuals with extensive needs~~ agency companion services (ACS) provided in accordance with Part 1 of OAC 317:40-5;

(2) ~~Close supervision for those individuals with moderate needs; and~~ specialized foster care (SFC) provided in accordance with Part 5 of OAC 317:40-5;

(3) ~~Intermittent supervision for those individuals with minimum needs.~~ daily living supports (DLS) provided in:

(A) Community Waiver in accordance with OAC 317:40-5-150; and

(B) Homeward Bound Waiver in accordance with OAC 317:40-5-153;

(4) group home services provided in accordance with OAC 317:40-5-152; and

(5) community transition services (CTS).

(A) Minimum qualifications. The provider must enter into contractual agreements with the Oklahoma Health Care Authority (OHCA) to provide ACS, habilitation training specialist (HTS) services, or DLS, in addition to a contract to provide CTS.

(B) Description of services. CTS is a one-time setup expense for members transitioning from an intermediate care facility for the mentally retarded (ICF/MR) or provider-operated residential setting to the member's own home or apartment. CTS:

(i) is furnished only when the member is unable to meet such expense and must be authorized in the member's Individual Plan (IP);

(ii) includes security deposits, essential furnishings, setup fees or deposits for utility or service access, including phone, electricity, gas, and water, moving expenses, and services necessary for the member's health and safety. Utilities must be in the members's name; and

(iii) does not include:

(I) recreational items, such as television, cable television access, video cassette recorder (VCR), digital video disc (DVD) player, compact disc (CD) player, MP3 player, or computer used primarily as diversion or recreation; and

(II) monthly rental or mortgage expense, food, or regular utility charges.

317:30-5-423. Coverage limitations

(a) ~~Payment rates and coverage~~ Coverage limitations for ~~adult companion services~~ residential supports for ~~the mentally retarded~~ members with mental retardation are ~~as follows~~:

(1) Description: ~~Intermittent Supervision~~ agency companion services (ACS); Unit: ~~One~~ one day; Limitation: 366 units per year~~.~~ ;

(2) Description: specialized foster care (SFC); Unit: one day; Limitation: 366 units per year;

(~~2~~ 3) Description: ~~Close Supervision~~ daily living supports (DLS); Unit: ~~One~~ one day; Limitation: 366 units per year~~.~~ ; and

(~~3~~ 4) Description: ~~Maximum Supervision~~ group home services; Unit: ~~One~~ one day; Limitation: 366 units per year.

(b) Members may not receive ACS, SFC, DLS and group home services at the same time.

(c) Community transition services (CTS) are limited to $2,400 per eligible member.

(1) CTS is limited to one transition over the member's lifetime. If the member's situation changes after receipt of CTS and hospitalization or readmission to an intermediate care facility for the mentally retarded (ICF/MR) is necessary, CTS is not authorized upon transition back into the community.

(2) Members moving into a group home, SFC, or ACS arrangement in the companion's home are not eligible to receive CTS.

317:30-5-424. Diagnosis code

The ICD-9-CM ~~Diagnosis~~ diagnosis code for ~~Adult Companion Services~~ residential supports is 319 (~~Mental Retardation~~ mental retardation). This code must be entered in ~~Item~~ field 21 on the ~~HCFA-1500~~ Form CMS-1500.

[OAR Docket #08-691; filed 4-22-08]

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

[OAR Docket #08-692]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-123. [AMENDED]
317:30-5-131. [AMENDED]
317:30-5-133. [AMENDED]
Part 21. Outpatient Behavioral Health Services
317:30-5-240. [AMENDED]
317:30-5-248. [AMENDED]
Part 65. Case Management Services for Over 21

317:30-5-585. through 317:30-5-586.1. [AMENDED]
317:30-5-587. through 317:30-5-588. [REVOKED]
317:30-5-589. [AMENDED]
Part 67. ~~Behavior~~Behavioral Health Case Management Services for Individuals Under 21 Years of Age
317:30-5-595. through 317:30-5-596.1. [AMENDED]
317:30-5-599. [AMENDED]
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-740.1. [AMENDED]
317:30-5-742. through 317:30-5-742.2. [AMENDED]
317:30-5-743.1. [AMENDED]
317:30-5-746. [AMENDED]
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
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Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 431.123; 42 CFR 440.60; House Bill 2842 of the 2nd Session of the 50th Oklahoma Legislature

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INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

PASRR rules are being revised to reflect the new required PASRR form for a Level I screen for nursing home admission. The new form is LTC-300R, Nursing Facility Level of Care Assessment. As part of the federally mandated PASRR process, all Medicaid certified nursing facilities must fill out the form LTC-300R for all applicants that apply to reside in the facility regardless of pay source. The LTC-300R is the new Level I screening form which helps to identify persons with possible mental illness or mental retardation or related conditions who apply to reside in Medicaid certified nursing facilities. Rules also change the submission deadline requirements for this form from thirty days to ten days of resident admission. The change in the submission deadline is expected to increase the level of compliance demonstrated by nursing facility reporting practices.

Children's case management rules are revised to expand educational standards required for individuals to be qualified for ODMHSAS certification as Case Managers for children and to update language on documentation requirements to maintain consistency and clarity between state agencies. The target group for children's behavioral health case management services consists of persons under age 21 who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons. Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs.

Residential Behavior Management Services (RBMS) rules are revised to: (1) allow Licensed Alcohol and Drug Counselors (LADC) to provide RBMS services; (2) add trauma informed methodology as an option to staff training requirements; and, (3) update terminology as recommended by the Behavioral Health Collaborative. RBMS are provided by Organized Health Care Delivery Systems (OHCDS) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services provided by their staff, providers must meet certain qualification and licensure requirements. These revisions will recognize Licensed Alcohol and Drug Counselor as a licensed provider for these services and expand the number of providers allowed to provide services to SoonerCare members. Rules are amended to include trauma informed methodology as an ongoing training option for RBMS staff who provide behavioral redirection services.

Residential Behavior Management Services (RBMS) rules are revised to: (1) allow Licensed Alcohol and Drug Counselors (LADC) to provide RBMS services; (2) add trauma informed methodology as an option to staff training requirements; (3) update terminology as recommended by the Behavioral Health Collaborative; and (4) add language to the inspection of care section for foster care settings to describe actions on contract deficiencies. Residential Behavior Management Services are provided in residential foster care programs for certain children and youth authorized by the designated agent of the Oklahoma Health Care Authority. The children and youth designated for this program have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. Providers must meet certain qualification and licensure requirements in order to provide these services. These revisions will recognize the Licensed Alcohol and Drug Counselor as a licensed provider for these services and expand the number of providers available to provide services to SoonerCare members. Currently, OHCA requires staff providing behavior redirection services to have current certification and required updates in nationally recognized behavior management techniques. Rules are amended to include trauma informed methodology as an ongoing training option for RBMS staff who provide behavioral redirection services. Rule revision also include adding language to the inspection of care section for foster care settings to describe actions on contract deficiencies. Current language describes the inspection of care process for which OHCA currently recoups monies for non-compensable services in acute and residential therapeutic care; however, there currently is no language that describes the recoupment for non-compensable services for therapeutic foster care. This revision will promote consistency for actions on contract deficiencies.

Adult case management rules are revised to expand educational standards required for individuals to be qualified for ODMHSAS certification as Adult Case Managers and to update language on documentation requirements to maintain consistency and clarity between state agencies. The target group for case management services is the chronically and/or severely mentally ill. Chronically and/or severely mentally ill individuals refers to institutionalized adults or adults at risk of institutionalization. Case management services are provided to assist members to gain access to needed medical, social, educational and other services essential to meeting basic human needs.

Outpatient behavioral health rules are being revised to: (1) streamline documentation; (2) broaden SoonerCare member accessibility to providers; (3) increase consistency among Oklahoma state agencies that deal with mental health services; and (4) eliminate coverage for Clubhouse services at the request of ODMHSAS. Outpatient behavioral health services are covered for adults and children when provided in accordance with a documented individualized service plan, developed to treat the identified mental health and/or substance abuse disorder(s). All services are to be for the goal of improvement of functioning, independence, or well being of the SoonerCare member. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short term memory to derive a reasonable benefit from the treatment.

Agency rules are revised to allow for the development of an incentive reimbursement rate plan for evidence-based quality improvements in nursing facilities. House Bill 2842 of the 2nd Session of the 50th Oklahoma Legislature amended state statutes to authorize the Oklahoma Health Care Authority (OHCA) to develop an incentive reimbursement rate plan for nursing facilities. Through a competitive bid process, OHCA awarded My InnerView, Inc. the contract to develop the incentive-based payment program for nursing facilities. The overall program consolidates and serves three interrelated public and social policy goals in a single, integrated program: value-based purchasing, provider improvement, and consumer information. All three objectives will be guided by a set of eleven performance data components that will be used to reward demonstrated value, support evidence-based quality improvement by nursing homes, and furnish consumers with frequently updated information by which to compare and choose nursing homes based on their quality of care rating. The revisions remove the nursing facility payment methodology from rules and reference the Medicaid State Plan for the methodology. Rules are revised to comply with House Bill 2842 of the 2nd Session of the 50th Oklahoma Legislature.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

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

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

(1) **Pre-admission screening.** Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) for individuals with mental illness and mental retardation. PASRR applies to the screening or reviewing of all individuals for mental illness or mental retardation or related conditions who apply to or reside in Title XIX certified nursing facilities regardless of the source of payment for the nursing facility services and regardless of the individual's or resident's known diagnoses. The ~~NF~~ nursing facility (NF) must

independently evaluate the Level I PASRR Screen regardless of who completes the form and determine whether or not to admit an individual to the facility. ~~NFs~~ Nursing facilities which inappropriately admit a person without a PASRR Screen are subject to recoupment of funds. PASRR is a requirement for nursing facilities with dually certified (both Medicare and Medicaid) beds. There are no PASRR requirements for Medicare skilled beds that are not dually certified, nor is PASRR required for individuals seeking residency in an intermediate care facility for the mentally retarded (ICF/MR).

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

(A) Form ~~LTC-300A~~ LTC-300R, ~~Long-Term Care Pre-admission Screen, Section I~~ Nursing Facility Level of Care Assessment, must be completed by an authorized NF official or designee. An authorized NF official or designee must consist of one of the following:

~~(i) A licensed nurse from OKDHS;~~

(~~ii~~ i) The nursing facility administrator or co-administrator;

(~~iii~~ ii) A licensed nurse, social service director, or social worker~~, or other authorized NF official or designee~~ from the nursing facility; or

(~~iv~~ iii) A licensed nurse, social service director, or social worker from the hospital.

~~(B) Section II of the LTC-300A must be completed by an authorized NF official or designee.~~

(~~C~~ B) Prior to admission, the authorized NF official must evaluate the properly completed OHCA Form ~~LTC-300A~~ LTC-300R and the Minimum Data Set (MDS), if available. Any other readily available medical and social information is also used to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. ~~This evaluation~~ Form LTC-300R constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II Assessment is necessary prior to allowing the patient to be admitted. The NF is also responsible for consulting with ~~LOCEU~~ the Level of Care Evaluation Unit (LOCEU) regarding any MI/MR related condition information that becomes known either from completion of the MDS or throughout the resident's stay.

(~~D~~ C) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A "yes" response to any question from Form ~~LTC-300A, Section I~~ LTC-300R, Section E, will ~~result in a consultation with~~ require the nursing facility to contact the ~~Level of Care Evaluation Unit (LOCEU)~~ LOCEU for a consultation to determine if a Level II Assessment is needed. If there is any question as to whether or not there is evidence of MI, MR, or related condition, LOCEU should be contacted prior to admission. The ~~LTC-300A~~ original Form LTC-300R ~~original form and copy, as well as a copy of the MDS, comprises the PASRR eligibility information packet, and is to be~~ must be submitted by mail to the LOCEU within ~~30~~ 10 days of the resident admission. SoonerCare payment may not be made for a resident whose LTC-300R requirements have not been satisfied in a timely manner.

(~~E~~ D) Upon receipt and review of the ~~medical eligibility information packet~~ Form LTC-300R, the LOCEU may, in coordination with the OKDHS area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II Assessment is not required, the process of determining medical eligibility continues. If a Level II is required, a medical decision is not made until the results of the Level II Assessment are known.

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

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

(i) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.

(ii) The patient does not have a diagnosis of mental retardation or related condition.

(iii) An individual may be admitted to an NF if he/she has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery **(Exempted Hospital Discharge).** If an individual is admitted to an NF based on Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed only if all three of the following conditions are met:

(I) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(II) The individual must require NF services for the condition for which he/she received care in the hospital; and

(III) The attending physician must certify in writing before admission to the facility that the individual is likely to require less than 30 days of nursing facility services. The NF will be required to furnish this documentation to OHCA upon request.

(B) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility until the LOCEU is contacted for consultation to determine if a Level II PASRR Assessment must be performed. Results of any Level

II PASRR Assessment ordered must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(C) The OHCA, LOCEU, authorizes Advance Group Determinations for the MI and MR Authorities in the following categories listed in (i) through (iii) of this subparagraph. Preliminary screening by the LOCEU ~~should~~ may indicate eligibility for nursing facility level of care prior to consideration of the provisional admission.

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

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

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

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

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

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

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

(4) **Resident Review.**

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

(B) A Level II Resident Review may be conducted the following year for each resident of a nursing facility who was found to experience a serious mental illness with no primary diagnosis of dementia on his or her pre-admission Level II, to determine whether, because of the resident's physical and mental condition, the resident requires the level of services provided by a nursing facility and whether the resident requires specialized services.

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

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

(6) **Readmissions, and interfacility transfers.** The Preadmission Screening process does not apply to readmission of an individual to an NF after transfer for a continuous hospital stay, and then back to the NF. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. Inter-facility transfers are also subject to preadmission screening. In the case of transfer of a resident from an NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent ~~LTC-300A~~ LTC-300R and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an

updated ~~LTC-300A~~ LTC-300R that reflects the resident's current status to LOCEU within ~~30~~ 10 days of the transfer. Failure to do so could result in possible recoupment of funds. LOCEU should also be contacted prior to admitting out-of-state NF applicants with mental illness or mental retardation or related condition, so that PASRR needs can be ascertained. Any PASRR evaluations previously completed by the referring state should be forwarded to LOCEU as part of this PASRR consultation.

(7) **PASRR appeals process.**

(A) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening or an annual resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county OKDHS office to discuss a hearing. Forms for requesting a fair hearing (OKDHS Form 13MP001E, Request for a Fair Hearing), as well as assistance in completing the forms, can be obtained at the local county OKDHS office. Any request for a hearing must be made no later than 20 days following the date of written notice. Appeals of these decisions are available under OAC 317:2-1-2. All individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

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

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

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

(2) **Medical eligibility for ICF/MR services.** Within ~~30~~ 10 calendar days after services begin, the facility must submit the original of the ~~Long Term Care Assessment form (LTC 300)~~ Nursing Facility Level of Care Assessment (Form LTC-300R) to LOCEU. Required attachments include current (within 90 days of requested approval date) medical information signed by a physician, a current (within 12 months of requested approval date) psychological evaluation, a copy of the pertinent section of the Individual Developmental Plan or other appropriate documentation relative to discharge planning and the need for ICF/MR level of care, and a statement that the ~~client~~ member is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on MEDATS.

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

317:30-5-131. Rates of payments

(a) Rates of payments shown on the Fee Schedule for Nursing Facilities and ICF/MR's are based on the cost of the nursing facility level of care provided and the nursing care staffing pattern. The rate of payment to a nursing facility is also determined by the type of facility and quality of care rating.

(b) A rate of payment established by the facility for private patients is not under the jurisdiction of OHCA. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State Plan for all individuals regardless of source of payment. The facility may charge any amount for services furnished to non-Medicaid residents consistent with the written notice requirements describing the charges found at 42 CFR 483.10.

317:30-5-133. Payment methodologies

(a) **Private Nursing Facilities.**

(1) **Facilities.** Private Nursing Facilities include:

(A) Nursing Facilities serving adults (NF),

(B) Nursing Facilities serving Aids Patients (NF-Aids),

(C) Nursing Facilities serving Ventilator Patients (NF-Vents),

(D) Intermediate Care Facilities for the Mentally Retarded (ICF/MR),

(E) Intermediate Care Facilities with 16 beds or less serving Severely or Profoundly Retarded Patients (Acute ICF/MR), and

(F) Payment will be made for non-routine nursing facility services identified in an individual treatment plan prepared by the State MR Authority. Services

are limited to individuals approved for NF and specialized services as the result of a PASRR/MR Level II screen. The per diem add-on is calculated as the difference in the statewide standard private MR base rate and the statewide NF facility base rate.

(2) **Reimbursement calculations.** Rates for Private Nursing Facilities will be reviewed periodically and adjusted as necessary through a public process. Payment will be made to Private Nursing Facilities pursuant to the methodology described in the Oklahoma Title XIX State Plan. ~~The rates are based on a statewide rate for each type of facility which consists of the sum of one or more of four components.~~

~~(A) **Base Year Rate component.** The Base Year Rate component will consist of the Primary Operating Cost, the Administrative Services Allowance and the Capital Allowance. Each of these components is set through a review of statewide base year cost report data, as reported on the annual cost reports, and adjusted for a statewide average per diem audit amount. The Capital Allowance component is also adjusted to reflect an expected occupancy level of 93 percent in order to exclude payment for unfilled beds through the Medicaid program.~~

~~(B) **Discretionary Inflation Rate component.** A Discretionary Inflation Rate component may be added to the Base Year Rate component dependent upon the factors listed in (i) (vii) of this paragraph. These factors may be reviewed individually or in the aggregate. Nothing in this paragraph shall mandate the State give majority consideration to any one factor or all factors. The factors include:~~

~~(i) access to Medicaid Services;~~

~~(ii) Medicaid utilization;~~

~~(iii) Cost Report analyses;~~

~~(iv) National and State specific trends and costs including trends and salary levels and changes in minimum wage levels;~~

~~(v) analyses of economic impact of changes in law or regulation;~~

~~(vi) budget appropriations to OHCA; and~~

~~(vii) Industry efforts to:~~

~~(I) reduce or contain employee benefits expenditures.~~

~~(II) consolidate or centralize personnel or departmental functions to reduce costs.~~

~~(III) review departmental staffing levels and to use lesser skilled employees or reduce numbers of full time equivalent employees where possible to do so without adversely affecting the quality of patient care.~~

~~(IV) standardize drugs and medical supplies in order to reduce costs that are unnecessary.~~

~~(V) expedite billings.~~

~~(VI) use volunteer service and fund raising.~~

~~(VII) control utility costs~~

~~(VIII) reduce the incidence of employee injuries.~~

~~(IX) reduce employee turnover and to involve employees in cost containment efforts.~~

~~(X) review contractual arrangements to determine if more cost effective ways of providing services and supplies can be achieved.~~

~~(XI) incorporate efficiency incentives into the compensation systems of employees.~~

~~(XII) use management information systems to plan and achieve efficiencies in operations (including but not limited to flexible budgeting, cost accounting, case mix, group purchasing, etc.).~~

~~(C) **Wage Enhancement Payment component.** The Wage Enhancement payment is subject to Title 63 of Oklahoma Statute, Section 5022 and is described at OAC 317:30-5-131.1. The Wage Enhancement payment is added as per the methodology listed at OAC 317:30-5-131.1.~~

~~(D) **Periodic Incentive Payment component.** A Periodic Incentive payment may be made to certain facilities whose score on a predetermined array of factors meets levels that exceeds the standard or norm. Among factors under consideration are the Customer Satisfaction Surveys, the OSDH survey and Certification data, the Wage Enhancement audit data, the Recipient Trust Fund audit data, data from the State Ombudsman and Pharmacy Utilization (DUR program) data. This payment is made based upon the availability of additional funds and the reliability of the data collected.~~

~~(E) **Nursing Facilities serving ventilator dependent patients.** A prospective statewide enhanced rate is paid to nursing facilities who do not have a waiver under Section 1919(b)(4)(C)(ii) of the Social Security Act on behalf of ventilator dependent patients.~~

~~(i) Reimbursement is limited to the same rate paid for care of NF patients plus an enhancement for patients who are ventilator dependent. The enhanced rate is an amount reflecting the additional costs of meeting the specialized care needs of ventilator dependent patients. In additional to increased skilled staffing costs, the following are used in calculating the enhanced rate:~~

~~(I) additional nursing hours;~~

~~(II) medical equipment and supplies;~~

~~(III) nutritional therapy; and~~

~~(IV) respiratory therapy.~~

~~(ii) Reimbursement for the enhanced rate requires prior authorization. In order for Medicaid eligible patients to be considered for prior authorization, the facility submits the treatment plan and most recent doctor's orders and/or hospital discharge summary for each ventilator dependent patient to OHCA.~~

~~(iii) The enhanced rate will be reviewed periodically and adjusted as necessary through a public process.~~

~~(F) **Nursing Facilities Serving Adults.** Base Rate when used in this subpart is defined as the rate in effect on June 30, 2005, adjusted for any changes as described in (B) through (E) for which the legislature has specified appropriated funds. Direct Care Costs are defined as those costs for salaries, benefits and training for registered nurses, licensed practical nurses, nurse aides and certified medication aides. Other Costs are defined as the total allowable routine and ancillary costs of nursing facility care less the Direct Care Costs. As of July 1, 2005, Nursing Facilities Serving Adults will be reimbursed as follows:~~

~~(i) The rate for each facility will be the sum of the Base Rate plus the add-ons for Direct Care and Other Costs as described below.~~

~~(ii) Annually, any funds over and above those to cover the Base Rate described above will be used to create two pools of funds used to adjust the rates as follows:~~

~~(I) The first pool will be 30% of the total available funds and will be used to adjust the rates equally (a statewide adjustment) for Other Costs.~~

~~(II) The second pool will be 70% of the total available funds and will be used to adjust rates on a facility-specific basis for Direct Care Costs. The add-on for each facility will be determined by multiplying each facility's reported direct care cost per day (with a maximum limit set at the 90th percentile) by the percent increase in the total direct care expenditures due to the addition of the direct care pool funds.~~

~~(iii) The available funds for establishing these pools and the subsequent add-ons for Direct Care and Other Costs will be re-determined and re-calculated annually and adjusted for changes in available funds and federal matching percentages.~~

(b) **Public Nursing Facilities.** Reimbursement for public Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be based on each facility's reasonable cost and shall be paid on an interim basis with an annual retroactive adjustment. Reasonable costs shall be based on Medicare principles of cost reimbursement. Rates for Public facilities will be reviewed periodically and adjusted as necessary through a public process.

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-240. Eligible providers

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

(1) **"AOA"** means American Osteopathic Association.

(2) **"AOD"** means Alcohol and Other Drug.

(3) **"AODTP"** means Alcohol and Other Drug Treatment Professionals.

(4) **"ASAM"** means the American Society of Addiction Medicine.

(5) **"ASI"** means the Addiction Severity Index.

(6) ~~**"BHRS"** means Behavioral Health Rehabilitation Specialist.~~ **"CAR"** means Clinical Assessment Record.

(7) **"CARF"** means Commission on Accreditation of Rehabilitation Facilities.

(8) **"CHCs"** means Community Health Centers.

(9) **"CMHCs"** means Community Mental Health Centers.

(10) **"COA"** means Council on Accreditation of Services for Families and Children, Inc.

(11) **"Cultural Competency"** means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs, and values that reflect an individual's racial, ethnic, age group, religious, sexual orientation, and/or social group.

(~~11~~ 12) **"DSM"** means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(~~12~~ 13) **"EBP"** means an Evidenced Based Practice per SAMHSA.

(~~13~~ 14) **"FQHC"** means Federally Qualified Health Centers that are entities known as Community Health Centers.

~~(14) **"ICCD"** means International Center for Clubhouse Development.~~

(15) **"ICF/MR"** means Intermediate Care Facility for the Mentally Retarded.

(16) **"I/T/U"** means Indian Health Services/Tribal Clinics/Urban Tribal Clinic facilities.

(17) **"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.

(18) ~~**"MHP"** means Mental Health Professional.~~ **"LBHP"** means a Licensed Behavioral Health Professional.

(19) **"OAC"** means Oklahoma Administrative Code, the publication authorized by 75 O.S. 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. 256(A)(1)(a) and maintained in the Office of Administrative Rules.

(20) **"Objectives"** means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

(~~20~~ 21) **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

(~~21~~ 22) **"ODMHSAS Contracted Facilities"** means those providers that have a contract with the ODMHSAS to provide mental health or substance abuse treatment services, and also contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.

(~~22~~ 23) **"OHCA"** means the Oklahoma Health Care Authority.

(~~23~~ 24) **"Private Facilities"** means those providers that contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.

(25) **"PSRS"** means Psychiatric-Social Rehabilitation Specialist.

(~~24~~ 26) **"Public Facilities"** means those providers who are regionally based Community Mental Health Centers who are also contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.

(~~25~~ 27) **"RBMS"** means Residential Behavioral Management Services within a group home or therapeutic foster home.

(~~26~~ 28) **"RHC"** means Rural Health Clinic.

(29) **"Recovery"** means an ongoing process of discovery and/or rediscovery that must be self defined, individualized and may contain some, if not all, of the ten fundamental components of recovery as outlined by SAMHSA.

(~~27~~ 30) **"SAMHSA"** means the Substance Abuse and Mental Health Services Administration.

(31) **"T-ASI"** means the Teen Alcohol Severity Index.

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

(b) **Provider Agency Requirements.** Rehabilitative services are provided by:

(1) Community based outpatient behavioral health organizations, that have a current accreditation status as a provider of behavioral health services, from the CARF, JCAHO, or COA. Providers accredited by CARF/JCAHO/COA must be able to demonstrate that the Scope of the current accreditation includes all programs, services and sites where ~~Medicaid~~ SoonerCare compensated services are rendered. CARF/JCAHO/COA accredited providers will only receive ~~Medicaid~~ SoonerCare reimbursement for services provided under the programs, which are accredited. ~~Programs that serve adults (over 17) with serious mental illness utilizing clubhouse model may substitute accreditation from the International Center for Clubhouse Development (ICCD) in lieu of CARF, JCAHO, or COA accreditation.~~

(A) Psychiatric Hospitals appropriately licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards including JCAHO accreditation. Psychiatric Hospitals must be able to demonstrate the scope of the current accreditation includes all programs and sites where ~~Medicaid~~ SoonerCare Outpatient Behavioral services will be performed.

(B) Acute Care Hospitals appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or AOA certification. Acute Care Hospitals must be able to demonstrate the scope of the current accreditation includes all programs and sites where Medicaid Outpatient Behavioral Health Services will be performed.

(C) Providers of Alcohol and other Drug Treatment Disorders must be certified by the designated state certifying agency, the ODMHSAS. ~~Providers certified by ODMHSAS must be actively working toward accreditation by one of the three recognized accrediting bodies.~~ Providers in this category must have achieved accreditation from JCAHO, CARF, or COA for the provision of outpatient alcohol and other drug treatment services ~~by January 1, 2007~~.

(2) Eligible organizations must meet one of the following standards and criteria:

(A) Be an incorporated organization governed by a board of directors; or

(B) A state-operated program under the direction of the ODMHSAS.

(3) Eligible organizations must meet each of the following:

(A) Have a well-developed plan for rehabilitation services designed to meet the recovery needs of the individuals served.

(B) Have a multi-disciplinary, professional team. This team must include all of the following:

(i) One of the following licensed behavioral health professionals:

(I) A Psychologist, Clinical Social Worker, Professional Counselor, Behavioral Practitioner, Marriage and Family Therapist, or Alcohol and Drug Counselor licensed in the state in which the services are delivered, or

(II) An Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided, or

(III) An allopathic or osteopathic physician with a current license and board certification in psychiatry in the state in which the service is delivered, or board eligible.

(ii) A Behavioral Health Rehabilitation Specialist as described in subsection (e) of this section, if individual or group rehabilitative services for mental illnesses are provided.

(iii) An Alcohol and Other Drug Treatment Professional if treatment of alcohol and other drug disorders is provided.

(iv) A registered nurse or physician assistant, with a current license to practice in the state in which the services are delivered if Medication Training and Support service is provided.

(v) The member for which the services will be provided, and parent/guardian for those under 18 years of age.

(vi) A member treatment advocate if desired and signed off on by the member.

(C) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241~~.~~ , ~~ICCD certified clubhouses, sites as identified by ODMHSAS as exclusively providing Community-based structured emergency care, or Program for Assertive Community Treatment services are exempted from this requirement.~~ as applicable to their program.

Providers must provide proper referral and linkage to providers of needed services if their agency does not have appropriate services.

(i) Mental Health Assessments and/or Alcohol and Drug assessments;

(ii) Individual, Group, and Family Psychotherapy;

(iii) Individual and Group Rehabilitative services ~~relevant to the population to be served~~ and Alcohol and other Drug Related Services Skill development services ~~if offered by the provider~~;

(iv) Mental Health and/or Substance Abuse Services Plan done by a non-physician (moderate and low complexity; and

(v) Crisis Intervention services.

(D) Be available 24 hours a day, seven days a week, for Crisis Intervention services. ~~ICCD certified clubhouses must have an arrangement by which crisis intervention services are available.~~

(E) Provide or have a plan for referral to physician and other behavioral health services necessary for the treatment of the behavioral disorders of the population served.

(F) Comply with all applicable Federal and State Regulations.

(G) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, member grievances, member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously. ~~Discharge criteria is not required for ICCD certified clubhouses.~~

(H) Demonstrate the ability to keep appropriate records and documentation of services performed.

(I) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.

(J) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

(4) Provider Specialties.

(A) Public and ODMHSAS Contracted Programs Facilities - Public facilities are the regionally based Community Mental Health Centers and ODMHSAS contracted programs are providers that have a contract with the ODMHSAS to provide Mental Health and/or Substance Abuse Treatment Services.

(B) Private Programs - Private facilities are those facilities that contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.

(C) Federally Qualified Health Centers/Community Health Centers - FQHCs are those facilities that qualify under OAC 317:30-5-660.

(D) Indian Health Services/Tribal Clinics/Urban Tribal Clinics - I/T/Us are those facilities that qualify under Federal regulation.

(E) Rural Health Clinics - RHCs are those facilities that qualify under OAC 317:30-5-355.

(c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, ~~ICCD,~~ COA or AOA accreditation will supply the documentation from the accrediting body, along with other information as required for contracting purposes to the OHCA. If the application is approved, a separate provider identification number for each outpatient Behavioral Health Service site will be assigned. The contract must include copies of all required state licenses, accreditation and ~~Medicaid~~ SoonerCare certifications.

(2) Each site operated by an outpatient mental health facility must have a separate provider number. A site is defined as an office, clinic, or other business setting where outpatient behavioral health services are routinely performed. When services are rendered at the member's residence, a school, or when provided occasionally at an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(d) **~~Mental~~ Licensed Behavioral Health Professional.** ~~Mental~~ Licensed Behavioral Health Professionals ~~(MHPs)~~ (LBHP) are defined as follows for the purpose of Outpatient Behavioral Health Services:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (A) through (F) below. The exemptions from licensure under 59 §1353(4) (Supp. 2000) and (5), 59 §1903(C) and (D) (Supp. 2000), 59 §1925.3(B) (Supp. 2000) and (C), and 59 §1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Services.

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(e) **~~Behavioral Health~~ Psychiatric-Social Rehabilitation Specialist.** The definition of a ~~Behavioral Health~~ Psychiatric-Social Rehabilitation Specialist ~~(BHRS)~~ (PSRS) is as follows:

(1) Bachelor or master degree in a behavioral health related field including, but not limited to, psychology, social work, occupational therapy, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency, rehabilitative services, sociology, school guidance and counseling, criminal justice family studies~~; or~~ , earned from a regionally accredited college or university recognized by the United States Department of Education; or

(2) Bachelor or master degree that demonstrates the individual completed and passed equivalent college level course work to meet the degree requirements of (1) of this subsection, as reviewed and approved by OHCA or its designated agent; or

(3) A current license as a registered nurse in ~~Oklahoma~~ the state where services are provided with behavioral health experience; or

(4) Certification as an Alcohol and Drug Counselor. Allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or

(5) Current certification as a Behavioral Health Case Manager from ODMHSAS and meets OHCA requirements to perform case management services, as described in OAC 317:30-5-585(1).

(f) **Alcohol and other Drug (AOD) Treatment Professionals (AODTP).** Alcohol and other Drug Treatment Professionals are defined as practitioners who are:

(1) Licensed to practice as an Alcohol and Drug Counselor in the state in which services are provided, or those actively and regularly receiving board approved supervision to become licensed;

(2) Certified as an Advanced Alcohol and Drug Counselor as recognized and approved by an ODMHSAS AOD treatment certifying and/or licensing body;

(3) Certified as an Alcohol and Drug Counselor as recognized and approved by an ODMHSAS AOD treatment certifying and/or licensing body; or

(4) A ~~MHP~~ Licensed Behavioral Health Professional with a current license, or those actively and regularly receiving board approved supervision to become licensed, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to practice who can demonstrate competency in the area of alcohol and drug counseling and treatment.

317:30-5-248. Documentation of records

All outpatient behavioral health services must be reflected by documentation in the member records.

~~(1) All assessment and treatment services must include the following:~~

~~(A) date;~~

~~(B) person(s) to whom services were rendered;~~

~~(C) start and stop time for each timed treatment session or service;~~

~~(D) original signature of the therapist/service provider. In circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider must obtain the original signature for the clinical file within 30 days and no stamped or Xeroxed signatures are allowed;~~

~~(E) credentials of therapist/service provider;~~

~~(F) specific treatment plan problems(s), goals and/or objectives addressed;~~

~~(G) services provided and methods used to address problem(s), goals and/or objectives;~~

~~(H) progress or lack of progress made in treatment as it relates to the goals and/or objectives;~~

~~(I) member (and family, when applicable) response to the session or intervention;~~

~~(J) any new problem(s), goals and/or objectives identified during the session or service; and~~

~~(K) where services were rendered.~~

~~(2) In addition to the items listed in (1) of this subsection:~~

~~(A) Crisis Intervention Service notes must also include:~~

~~(i) a detailed description of the crisis; and~~

~~(ii) level of functioning assessment.~~

~~(B) For each Group rehabilitative or counseling session a list of participants and facilitating BHRS, MHP, or AODTP must be maintained.~~

~~(C) For medication training and support, vital signs must be recorded in the progress note, but are not required on the mental health services plan.~~

(1) For Mental Health and Alcohol and Drug Assessments (see 317:30-5-241), no progress note are required.

(2) For Mental Health Services Plan and Alcohol and/or Substance Abuse Services, Treatment Plan (see 317:30-5-241), no progress note are required.

(3) Treatment Services documented by progress notes.

(A) Progress notes shall chronologically describe the services provided, the member's response to the services provided and the member's progress, or lack or, in treatment and must include the following:

(i) Date;

(ii) Person(s) to whom services were rendered, must be HIPAA compliant if other individuals in session are mentioned;

(iii) SoonerCare number for member;

(iv) Start and stop time for each timed treatment session or service;

(v) Original signature of the therapist/service provider; in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider must obtain the original signature for the clinical file within 30 days and no stamped or Xeroxed signatures are allowed. Electronic signatures are acceptable following OAC 317:30-3-4.1 and 317:30-3-15;

(vi) Credentials of therapist/service provider;

(vii) Specific treatment plan problems(s), goals and/or objectives addressed;

(viii) Services provided to address need(s), goals and/or objectives;

(ix) Progress or barriers to progress made in treatment as it relates to the goals and/or objectives;

(x) Member (and family, when applicable) response to the session or intervention; (what did the member do in session? What did the provider do in session?);

(xi) Any new need(s), goals and/or objectives identified during the session or service.

(4) In addition to the items listed in (1) of this subsection:

(A) Crisis Intervention Service notes must also include a detailed description of the crisis and level of functioning assessment;

(B) a list of participants for each Group rehabilitative or counseling session and facilitating PSRS, LBHP, or AODTP must be maintained; and

(C) for medication training and support, vital signs must be recorded in the progress note, but are not required on the mental health services plan;

(5) Progress notes for intensive outpatient mental health, substance abuse, or integrated programs may be in the form of daily summary or weekly summary notes and must include the following:

(A) Curriculum sessions attended each day and/or dates attended during the week;

(B) Start and stop times for each day attended;

(C) Specific goal(s) and objectives addressed during the week;

(D) Type of Skills Training provided each day and/or during the week;

(E) Member satisfaction with staff intervention(s);

(F) Progress, or barriers to, made toward goals, objectives;

(G) New goal(s) or objective(s) identified;

(H) Signature of the lead PSRS; and

(I) Credentials of the lead PSRS.

PART 65. CASE MANAGEMENT SERVICES FOR OVER 21

317:30-5-585. Eligible providers

Services are provided by case management agencies established for the purpose of providing case management services.

(1) **~~Program~~ Provider agency requirements.** ~~Programs must be reviewed in the areas of substance abuse and/or mental health by the Department of Mental Health and Substance Abuse Services (DMHSAS) as an agent of the OHCA in accordance with a current Interagency Agreement for such purposes. The program must be found to be in compliance with the applicable approved OHCA standards for the purpose of providing case management services. Only organizations that have submitted a completed OHCA Case Management Provider Application to DMHSAS before July 1, 2003, will be eligible to be reviewed by DMHSAS for such purposes. On or after July 1, 2003, any organization seeking to be a provider of case management services not having a valid Memorandum of Agreement as an OHCA case management provider, or a completed OHCA Case Management Provider Application with DMHSAS, must demonstrate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the DMHSAS review, in accordance with the above referenced DMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of case management services. As set forth in the current DMHSAS/OHCA Interagency Agreement, reviews conducted by DMHSAS will be limited to determinations that applications for initial and/or continued Medicaid case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.~~ The agency must demonstrate its capacity to deliver case management services in terms of the following:

(A) On or after July 1, 2007, the OHCA will require agencies to have accreditation appropriate to case management from JCAHO, CARE, COA, or AOA, and meet the standards of the accreditation agency at all times.

(B) The OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.

(C) Agencies that are eligible to contract with the OHCA to provide case management services for seriously mentally ill adults must be community based.

(D) Agencies must be able to demonstrate the ability to develop and maintain appropriate patient records including, but not limited to, assessments, service plans, and progress notes.

(E) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.

(F) Each site operated by a case management facility must have a separate provider number. A site is defined as an office, clinic, or other business setting where case management services are routinely performed. When services are rendered at the patient's residence, a school, or an appropriate community based setting, a site is determined according to where the professional staff conduct administrative duties and where the patient's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

~~(2)~~ **~~Provider requirements.~~** ~~The agency must demonstrate its capacity to deliver case management services in terms of the following items:~~

~~(A) Case management staff to serve the target group and be available on a 24 hour on call basis.~~

~~(B) Administrative capacity to fulfill State and Federal requirements.~~

~~(C) Maintenance of programmatic and financial records. Program records should show that the agency is able to develop and maintain assessment records. The financial records should include development of a management system which tracks costs associated with worker activities.~~

~~(D) Be an agency which agrees to comply with applicable Federal and State regulations, as set forth in the contractual agreement.~~

~~(E) On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to case management from JCAHO, CARF, COA, or AOA, and meet the standards of the accreditation agency at all times.~~

~~(F) Agencies will be required to maintain the Code of Federal Regulations (CFR) requirements as required by the Health Care Financing Administration at all times.~~

~~(G) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.~~

~~(H) Agencies that are eligible to contract with OHCA to provide case management services for seriously mentally ill adults must be community based with a history of serving adults who have a serious mental illness.~~

~~(3) **Application to become a provider by the Department of Mental Health.** On or before July 1, 2003, an application as an eligible provider for case management services must be requested from the Department of Mental Health and Substance Abuse Services. This process is in addition to any other application submitted to the Department of Mental Health. The application will be reviewed and the provider will be notified within ten (10) days from receipt of application of the determination. An application must be submitted prior to the beginning of each contract period.~~

~~(4) **Memorandum of agreement.** The Oklahoma Health Care Authority and the Department of Mental Health and Substance Abuse Services have developed a memorandum of agreement that provides for responsibility of payment of the Medicaid state share required for federal financial participation. In accordance with this agreement, DMHSAS has agreed to pay the state share for case management services provided by Public facilities and DMHSAS facilities.~~

(~~5~~ 2) **Provider types.**

(A) **ODMHSAS ~~Public~~ public and private facilities.** Public ODMHSAS facilities are ~~the~~ regionally based Community Mental Health Centers. Private ODMHSAS facilities are providers that have contracted with the ODMHSAS to provide mental health, substance abuse, and case management treatment services. ~~The Department of Mental Health and Substance Abuse Services (DMHSAS) is responsible for the State's share of adult Medicaid services. Reimbursement will be at the Public rate.~~ Both of these provider types must also contract with the OHCA directly to receive SoonerCare reimbursement.

~~(B) **DMHSAS Contracted facilities.** DMHSAS Contracted facilities are those facilities who contract with the DMHSAS to provide services. These facilities receive an appropriation from the DMHSAS and report to DMHSAS via the OMHIS system. The Department of Mental Health and Substance Abuse Services is responsible for the State's share of adult Medicaid services. Reimbursement will be at the Public rate.~~

(~~C~~ B) **Private facilities.** Private facilities are those facilities ~~who~~ that contract directly with the Oklahoma Health Care Authority to provide case management services. ~~The State's share of Medicaid services is included in the OHCA budget. Reimbursement will be at the Private rate.~~

(~~6~~ 3) **Service provider education and experience requirements before July 1, 2001.** For case management services to be compensable by ~~Medicaid~~ SoonerCare, the case manager performing the service must maintain current case management certification from the Department of Mental Health and Substance Abuse Services. For those case managers who are certified on or before July 1, 2001, the following education and experience requirements apply:

(A) Associate's degree in a related human service field, OR;

(B) Two years of college education plus two years or more human service experience, OR;

(C) Bachelor's degree in a related human service field plus one year or more human service experience, OR;

(D) Master's degree in a related human service field.

(~~7~~ 4) **Service provider education and experience requirements after July 1, 2001.** The following education and experience requirements apply after July 1, 2001.

(A) Bachelor's or Master's degree in a mental health related field including, but not limited to psychology, social work, occupational therapy, family studies, sociology, criminal justice, school guidance and counseling, OR

(B) A current license as a registered nurse in Oklahoma; OR

(C) Certification as an alcohol and drug counselor allowed to provide substance abuse case management to those with alcohol and/or other drug-dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis, AND

(D) Current case management certification from the Department of Mental Health and Substance Abuse Services.

(5) **Service provider education and experience requirements after July 1, 2007.** For behavioral health

case management services to be compensable by SoonerCare, the case manager performing the service must have and maintain a current behavioral health case manager certification from the ODMHSAS and meet either (A), (B), or (C) below, and (D):

(A) Certified Behavioral Health Case Manager III - meets the Licensed Behavioral Health Professional status as defined at OAC 317:30-5-240, and passes the ODMHSAS web-based Case Management Competency Exam.

(B) Certified Behavioral Health Case Manager II - a bachelor's or master's degree in a behavioral health field, earned from a regionally accredited college or university recognized by the United States Department of Education, which includes but is not limited to psychology, social work/sociology, occupational therapy, family studies, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency studies, school guidance/counseling/education, rehabilitative services, and/or criminal justice; a current license as a registered nurse in Oklahoma with experience in behavioral health care; or a current certification as an alcohol and drug counselor in Oklahoma, and pass the ODMHSAS web-based Case Management Competency Exam, and complete seven hours of ODMHSAS specified CM training.

(C) Certified Behavioral Health Case Manager I - meets the following requirements:

(i) completed 60 college credit hours; or

(ii) high school diploma with 36 total months of experience working with persons who have a mental illness. Documentation of experience must be on file with ODMHSAS; and

(iii) passes the ODMHSAS web-based Case Management Competency Exam, and completes 14 hours of ODMHSAS specified CM training.

(D) All certified case managers must fulfill the continuing education requirements as laid out in OAC 450:50-5-4.

317:30-5-586. Coverage by category

Payment is made for case management services as set forth in this Section.

(1) **Adults.** Payment is made for services to adults as follows:

(A) **Description of case management services.** Services under case management are not comparable in amount, duration and scope. The target group for case management services is the chronically and/or severely mentally ill. Chronically and/or severely mentally ill individuals refer to institutionalized adults or adults at risk of institutionalization. All case management services will be subject to medical necessity criteria. The criteria will be applied to each individual case by an agent designated by the ~~Oklahoma Health Care Authority~~ OHCA or its designated agent.

(i) Behavioral health ~~Case~~ case management services are provided to assist consumers in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides referral, linkage and advocacy on behalf of consumers, to help consumers access appropriate community resources. Case management is designed to assist individuals in accessing services for themselves. The consumer has the right to refuse case management and cannot be restricted from other services because of a refusal of case management services. However, in referring a consumer for medical services, the case manager should be aware that the ~~Medicaid~~ SoonerCare program is limited in scope. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by the ODMHSAS. In order to be compensable, the service must be performed utilizing the ODMHSAS Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Helping activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the member by phone or face-to-face, to identify immediate needs for return to home/community. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month.

(ii) ~~Provision of case management services~~ An eligible member/parent/guardian will not ~~restrict a consumer's free choice of providers~~ be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care. ~~Eligible recipients have the freedom to choose a case management provider as well as providers of other medical care.~~

(iii) In order to ensure that case management services are not duplicated by other staff, case management activities will be provided in accordance with a comprehensive individualized treatment/service plan. ~~The development of this plan includes clinical staff participation, thus ensuring that staff knows a client has a case manager. The treatment service plan includes goals and objectives that are measurable and time-limited. The plan also includes specific activities. Time spent in planning case management activities or service development is compensated if the consumer is present. If there are outpatient behavioral health services in addition to case management services, the treatment plan must be reviewed and signed by the responsible mental health professional, consumer, and physician (if applicable).~~

(iv) The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the participation by, as well as, reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health case manager, and a licensed behavioral health professional as defined at OAC 317:30-5-240.

(v) SoonerCare reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of service plan development.

(II) Face-to-face meetings with the child and/or the parent/guardian/family member for the implementation of activities delineated in the service plan.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the service plan.

(IV) Supportive activities such as non face-to-face communication with the child and/or parent/guardian/family member or the behavioral health case manager's travel time to and from meetings for the purpose of development or implementation of the service plan.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the service plan.

(~~iv~~ vi) ~~Medicaid reimbursable~~ Reimbursable case management does not include:

(I) ~~Physically~~ physically escorting or transporting a ~~consumer~~ member to scheduled appointments or staying with the ~~consumer~~ member during an appointment; or

(II) ~~Monitoring~~ monitoring financial goals; or

(III) ~~Providing~~ providing specific services such as shopping or paying bills; or

(IV) ~~Delivering~~ delivering bus tickets, food stamps, money, etc.; or

(V) ~~Services~~ services to nursing home ~~consumers~~ residents; or

(VI) ~~Counseling~~ counseling or rehabilitative services, psychiatric assessment, or discharge; or

(VII) ~~Filling~~ filling out forms, applications, etc., on behalf of the ~~consumer~~ member when the ~~consumer~~ member is not present; or

(VIII) ~~Filling~~ filling out ~~Medicaid~~ SoonerCare forms, applications, etc., or;

(IX) ~~Services~~ services to ~~consumers~~ members residing in ICF/MR facilities.

(B) **Providers.** Case management services must be provided by a Community Mental Health Center or other qualifying provider agency of case management. Two different provider agencies may not bill case management service(s) for the same ~~consumer~~ member on the same day.

(2) **Children.** Coverage for children is found in OAC 317:30-5-596.

(3) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible ~~recipients~~ members should be filed directly with the fiscal agent.

317:30-5-586.1. Prior authorization

(a) Prior authorization of behavioral health services and requirements to be authorized to provide case management services ~~is~~ are mandatory. The provider must request prior authorization from the OHCA or its designated agent. In order for the services to be prior authorized, ~~consumer~~ member information requested must be submitted. ~~Consumer~~ Member information includes but is not limited to the following:

(1) Complete multi-axial DSM IV diagnosis with supportive documentation and mental status examination summary; and

(2) Treatment history; and

(3) Current ~~psycho~~ psychiatric social information; and

(4) Psychiatric history; and

(5) Fully developed case management service plan, with goals, objectives, and time frames for services.

(b) ~~Medicaid recipients~~ SoonerCare members will be considered for prior authorization after receipt of complete and appropriate information submitted by the provider. Based on diagnosis, functional assessment, history and other ~~Medicaid~~ SoonerCare services being received, the ~~Medicaid recipient~~ SoonerCare member may be approved to receive case management services. ~~Medicaid recipients~~ SoonerCare members who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive ~~Medicaid~~ SoonerCare compensable case management services. A ~~Medicaid recipient~~ SoonerCare member may be approved for a time frame of one to six months. The OHCA ~~(~~or its designated agent~~)~~ will review the request ~~for completeness and appropriateness. The provider will be notified within 24 hours (excluding weekends and holidays) if the request is incomplete, deficient, or inappropriate, and, if so, additional information will be requested. A completed request will be reviewed and processed within 72 working hours~~ in accordance with the guidelines for prior authorization in the Outpatient Behavioral Health Provider Manual. Requests will be reviewed by licensed ~~master's prepared therapists (Licensed Clinical Social Workers, Licensed Professional Counselors, Licensed Marriage and Family Therapists) with experience in behavioral health care, Licensed Registered Nurses with experience in behavioral health care, Psychiatrists (M.D. and D.O.), or Psychologists possessing current state licensure~~ behavioral health professionals under OAC 317:30-5-240.

(c) A prior authorization decision may be appealed by the ~~consumer~~ member if filed within 20 days of receipt of the decision. Until July 1, 2006, a provider may request a reconsideration from OHCA's designated agent within five working days of receipt of the decision. The designated agent's decision regarding a reconsideration requests is final.

(d) Providers seeking prior authorization will follow OHCA's designated agent's Outpatient Behavioral Health Prior Authorization Manual guidelines for submitting requests on behalf of the ~~Medicaid recipient~~ SoonerCare member.

317:30-5-587. Reimbursement [REVOKED]

~~(a) Payment rates for case management services are established with a methodology that uses the average cost (from the last available cost reports) of furnishing one unit of each service multiplied by the Consumer Price Index for Labor Costs for Hospital Workers to arrive at a prospective rate for the next state fiscal year (July 1 through June 30).~~

~~(b) Reimbursement for adult case management services is determined using a Relative Value Unit (RVU) fee schedule. Two monetary conversion factors (CF) will be used to determine the overall level of payments to providers. The formula for calculating the rates is as follows: RVU x CF = RATE.~~

~~(1) **Public rate.** The conversion factor for Public rate uses 1996 baseline payment data, trended forward using the Consumer Price Index for Hospital Workers.~~

~~(2) **Private rate.** The conversion factor for Private rate uses 1996 baseline payment data, adjusted to reduce Medicaid's payment of fixed costs.~~

~~(c) Case management is reimbursed in 15 minute increments.~~

317:30-5-588. Billing [REVOKED]

~~(a) Billing for case management services will be on Form HCFA 1500. Claims should not be submitted until Medical eligibility of the individual has been determined. However, a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~

~~(b) Claims for prior authorized services must include a prior authorization number in Block 23 of the HCFA 1500.~~

317:30-5-589. Documentation of records

All behavioral health case management services rendered must be reflected by documentation in the records. ~~Documentation~~ In addition to a complete behavioral health case management service plan documentation of each session must include, but is not limited to:

(1) ~~goals and objectives addressed,~~ date;

(2) ~~progress toward goals and objectives,~~ person(s) to whom services are rendered;

(3) start and stop times for each service ~~,~~ ;

(4) ~~date,~~ original signature of the service provider (original signatures for faxed items must be added to the clinical file within 30 days);

(5) ~~staff signature and~~ credentials of the service provider ~~, and~~ ;

(6) specific ~~resources to which the consumer was referred.~~ service plan needs, goals and/or objectives addressed;

(7) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;

(8) progress or barriers made towards goals and/or objectives;

(9) member (family when applicable) response to the service;

(10) any new service plan needs, goals, and/or objectives identified during the service; and

(11) member satisfaction with staff intervention.

PART 67. ~~BEHAVIOR~~ BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES FOR INDIVIDUALS UNDER 21 YEARS OF AGE

317:30-5-595. Eligible providers

Services are provided by case management agencies established for the purpose of providing case management services.

(1) **Provider agency requirements.** The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:

~~(A) On or after July 1, 2003, any organization seeking to be a provider of behavioral health case management services not having a valid Memorandum of Agreement as an OHCA case management provider,~~

~~or a completed OHCA Case Management Provider Application with ODMHSAS, must demonstrate appropriate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the ODMHSAS review, in accordance with ODMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of behavioral health case management services. As set forth in the current ODMHSAS/OHCA Interagency Agreement, reviews conducted by ODMHSAS will be limited to determinations that applications for initial and/or continued behavioral health case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.~~

(~~B~~ A) On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to behavioral health case management from JCAHO, CARF, COA, or AOA, and maintain the standards of the accreditation at all times.

(~~C~~ B) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.

(~~D~~ C) Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals under the age of 21 must be community based with a history of serving seriously emotionally disturbed (SED) children and their families.

(~~E~~ D) The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes. ~~The financial records should include development of a management system which tracks costs associated with worker activities.~~

(~~F~~ E) An agency must agree to follow the Oklahoma Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.

(~~G~~ F) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.

~~(H) An agency must agree to comply with applicable Federal and State regulations, as set forth in the contractual agreement.~~

~~(I) Agencies will be required to maintain the Code of Federal Regulations (CFR) requirements as required by the Centers for Medicare and Medicaid Services (CMS) at all times.~~

(~~J~~ G) Each site operated by a case management facility must have a separate provider number. A site is defined as an office, clinic, or other business setting where case management services are routinely performed. When services are rendered at the patient's residence, a school, or an appropriate community based setting, a site is determined according to where the professional staff ~~perform~~ conduct administrative duties and where the patient's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(2) **Provider types.**

(A) **ODMHSAS ~~Public~~ public and private facilities.** Public ~~and~~ ODMHSAS ~~Contracted Programs Facilities (Public facilities)~~ facilities are ~~the~~ regionally based Community Mental Health Centers. ~~ODMHSAS contracted programs are~~ Private ODMHSAS facilities are providers that have a contract with the ODMHSAS to provide Mental Health, Substance Abuse, and Case Management Treatment Services. Both of these provider types must also contract with the OHCA directly to receive SoonerCare reimbursement.

(B) **Private facilities.** Private facilities are those facilities ~~who~~ that contract directly with the Oklahoma Health Care Authority to provide case management (CM) services.

(3) **Service provider education and experience requirements before July 1, 2001.** For case management services to be compensable by ~~Medicaid~~ SoonerCare, the case manager performing the service must maintain current case management certification from the Oklahoma Department of Mental Health and Substance Abuse Services. For those case managers who are certified on or before July 1, 2001, the following education and experience requirements apply:

(A) Associate's degree in a related human service field, OR;

(B) Two years of college education plus two years or more human service experience, OR;

(C) Bachelor's degree in a related human service field plus one year or more human service experience, OR;

(D) Master's degree in a related human service field.

(4) **Service provider education and experience requirements after July 1, 2001.** For behavioral health case management services to be compensable by ~~Medicaid~~ SoonerCare, the case manager performing the service must have and maintain a current children's behavioral health case manager certification from the ~~Oklahoma Department of Mental Health and Substance Abuse Services (refer to OAC 450:50)~~ ODMHSAS and have a:

(A) Bachelor's or Master's degree in a mental health related field including, but not limited to psychology, social work, occupational therapy, family studies, sociology, criminal justice, school guidance and counseling; OR

(B) A current license as a registered nurse in Oklahoma with experience in behavioral health care; OR

(C) Certification as an alcohol and drug counselor allowed to provide substance abuse case management to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; and

(D) Current case management certification from the ODMHSAS.

(5) **Service provider education and experience requirements after July 1, 2007.** For behavioral health case management services to be compensable by SoonerCare, the case manager performing the service must have and maintain a current children's behavioral health case manager certification from the ODMHSAS and meet either (A), (B), or (C) below, and (D):

(A) Certified Behavioral Health Case Manager III - meets the Licensed Behavioral Health Professional status as defined at OAC 317:30-5-240, and passes the ODMHSAS web-based Case Management Competency Exam.

(B) Certified Behavioral Health Case Manager II - a bachelor's or master's degree in a behavioral health field, earned from a regionally accredited college or university recognized by the United States Department of Education, which includes but is not limited to psychology, social work/sociology, occupational therapy, family studies, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency studies, school guidance/counseling/education, rehabilitative services, and/or criminal justice; a current license as a registered nurse in Oklahoma with experience in behavioral health care; or a current certification as an alcohol and drug counselor in Oklahoma, and pass the ODMHSAS web-based Case Management Competency Exam, and complete seven hours of ODMHSAS specified CM training.

(C) Certified Behavioral Health Case Manager I - meets the requirements in either (i) or (ii), and (iii):

(i) completed 60 college credit hours; or

(ii) has a high school diploma with 36 total months of experience working with persons who have a mental illness. Documentation of experience on file with ODMHSAS; and

(iii) passes the ODMHSAS web-based Case Management Competency Exam, and completes 14 hours of ODMHSAS specified CM training.

(D) All certified case managers must fulfill the continuing education requirements as outlined under OAC 450:50-5-4.

317:30-5-596. Coverage by category

Payment is made for behavioral health case management services as set forth in this Section.

(1) **Adults.** Coverage for adults is found in OAC 317:30-5-586.

(2) **Children.** Payment is made for services to persons under age 21 as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for behavioral health case management services are persons under age 21 who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons. All behavioral health case management services will be subject to medical necessity criteria.

(i) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides referral, linkage and advocacy on behalf of the child to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by the Oklahoma Department of Mental Health and Substance Abuse Services. In order to be compensable, the service must be performed utilizing the ODMHSAS Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service ~~recipient~~ member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. ~~Helping~~ Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the child and family by phone or face-to-face, to identify immediate needs for return to home/community no more than 72 hours after notification that the family requests case management services. For children discharging from an out of home placement, the out of home agency/placement is responsible for scheduling an appointment with a case management agency for services post discharge. The case manager will make contact with the child and family within 72 hours of discharge, then conduct a face-to-face follow-up appointment within ~~7~~ seven days. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within 2 business days of the

missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The ~~recipient/parent/guardian~~ member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) An eligible ~~recipient/parent/guardian~~ member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the child and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized ~~service~~ plan of care.

(iv) The ~~service~~ individual plan of care must include general goals and objectives pertinent to the overall recovery of the child and family's needs. Progress notes must relate to the individual plan of care and ~~that are measurable and time limited and must~~ describe the specific activities to be performed. Behavioral health case management ~~service~~ individual plan of care development is compensable if the time is spent communicating with the child, parent/guardian/family member or provider of other services. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the child (only if over 16 years of age), the parent or guardian, the behavioral health case manager, and a ~~mental health professional~~ Licensed Behavioral Health Professional as defined in OAC ~~317:30-240(c)~~ 317:30-5-240(d).

(v) ~~Medicaid~~ SoonerCare reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of ~~service~~ individual plan of care development.

(II) Face-to-face meetings with the child and/or the parent/guardian/family member for the implementation of activities delineated in the ~~service~~ individual plan of care.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the ~~service~~ individual plan of care.

(IV) Supportive activities such as non face-to-face communication with the child and/or parent/guardian/family member or the behavioral health case manager's travel time to and from meetings for the purpose of development or implementation of the ~~service~~ individual plan of care.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the ~~service~~ individual plan of care.

(vi) ~~Medicaid~~ SoonerCare reimbursable behavioral health case management does not include the following activities:

(I) Physically escorting or transporting a child or family to scheduled appointments or staying with the child during an appointment; or

(II) Managing finances; or

(III) Providing specific services such as shopping or paying bills; or

(IV) Delivering bus tickets, food stamps, money, etc.; or

(V) Counseling, rehabilitative services, psychiatric assessment, or discharge planning; or

(VI) Filling out forms, applications, etc., on behalf of the child when the child is not present; or

(VII) Filling out ~~Medicaid~~ SoonerCare forms, applications, etc., or;

(VIII) Mentoring or tutoring; or

(IX) Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies.

(B) The following ~~Medicaid recipients~~ SoonerCare members are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through OKDHS/OJA staff without special arrangements with OKDHS, OJA, and OHCA;

(ii) Children receiving services in Residential Behavior Management Services (RBMS) in a foster care or group home setting;

(iii) Residents of ICF/MR and nursing facilities; and

(iv) Children receiving Home and Community Based Waiver services.

(C) **Restriction.** Two different provider agencies may not bill case management services for the member on the same day.

(3) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible ~~recipients~~ members should be filed directly with the fiscal agent.

317:30-5-596.1. Prior authorization

(a) Prior authorization of behavioral health case management services is mandatory. The provider must request prior authorization from the OHCA, or its designated agent.

(b) ~~Medicaid recipients~~ SoonerCare members who are eligible for services will be considered for prior authorization after receipt of complete and appropriate information submitted by the provider in accordance with the guidelines for behavioral health case management services developed by OHCA or its designated agent. Based on diagnosis, functional assessment, history and other ~~Medicaid~~ SoonerCare services being received, the ~~Medicaid recipient~~ SoonerCare member may be approved to receive case management services. ~~Medicaid recipients~~ SoonerCare members who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive ~~Medicaid~~ SoonerCare compensable case management services. A ~~Medicaid recipient~~ SoonerCare member may be approved for a time frame of one to six months. The OHCA, or its designated agent will review the initial request in accordance with the guidelines for prior authorization in the Outpatient Behavioral Health Service Provider Manual. An initial request for case management services requires the provider to submit specific documentation to OHCA, or its designated agent. A fully developed ~~service~~ individual plan of service is not required at the time of initial request. The provider will be given a time frame to develop the ~~service~~ individual plan of service while working with the child and his/her family and corresponding units of service will be approved prior to the completion of the service plan. The provider will be required to engage with the child/family within 72 hours of discharge from an inpatient psychiatric hospital and/or within 72 hours of receiving the request for services from the family or other community resource. The expectation is for the behavioral health case manager to immediately engage with the child/family to prevent hospital readmission or other out-of-home placement, and refer to needed community resources. Prior authorization requests will be reviewed by licensed ~~mental health professionals (Licensed Clinical Social Workers, Licensed Professional Counselors, Licensed Marriage and Family Therapists, Licensed Behavioral Practitioners, and Licensed Alcohol and Drug Counselors), Licensed Registered Nurses with experience in behavioral health care, Psychiatrists (M.D. and D.O.), or Psychologists possessing current state licensure~~ behavioral health professionals as defined at OAC 317:30-5-240.

(c) In the event that a ~~recipient~~ member disagrees with the decision by OHCA's contractor, it 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. After the contractor issues a decision regarding an Initial Prior Authorization request, an Extension Request, a Modification Request or a Correction Request, the provider has five business days of receipt of the decision to request the contractor to reconsider its decision. The issues which a provider may ask for reconsideration are the number and type of services designated by the contractor and the length of treatment approved by the contractor. The reasoning or propriety of an Important Notice or a denial based upon insufficient data may not be reconsidered. The reconsideration process will end on July 1, 2006.~~

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

317:30-5-599. Documentation of records

All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management ~~service~~ individual plan of service, documentation of each session must include but is not limited to:

(1) date;

(2) person(s) to whom services were rendered;

(3) start and stop time for each service;

(4) original signature of the service provider (in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider needs to obtain the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed)~~.)~~;

(5) credentials of service provider;

(6) specific service plan ~~problem(s)~~ need(s), goals and/or objectives addressed;

(7) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address problem(s), goals and/or objectives;

(8) progress or ~~lack of progress~~ barriers made towards goals and/or objectives;

(9) client (and family, when applicable) response to the services;

(10) any new ~~service~~ individual plan of service ~~problem(s)~~ need(s), goals and/or objectives identified during the service; and

(11) ~~where services were rendered; and~~ member satisfaction with staff intervention(s).

~~(12) specific activities necessary for service plan development.~~

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-740.1. Eligible provider contracting requirements

(a) Eligible agency providers that are defined in section OAC 317:30-5-740 shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

(1) pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;

(2) treatment of victims of physical, emotional, and sexual abuse;

(3) treatment of children with attachment disorders;

(4) treatment of children with hyperactive or attention deficit disorders;
(5) normal childhood development and the effect of abuse and/or neglect on childhood development;
(6) treatment of children and families with substance abuse and chemical dependency disorders;
(7) the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
(8) anger management;
(9) inpatient authorization procedures;
(10) crisis intervention;
(11) grief and loss issues for children in foster care; ~~and~~
(12) the significance/value of birth families to children receiving services in residential behavior management services in a foster care setting; and
(13) trauma informed methodology.

(b) Eligible agency providers defined at OAC 317:30-5-740 ~~shall~~ must provide staff with access to professional psychiatric and/or psychological consultation as deemed necessary for the planning, implementation and appropriate management of the resident's treatment.

317:30-5-742. Description of services

(a) Behavior management services mean all the services listed in (1)-(8) of this subsection as provided in the ~~treatment~~ individual plan of care. Each of the service requirements has special duration and frequency requirements as set out in OAC 317:30-5-742.2.
(1) Individual therapy;
(2) Substance abuse/chemical dependency education, prevention, and therapy;
(3) Group rehabilitative treatment;
(4) Family therapy;
(5) Basic living skills redevelopment;
(6) Social skills redevelopment;
(7) Crisis/behavior management redirection; and
(8) Discharge planning.

(b) Behavior management services must be provided in the least restrictive, non-institutional therapeutic milieu. The foster care setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Behavior management services are considered an ancillary component of inpatient hospital care and residential treatment services provided in a less restrictive setting and as a less costly alternative to inpatient psychiatric hospital services and other residential treatment services.

(c) Behavioral Management Services must include ~~a treatment plan for each client~~ an individual plan of care for each member served. The ~~treatment plan~~ individual plan of care requirements are set out in OAC 317:30-5-742.2(1).

317:30-5-742.1. Residential behavior management reimbursement

(a) All Residential Behavioral Management Services must be prior authorized by the designated agent of the Oklahoma Health Care Authority before the service is rendered by an eligible service provider. Without prior authorization, payment is not authorized.

(b) The Oklahoma Health Care Authority will not reimburse for the services defined in OAC 317:30-5-742 for more than two children in a home at any one time unless additional cases are specifically authorized by the Oklahoma Department of Human Services, Division of Children and Family Services or Oklahoma Office of Juvenile Affairs.

(c) A child who is eligible for the services defined in OAC 317:30-5-742 ~~shall~~ is not to receive any other outpatient behavioral health services defined by OHCA unless prior authorized by OHCA or its designated agent. For example, separate individual therapy for a child eligible for Residential Behavioral Management Services will not generally be authorized because this service is part of the bundled service provided by a Residential Behavioral Management provider. If additional outpatient services are authorized by OHCA or its designated agent, the service provider may not be the provider of the Residential Behavioral Management Services.

(d) OHCA will not reimburse an eligible service provider for units of service that are not authorized before the service is delivered.

(e) Initial requests for residential foster care and the first extension request will be approved for a maximum of six months. All subsequent requests for services/extensions will be for a maximum time period not to exceed three months.

(f) No reimbursement ~~shall be~~ is made for a service for a ~~client~~ member without a written individual plan of care for each ~~client~~ member as described in OAC 317:30-5-742.2(1). Each ~~treatment plan~~ individual plan of care must contain all of the services required in OAC 317:30-5-742(a).

317:30-5-742.2. Required Residential Behavior Management Services

All residential behavior management services in a foster care setting (RBMS) are provided as a result of an individual assessment of the ~~resident's~~ member's needs and documented in the individual ~~treatment~~ plan of care. Services including ~~treatment~~ individual plan of care development, individual therapy, family therapy, basic living skills (re)development, social skills (re)development, group rehabilitative treatment, substance abuse/chemical dependency education, prevention and therapy are provided per minimum requirements identified in this section. All services are based upon the ~~resident's~~ member's ~~treatment~~ individual plan of care and consistent with assessed needs. Individual therapy and family therapy may be provided in lieu of group rehabilitative therapy. Crisis behavior management and redirection services are provided as needed. The following represent the minimum service requirement for a ~~resident~~ member receiving Residential Behavior Management Services:

(1) ~~**Treatment**~~ **Individual plan of care requirement.**
(A) A written ~~treatment~~ individual plan of care for each ~~resident~~ member ~~shall~~ must be formulated by the ~~Provider Agency~~ provider agency staff within 30 days of admission with documented input from the ~~resident~~ member, legal guardian (OKDHS/OJA)

staff, the foster parent and the treatment provider(s). It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and have them fax back their signature; however, the provider must obtain the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed. This plan ~~shall~~ must be revised and updated each 90 days with documented involvement of the legal guardian and resident.

(B) The ~~treatment~~ individual plan of care must be individualized and take into account the ~~resident's~~ member's age, history, diagnosis, assessed functional levels, ~~and~~ culture, and the effect of past and current traumatic experiences in the life of the member. It includes the member's documented full five-axis DSM-IV diagnosis, appropriate long term and short term goals, and corresponding measurable objectives to obtain the stated goals within the expected time lines. Each ~~resident's~~ member's ~~treatment~~ individual plan of care ~~shall~~ is to also address the provider agency's plans with regard to the provision of services in each of the following areas:

(i) ~~Individual~~ individual therapy;

(ii) ~~Substance~~ substance abuse/chemical dependency education, prevention, and therapy;

(iii) ~~Group~~ group rehabilitative treatment;

(iv) ~~Family~~ family therapy;

(v) ~~Basic~~ basic living skills (re)development;

(vi) ~~Social~~ social skills (re)development;

(vii) ~~Crisis/behavior~~ crisis/behavior management and redirection; and

(viii) ~~Discharge~~ discharge planning.

(2) **Individual therapy.** The provider agency ~~shall~~ must provide individual therapy on a monthly basis to youth placed in the residential foster care homes. Individual therapy is a method of treating mental health and alcohol and other drug disorders using face to face, one to one interaction between a ~~Mental~~ Licensed Behavioral Health Professional as defined in OAC ~~317:30-5-240(c)~~ 317:30-5-240(d) and the ~~resident~~ member to promote behavioral, emotional or psychological change. Individual therapy is age appropriate and the techniques and modalities employed are relevant to the goals of the individual's ~~treatment~~ plan of care. The required service for each ~~resident~~ member served is a minimum of four 30 minute sessions per month of individual therapy.

(3) **Group rehabilitative treatment.** The provider agency will provide group rehabilitative treatment as specified in the individual ~~treatment~~ plan of care for the treatment of mental health and behavioral disorders for a minimum of two 30 minute sessions per month. Group rehabilitative services provided for children receiving RBMS in a foster care setting include educational and supportive services such as basic living skills, social skills (re)development, interdependent living, self-care, lifestyle change and recovery principles. Services are provided in the least restrictive setting appropriate for the reduction of emotional and behavioral impairment and suitable to the restoration of the ~~resident's~~ member's functioning. Services are consistent with the requirements of age and appropriate to the ~~resident's~~ member's behavioral functioning and self sufficiency. Meeting with family members, legal guardian, and/or care givers is covered when the services are directed exclusively to the effective treatment of the individual ~~resident~~ member. Each service provided under this section must have a goal and purpose, which relates directly to the ~~resident's~~ member's individual ~~treatment~~ plan of care. Compensable rehabilitative treatment services are provided to ~~residents~~ members who have the ability to benefit from the service. The ~~resident~~ member must be able to actively participate and must possess the cognitive, developmental, and communication skills necessary to benefit from the service. Travel time to and from activities is not covered. Staff to resident ratio shall not exceed eight children to one staff member. Staff appropriately trained, including training and certification in a recognized anger management intervention technique, such as MANDT or Controlling Aggressive Patient Environment (CAPE), must be present in the group. Thirty minutes of individual therapy and/or family therapy may be provided in lieu of one hour of group rehabilitative treatment.

(4) **Family therapy.** The provider agency ~~shall~~ must provide family therapy as indicated on the ~~resident's~~ member's individual ~~treatment~~ plan of care. Family therapy is an interaction between a ~~Mental~~ Licensed Behavioral Health Professional as defined in OAC ~~317:30-5-240(c)~~ 317:30-5-240(d) and the family member(s) designated on the ~~treatment~~ individual plan of care. The interaction is intended to facilitate behavioral, emotional, or psychological change and promote understanding through successful communication skills. Family therapy ~~shall~~ must be provided for a minimum of four 30-minute sessions per month. The ~~Agency shall~~ agency must:

(A) work with the caretaker to whom the ~~resident~~ member will be discharged, as identified by the OKDHS/OJA local worker;

(B) seek to support and enhance the child's relationships with nuclear and appropriate extended family members, if the OKDHS/OJA plan for the child indicates family reunification;

(C) arrange for and encourage regular contact and visitation between children and their parents and other family members as specified in the ~~treatment~~ individual plan of care;

(D) seek to involve the child's parents/legal guardian in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program;

(E) provide consultation to the residential foster care parents;

(F) provide regular support and technical assistance to residential foster parents in their implementation of the ~~treatment~~ individual plan of care and with regard to other responsibilities they undertake. Fundamental components of such technical

assistance will be the design or revision of in-home treatment strategies including proactive goal-setting and planning, and the provision of ongoing child-specific skills training and problem-solving in the home during home visits. Other types of support and supervision must include emotional support and relationship-building, the sharing of information and general training to enhance professional development, assessment of the youth's progress, observation/assessment of family interactions and stress, and assessment of safety issues. Residential foster parents and their biological children ~~shall~~ must have access to counseling and therapeutic services arranged by the provider agency for personal issues/problems caused or exacerbated by their work as residential foster parents. Such issues may include, for example, marital stress, or abuse of their own child(ren) by a child placed in their care by the provider agency.

(5) **Substance abuse/chemical dependency education, prevention and therapy.** The provider agency ~~shall~~ must provide substance abuse/chemical dependency therapy for all ~~residents~~ members who are identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance abuse and/or chemical dependency. If a ~~resident~~ member is identified as requiring substance abuse/chemical dependency therapy, the provider agency ~~shall~~ must provide age appropriate substance abuse/chemical dependency therapy. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. For those ~~clients~~ members identified above, substance abuse/chemical dependency therapy must be provided a minimum of two one-hour sessions per month. In the case a ~~resident~~ member who has no identifiable emotional or behavioral problem directly related to substance abuse ~~and/or~~ and/or chemical dependency, ~~residents~~ members must be provided age appropriate education and prevention activities. These may include self-esteem enhancement, violence alternatives, communication skills or other skill development curriculums. For ~~clients~~ members who do not need substance and/or chemical dependency therapy, a minimum of two hours of education and/or prevention therapy per three month period is required.

(6) **Basic living skills redevelopment.** The provider agency ~~shall~~ must provide goal directed activities for each ~~resident~~ member to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopments are daily activities that are age appropriate and relevant to the goals of the ~~treatment~~ individual plan of care. This may include, but is not limited to, food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, and job application and retention skills. Basic living skill redevelopment therapy must occur a minimum of 30 minutes each day.

(7) **Social skills redevelopment.** The provider agency ~~shall~~ must provide goal directed activities for each ~~resident~~ member to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual ~~treatment~~ plan of care. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development curriculums approved by the provider agency. Social skill redevelopment therapy must occur a minimum of two 30-minute activities each day.

(8) **~~Crisis behavior~~ Crisis/behavior management and redirection.** The provider agency ~~shall~~ must provide crisis/behavior redirection by agency staff as needed 24 hours per day, 7 days per week. The ~~Agency shall~~ agency must ensure staff availability to respond to the residential foster parents in a crisis to stabilize ~~residents'~~ members' behavior and prevent placement disruption.

(9) **Discharge planning.** The provider agency ~~shall~~ must develop a discharge plan for each ~~resident~~ member. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the ~~resident's~~ member's needs and in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Oklahoma Department of Human Services or the Office of Juvenile Affairs ~~shall~~ must be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan ~~should~~ is to include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.

317:30-5-743.1. Inspection of Care

There will be an on site Inspection of Care of each Therapeutic Foster Care (TFC) ~~Agency~~ agency that provides care to ~~recipients~~ members which will be performed by the OHCA or its designated agent. The OHCA will designate the members of the Inspection of Care Team. This team will consist of two team members and will be comprised of Licensed ~~Mental~~ Behavioral Health Professionals and/or Registered Nurses. The Inspection may include observation and contact with ~~recipients~~ members. The Inspection of Care (IOC) 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 TFC services. The review includes validation of certain factors, all of which must be met for the ~~Medicaid Services~~ services to be compensable. 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 facilities' accrediting agency. Deficiencies found during the IOC may result in a partial recoupment or a full recoupment of the compensation received. The individual plan of care is considered to be critical to the integrity of care and treatment and must be completed within the time lines designated at OAC 317:30-5-742.2. For each day that the individual plan of care is not contained within the member's records, those days will warrant full per-diem recoupment of the compensation received. If the review findings have resulted in a partial per-diem recoupment of $10.00 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. 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 compensable or billable to the member or anyone financially responsible for the member.

317:30-5-746. Appeal of Prior Authorization Decision

~~In the event a member disagrees with the decision by OHCA's designated agent, he/she receives an evidentiary hearing under OAC 317:2-1-2(a). The 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 two business days of receipt of the decision to request the contractor to reconsider its decision. The designated agent will return a decision within ten working days from the time of receiving the provider's reconsideration request. The reconsideration process will end on July 1, 2006.~~ If a denial decision is made, an appeal may be initiated by the member or the member's legal guardian. The denial can be appealed to the Oklahoma Health Care Authority within 20 calendar days of the receipt of the notification of the denial by the OHCA or its designated agent.

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1043. Coverage by category

(a) **Adults.** Residential Behavioral Management Services ~~In~~ in Group Settings and Non-Secure Diagnostic and Evaluation Center Services are not covered for adults.

(b) **Children.** Residential Behavioral Management Services (RBMS) in Group Settings and Non-Secure Diagnostic and Evaluation Centers are covered for children as set forth in this subsection.

(1) **Description.** Residential Behavior Management Services are provided by Organized Health Care Delivery Systems (OHCDS) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. The behavior management services are provided in the least restrictive environment and within a therapeutic milieu. The group setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Residential Behavior Management Services are reimbursed in accordance with the intensity of supervision and treatment required for the group setting in which the ~~client~~ child is placed. ~~Clients~~ Members residing in a Level E and Intensive Treatment Services (ITS) Group Homes receive maximum supervision and treatment. In addition, ITS group homes provide crisis and stabilization intervention and treatment. ~~Clients~~ Members residing in a Level D+ Group Home receive highly intensive supervision and treatment. ~~Clients~~ Members residing in a Level D Group home or in a wilderness camp receive close supervision and moderate treatment. ~~Clients~~ Members residing in a Level C Group Home receive minimum supervision and treatment. ~~Clients~~ Members residing in Residential Diagnostic and Evaluation Centers receive intensive supervision and a 20 day comprehensive assessment. ~~Clients~~ Members residing in a Sanctions Home receive highly intensive supervision and treatment. ~~Clients~~ Members residing in an Independent Living Group Home receive intensive supervision and treatment. It is expected that RBMS in group settings are an all-inclusive array of treatment services provided in one day. In the case of a child who needs additional specialized services, under the Rehabilitation Option or by a psychologist, prior authorization by the OHCA or designated agent is required. Only specialized rehabilitation or psychological treatment services to address unique, unusual or severe symptoms or disorders will be authorized. If additional services are approved, the OHCDS ~~shall collaborate~~ collaborates with the provider of such services as directed by the OHCA or its agent. Any additional specialized behavioral health services provided to children in state custody ~~shall be~~ are funded in the normal manner. The OHCDS ~~shall~~ must provide concurrent documentation that these services are not duplicative. The OHCDS determines the need for RBMS.

(2) **Medical necessity criteria.** The following medical necessity criteria must be met for residential behavior Management Services.

(A) Any DSM-IV AXIS I primary diagnosis, with the exception of V codes, with a detailed description of the symptoms supporting the diagnosis. A detailed description of the child's emotional, behavioral and psychological condition must be on file. A diagnosis is not required for behavior management services provided in Diagnostic and Evaluation centers.

(B) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(C) It has been determined by the OHCDS that the current disabling symptoms could not have been or

have not been manageable in a less intensive treatment program.

(D) Documentation that the child's presenting emotional and/or behavioral problems prevent the child from living in a traditional family home. The child requires the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff.

(E) The Agency which has permanent or temporary custody of the child agrees to active participation in the child's treatment needs and planning.

(F) All of the medical necessity criteria must also be met for continued stay in residential group settings.

(3) **Treatment components.**

(A) **~~Treatment~~ Individual plan of care development.** A comprehensive individualized ~~treatment~~ plan of care for each resident shall be formulated by the ~~Provider Agency~~ provider agency staff within 30 days of admission, for ITS level within 72 hours, with documented input from the ~~Agency~~ agency which has permanent or temporary custody of the child and when possible, the parent. This plan ~~shall~~ must be revised and updated at least every three months, every seven days for ITS, with documented involvement of the ~~Agency~~ agency which has permanent or temporary custody of the child. Documented involvement can be written approval of the ~~treatment~~ individual plan of care by the ~~Agency~~ agency which has permanent or temporary custody of the child and indicated by the signature of the ~~Agency~~ agency case worker or liaison on the ~~treatment~~ individual plan of care. It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature; however, the provider obtains the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed. ~~A treatment~~ An individual plan of care is considered inherent in the provision of therapy and is not covered as a separate item of behavior management services. The ~~treatment~~ individual plan of care is individualized taking into account the child's age, history, diagnosis, functional levels, and culture. It includes appropriate goals and time limited and measurable objectives. Each ~~resident's treatment~~ member's individual plan of care ~~shall~~ must also address the ~~Provider Agency's~~ provider agency's plans with regard to the provision of services in each of the following areas:

(i) ~~Group~~ group therapy;

(ii) ~~Individual~~ individual therapy;

(iii) ~~Family~~ family therapy;

(iv) ~~Alcohol~~ alcohol and other drug counseling;

(v) ~~Basic~~ basic living skills redevelopment;

(vi) ~~Social~~ social skills redevelopment;

(vii) ~~Behavior~~ behavior redirection; and

(viii) ~~The Provider Agency's~~ the provider agency's plan to access appropriate educational placement services. (Any educational costs are excluded from calculation of the daily rate for behavior management services.)

(B) **Individual therapy.** The ~~Provider Agency shall~~ provider agency must provide individual therapy on a weekly basis with a minimum of one or more sessions totaling one hour or more of treatment per week to children and youth receiving RBMS in Wilderness Camps, Level D, Level D+ homes, Level E Homes, Independent Living Homes, and Sanctions Homes. ITS Level residents will receive a minimum of five or more sessions totaling a minimum of five or more hours of individual therapy per week. ~~Clients~~ Members residing in Diagnostic and Evaluation Centers and Level C Group Homes receive Individual Therapy on an as needed basis. Individual therapy must be age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's ~~treatment~~ plan of care. Individual counseling is a face to face, one to one service, and must be provided in a confidential setting.

(C) **Group therapy.** The ~~Provider Agency shall~~ provider agency must provide group therapy to children and youth receiving residential behavioral management services. Group therapy must be a face to face interaction, age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's ~~treatment~~ plan of care. The minimum expected occurrence would be one hour per week in Level D, Level C, Wilderness Camps and Independent Living. Two hours per week are required in Levels D+ and E. Ten hours per week are required in Sanctions Homes, Intensive Treatment Service Level. Group therapy is not required for Diagnostic and Evaluation Centers. Group size should not exceed six members and group therapy sessions must be provided in a confidential setting. One half hour of individual therapy may be substituted for one hour of group therapy.

(D) **Family therapy.** Family therapy is a face to face interaction between the therapist/counselor and family, to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The ~~Provider Agency shall~~ provider agency must provide family therapy as indicated by the resident's individual ~~treatment~~ plan of care. The ~~Agency shall~~ agency must work with the caretaker to whom the resident will be discharged, as identified by the OHCDS custody worker. The ~~Agency shall~~ agency must seek to support and enhance the child's relationships with family members (nuclear and appropriate extended), if the custody plan for the child indicates family reunification. The RBMS provider ~~shall~~ must also seek to involve the child's parents in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program. Any service provided to the family must have the child as the focus.

(E) **Alcohol and other drug abuse treatment education, prevention, therapy.** The ~~Provider Agency shall~~ provider agency must provide alcohol and other drug abuse treatment for residents who have emotional or behavioral problems related to substance abuse/chemical dependency, to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. This service ~~shall be~~ is considered ancillary to any other formal treatment program in which the child participates for treatment and rehabilitation. For residents who have no identifiable alcohol or other drug use, abuse, or dependency, age appropriate education and prevention activities are appropriate. These may include self esteem enhancement, violence alternatives, communication skills or other skill development curriculums.

(F) **Basic living skills redevelopment.** The ~~Provider Agency shall~~ provider agency must provide goal directed activities designed for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopment is age appropriate and relevant to the goals and objectives of the ~~treatment~~ individual plan of care. This many include, but is not limited to food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, job application and retention skills.

(G) **Social skills redevelopment.** The ~~Provider Agency shall~~ provider agency must provide goal directed activities designed for each resident to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These are age appropriate, culturally sensitive and relevant to the goals of the individual ~~treatment~~ plan of care. For ITS level of care, the minimum skill redevelopment per day is three hours. Any combination of basic living skills and social skills redevelopment that is appropriate to the need and developmental abilities of the child is acceptable.

(H) **Behavior redirection.** The ~~Provider Agency shall~~ provider agency must be able to provide behavior redirection management by agency staff as needed 24 hours a day, 7 days per week. The ~~Agency shall~~ agency must ensure staff availability to respond in a crisis to stabilize residents' behavior and prevent placement disruption. In addition, ITS group homes will be required to provide crisis stabilization interaction and treatment for new residents 24 hours a day, seven days a week.

(4) **Providers.** For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers, the providers of individual, group and family therapies must:

(A) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board Supervision to be licensed in one of the above stated areas; or

(B) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing boards:

(i) Psychology,

(ii) Social work (clinical specialty only),

(iii) Licensed professional counselor,

(iv) Licensed marriage and family therapist, or

(v) Licensed behavioral practitioner; or

(C) have a baccalaureate degree in a mental health field in one of the stated areas listed in (B) of this paragraph AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in (A) of this paragraph; or

(D) be a registered psychiatric nurse; AND

(E) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;

(ii) treatment of victims of physical, emotional, and sexual abuse;

(iii) treatment of children with attachment disorders;

(iv) treatment of children with hyperactivity or attention deficit disorders;

(v) treatment methodologies for emotional disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;

(viii) anger management; and

(ix) crisis intervention.

(5) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services provided by their staff for behavior management therapies (Individual, Group, Family) as of ~~January 1, 2004~~ July 1, 2007, providers must have the following qualifications:

(A) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, alcohol and drug counselor or under Board approved Supervision to be licensed in one of the above stated areas; or

(B) be licensed as an Advanced Practice Nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of

recognition from the Board of Nursing in the state in which services are provided, AND

(C) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;

(ii) treatment of victims of physical, emotional, and sexual abuse;

(iii) treatment of children with attachment disorders;

(iv) treatment of children with hyperactivity or attention deficit disorders;

(v) treatment methodologies for emotionally disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;

(viii) anger management; and

(ix) crisis intervention.

(D) Staff providing basic living skills redevelopment, social skills redevelopment, and alcohol and other substance abuse treatment, ~~shall~~ must meet one of the following areas:

(i) Bachelor's or Master's degree in a behavioral health related field including but not limited to, psychology, sociology, criminal justice, school guidance and counseling, social work, occupational therapy, family studies, alcohol and drug; or

(ii) a current license as a registered nurse in Oklahoma; or

(iii) certification as an Alcohol and Drug Counselor ~~is allowed~~ to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or

(iv) current certification as a Behavioral Health Case Manager from DMHSAS and meets OHCA requirements to perform case management services, as described in OAC ~~317:30-5-595(7)~~ 317:30-5-595.

(E) Staff providing behavior redirection services must have current certification and required updates in nationally recognized behavior management techniques, such as Controlling Aggressive Patient Environment (CAPE) or MANDT. Additionally, staff providing these services must receive initial and ongoing training in at least one of the following areas:

(i) trauma informed methodology,

(ii) anger management,

(iii) crisis intervention,

(iv) normal child and adolescent development and the effect of abuse,

(v) neglect and/or violence on such development,

(vi) grief and loss issues for children in out of home placement,

(vii) interventions with victims of physical, emotional and sexual abuse,

(viii) care and treatment of children with attachment disorders,

(ix) care and treatment of children with hyperactive, or attention deficit, or conduct disorders,

(x) care and treatment of children, youth and families with substance abuse and chemical dependency disorders,

(xi) passive physical restraint procedures,

(xii) procedures for working with delinquents or the Inpatient Mental Health and Substance Abuse Treatment of ~~Minor's~~ Minors Act.

(F) In addition, Behavioral Management staff ~~shall~~ must have access to consultation with an appropriately licensed mental health professional.

317:30-5-1046. Documentation of records and records review

(a) The OHCDS and the facilities with whom it contracts must maintain appropriate records system. Current ~~treatment~~ individual plans of care, case files, and progress notes are maintained in the facilities' files during the time the child or youth is receiving services. All services rendered must be reflected by documentation in the case records.

(b) OHCA and the Centers for Medicare and Medicaid Services (CMS) may evaluate through inspection or other means, the quality, appropriateness and timeliness of services provided by the OHCDS or facilities with whom it contracts.

(c) All residential behavioral management services in group settings and non-secure diagnostic and evaluation centers must be reflected by documentation in the ~~patient~~ patients' records. Individual, group, family, and alcohol and other drug counseling~~,~~ and social and basic living skills development services must include all of the following:

(1) date;

(2) start and stop time for each session;

(3) signature of the therapist/staff providing service;

(4) credentials of therapist/staff providing service;

(5) specific problem(s) addressed (problem must be identified on ~~master treatment~~ individualized plan of care);

(6) methods used to address problem(s);

(7) progress made toward goals;

(8) patient response to the session or intervention; and

(9) any new problem(s) identified during the session.

[OAR Docket #08-692; filed 4-22-08]

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

[OAR Docket #08-688]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-2. [AMENDED]
317:35-5-6.1. [NEW]
317:35-5-8. [AMENDED]
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
317:35-5-26. [AMENDED]
Part 5. Countable Income and Resources
317:35-5-41.9. [NEW]
Subchapter 6. SoonerCare Health Benefits for Categorically Needy Pregnant Women and Families with Children
Part 3. Application Procedures
317:35-6-15. [AMENDED]
Subchapter 7. Medical Services
Part 3. Application Procedures
317:35-7-15. [AMENDED]
Part 5. Determination of Eligibility for Medical Services
317:35-7-48. [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 2. Medicaid Recovery Program
317:35-9-15. [AMENDED]
Part 5. Determination of Medical Eligibility for ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
317:35-9-45. [AMENDED]
Part 7. Determination of Financial Eligibility
317:35-9-67. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-10. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-4. [AMENDED]
317:35-19-9. [AMENDED]
317:35-19-14. [AMENDED]
317:35-19-16. [AMENDED]
317:35-19-18. [AMENDED]
317:35-19-20. [AMENDED]
Subchapter 22. Pregnancy Related Benefits Covered under Title XXI [NEW]
317:35-22-1. through OAC 317:35-22-11. [NEW]
(Reference APA WF # 07-07B, 07-25, 07-46, 07-50, 07-57 and 07-58)
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Part 5. Countable Income and Resources
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Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 2. Medicaid Recovery Program
317:35-9-15. [AMENDED]
Part 7. Determination of Financial Eligibility
317:35-9-67. [AMENDED]
Subchapter 17. ADvantage Waiver Services
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Subchapter 19. Nursing Facility Services
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317:35-19-20. [AMENDED]

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Part 1. Determination of Qualifying Categorical Relationships
317:35-5-2. [AMENDED]
317:35-5-6.1. [NEW]
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
Subchapter 22. Pregnancy Related Benefits Covered under Title XXI [NEW]
317:35-22-1. through OAC 317:35-22-11. [NEW]

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INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

PASRR rules are being revised to reflect the new required PASRR form for a Level I screen for nursing home admission. The new form is LTC-300R, Nursing Facility Level of Care Assessment. As part of the federally mandated PASRR process, all Medicaid certified nursing facilities must fill out the form LTC-300R for all applicants that apply to reside in the facility regardless of pay source. The LTC-300R is the new Level I screening form which helps to identify persons with possible mental illness or mental retardation or related conditions who apply to reside in Medicaid certified nursing facilities. Rules also change the submission deadline requirements for this form from thirty days to ten days of resident admission. The change in the submission deadline is expected to increase the level of compliance demonstrated by nursing facility reporting practices.

Application procedure rules for medical assistance are revised to allow the acceptance of facsimile signatures on all SoonerCare applications and would not require an original signature to follow. There is no current rule in policy which speaks to obtaining original signatures on SoonerCare applications; however, current practices require caseworkers to obtain original signatures on applications. Not allowing facsimile signatures may delay the processing of SoonerCare applications, impeding members from accessing needed medical attention.

Eligibility rules for the SoonerPlan Program (Family Planning Waiver services) are revised to: (1) allow an applicant/member who wants Family Planning services only to enroll in SoonerPlan even if they may be otherwise eligible for SoonerCare; and (2) allow closure of SoonerPlan benefits when the applicant/member has undergone a sterilization procedure. Current rules do not allow an applicant the choice of receiving family planning services only but requires them to apply for SoonerCare, the full scope of Medicaid benefits. Currently, when it appears an applicant may be otherwise eligible for SoonerCare, he/she is sent an application for SoonerCare. They are certified for SoonerPlan but if the SoonerCare application is not returned, they are disenrolled from SoonerPlan. Revisions are needed to allow member/applicants the choice of enrolling in family planning services only when they do not want the full scope of Medicaid. In addition, current rules do not provide a process for closure of family planning services when a member undergoes sterilization procedures. Revisions are needed to allow case closure when the member has undergone a sterilization procedure and is no longer in need of family planning services.

Agency rules are revised to recognize children who reside in IHS, BIA, or Tribal controlled dormitories as residents of Oklahoma for SoonerCare eligibility purposes. Currently, over one thousand children reside in Oklahoma's five IHS, BIA, or Tribal controlled dormitories. Approximately thirty percent of those children lack comprehensive health care coverage. Many of these children, described as Aat risk@ children, often have had little or no access to even basic health care prior to their arrival at an IHS, BIA, or Tribal controlled dormitory. Making these children eligible for SoonerCare services ensures that the children will receive the primary care and preventive services they need.

Agency rules are revised to comply with Public Law 109-171, known as the Deficit Reduction Act of 2005 (DRA). Section 6021 of the DRA authorizes states to implement long-term care partnership program. Individuals who purchase a qualified long-term care partnership insurance policy are subject to special rules relating to eligibility for long-term care services provided by SoonerCare. These rules allow assets equal to the amount of benefits received from a qualified long-term care partnership insurance policy to be disregarded for the purposes of determining eligibility for long-term care services provided by SoonerCare. Individuals without a long-term care partnership insurance policy are required to spend-down their assets in order to qualify for long-term care services provided by SoonerCare. Agency rules are also revised to comply with Public Laws 104-204, 108-183, and 106-419. Public Law 104-204 requires payments made to certain Vietnam veterans' children with spina bifida to be disregarded for purposes of SoonerCare eligibility. Public Law 108-183 requires payments made to certain Korea service veterans' children with spina bifida to be disregarded for purposes of SoonerCare eligibility. Public Law 106-419 requires payments made to children of women Vietnam veterans who suffer from certain birth defects to be disregarded for purposes of SoonerCare eligibility. Proposed revisions are required to comply with state and federal regulations. Other revisions are incorporated due to superseding emergency rules previously approved by the Governor in APA WF 07-24. These revisions provided compliance with Sections of Public Law 109-171, known as the Deficit Reduction Act of 2005 (DRA), regarding SoonerCare eligibility for long-term care services.

Rules are revised to add pregnancy related benefits to improve health outcomes for children who are Oklahoma residents and U. S. citizens upon their birth. Current agency rules prohibit prenatal benefits to pregnant women with certain alien status. As a result of the prohibition, the child goes without prenatal care. The lack of care can result in low birth weight and an increased probability of birth defects. Expenditures for these children after birth, who have citizenship, Oklahoma residency, and meet SoonerCare eligibility standards, are more costly than prenatal care. Title XIX gives states the opportunity to cover pregnancy related expenses for the mother of a child that will qualify for SoonerCare at birth. Rule revisions will lower expenditures for neonatal ICU expenses, extended hospital stays after birth and ongoing chronic medical expenses for the child.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

317:35-5-2. Categorically related programs

(a) Categorical relationship is established using the same definitions of age, disability and blindness as used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is a SSA/SSI recipient in current payment status (including presumptive eligibility), a TANF recipient, or is low-income under age 19, categorical relationship is automatically established. Categorical relationship to pregnancy-related services is established when the determination is made by medical evidence that the individual is or has been pregnant. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and ~~post-partum~~ postpartum periods. For an individual age 19 or over to be related to AFDC, the individual must have a minor dependent child. Categorical relationship to Refugee services is established in accordance with OAC 317:35-5-25. Categorical relationship for the Breast and Cervical Cancer Treatment program is established in accordance with OAC 317:35-21. Categorical relationship for the Family Planning Waiver Program is established in accordance with OAC 317:35-5-8. Categorical relationship for pregnancy related benefits covered under Title XXI is established in accordance with OAC 317:35-22. Benefits for pregnancies covered under Title XXI medical services are provided within the scope of the program during the prenatal, delivery and postpartum care when included in the global delivery payment. To be eligible for ~~Medicaid~~ SoonerCare benefits, an individual must be related to one of the following:

(1) Aged
(2) Disabled
(3) Blind
(4) Pregnancy
(5) Aid to Families with Dependent Children
(6) Refugee
(7) Breast and Cervical Cancer Treatment program
(8) Family Planning Waiver Program
(9) Benefits for pregnancies covered under Title XXI.

(b) The Authority may provide ~~Medicaid~~ SoonerCare to reasonable categories of individuals under age 21 who are not receiving cash assistance under any program but who meet the income requirement of the State's approved AFDC plan.

(1) Individuals eligible for ~~Medicaid~~ SoonerCare benefits include individuals between the ages of 19 and 21:

(A) for whom a public agency is assuming full or partial financial responsibility who are in custody as reported by the Oklahoma Department of Human Services (OKDHS) and in foster homes, private institutions or public facilities; or

(B) in adoptions subsidized in full or in part by a public agency; or

(C) individuals under age 21 receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age 21 are provided under the State Plan and the individuals are supported in full or in part by a public agency; or

(2) Individuals eligible for ~~Medicaid~~ SoonerCare benefits include individuals between the ages of 18 and 21 if they are in custody as reported by OKDHS on their 18th birthday and living in an out of home placement.

317:35-5-6.1. Determining categorical relationship for pregnancy related services covered under Title XXI

Categorical relationship for pregnancy related benefits covered under Title XXI are determined in accordance with OAC 35-22-1 and through medical evidence that the individual is currently or has recently been pregnant and may qualify for pregnancy related services. Form MS-MA-5, Notification of Needed Medical Services, is not required but will be accepted as medical verification. Pregnancy may also be verified by submission of a copy of a laboratory report indicating the individual is or has been pregnant. The applicant must be residing in the State of Oklahoma with the intent to remain at the time the medical service is received. The expected date of delivery must be established either by information from the applicant's physician or other qualified practitioner.

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

All uninsured women and men ages 19 and older, who have not undergone a sterilization procedure, regardless of pregnancy or paternity history, with family income at or below 185% of the federal poverty level and who are otherwise ineligible for ~~Medicaid~~ SoonerCare benefits are categorically related to the Family Planning Waiver Program. If eligible for SoonerCare benefits, the individual can choose to enroll only in the Family Planning Waiver Program with the option of applying for SoonerCare at any time.

PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS

317:35-5-25. Citizenship/alien status and identity verification requirements

(a) **Citizenship/alien status and identity verification requirements.** Verification of citizenship/alien status and identity are required for all adults and children approved for Medicaid.

(1) The types of acceptable evidence that verify identity and citizenship include:

(A) United States (U.S.) Passport;

(B) Certificate of Naturalization issued by U.S. Citizenship & Immigration Services (USCIS) (Form N-550 or N-570);

(C) Certificate of Citizenship issued by USCIS (Form N-560 or N-561); or

(D) Copy of the Medicare card or printout of a BENDEX or SDX screen showing receipt of Medicare benefits, Supplemental Security Income or disability benefits from the Social Security Administration.

(2) The types of acceptable evidence that verify citizenship but require additional steps to obtain satisfactory evidence of identity are listed in subparagraphs (A) and (B). Subparagraph (A) lists the most reliable forms of verification and is to be used before using items listed in (B). Subparagraph (B) lists those verifications that are less reliable forms of verification and are used only when the items in (A) are not attainable.

(A) Most reliable forms of citizenship verification are:

(i) A U.S. public Birth Certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after 1/13/1941), Guam (on or after 4/10/1899), the U.S. Virgin Islands (on or after 1/17/1917), American Samoa, Swain's Island, or the Northern Mariana Islands after 11/4/1986;

(ii) A Report of Birth Abroad of a U.S. citizen issued by the Department of Homeland Security or a Certification of birth issued by the State Department (Form FS-240, FS-545 or DS-1350);

(iii) A U.S. Citizen ID Card (Form I-179 or I-197);

(iv) A Northern Mariana Identification Card (Form I-873) (Issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before 11/3/1986);

(v) An American Indian Card issued by the Department of Homeland Security with the classification code "KIC" (Form I-872);

(vi) A Final Adoption Decree showing the child's name and U. S. place of birth;

(vii) Evidence of U.S. Civil Service employment before 6/1/1976; or

(viii) An Official U.S. Military Record of Service showing a U.S. place of birth (for example a DD-214).

(B) Other less reliable forms of citizenship verification are:

(i) An extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and that indicates a U.S. place of birth. For children under 16 the evidence must have been created near the time of birth or five years before the date of application;

(ii) Life, health, or other insurance record showing a U.S. place of birth that was created at least five years before the initial application date and that indicates a U.S. place of birth;

(iii) Federal or State census record showing U.S. citizenship or a U.S. place of birth (generally for persons born 1900 through 1950). The census record must also show the applicant's/member's age; or

(iv) One of the following items that show a U.S. place of birth and was created at least five years before the application for Medicaid. This evidence must be one of the following and show a U.S. place of birth:

(I) Seneca Indian tribal census record;

(II) Bureau of Indian Affairs tribal census records of the Navajo Indians;

(III) U.S. State Vital Statistics official notification of birth registration;

(IV) An amended U.S. public birth record that is amended more than five years after the person's birth; or

(V) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) Acceptable evidence of identity that must accompany citizenship evidence listed in (A) and (B) of paragraph (2) of this subsection includes:

(A) A driver's license issued by a U.S. state or territory with either a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;

(B) A school identification card with a photograph of the individual;

(C) An identification card issued by Federal, state, or local government with the same information included on driver's licenses;

(D) A U.S. military card or draft record;

(E) A U.S. military dependent's identification card;

(F) A Native American Tribal document including Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph of the individual or other personal identifying information;

(G) A U.S. Coast Guard Merchant Mariner card;

(H) A state court order placing a child in custody as reported by the OKDHS;

(I) For children under 16, school records may include nursery or daycare records;

(J) If none of the verification items on the list are available, an affidavit may be used for children under 16. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and **cannot be used if an affidavit for citizenship was provided.**

(b) **Centralized Verification Unit.**

(1) When the applicant/member is unable to obtain citizenship verification, a reasonable opportunity is afforded the applicant/member to obtain the evidence as well as assistance in doing so. A reasonable opportunity is afforded the applicant/member before taking action affecting the individual's eligibility for Medicaid. The reasonable opportunity time frame usually consists of 60 days. In rare instances, the CVU may extend the time frame to a period not to exceed an additional 60 days.

(2) Additional methods of verification are available to the CVU. These methods are the least reliable forms of verification and should only be used as a last resort:

(A) Institutional admission papers from a nursing facility, skilled care facility or other institution.

Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth;

(B) Medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates a U.S. place of birth. For children under 16, the document must have been created near the time of birth. Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship;

(C) Written affidavit. Affidavits are only used in rare circumstances. If the verification requirements need to be met through affidavits, the following rules apply:

(i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's/member's claim of citizenship;

(ii) At least one of the individuals making the affidavit cannot be related to the applicant/member;

(iii) In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity;

(iv) If the individual(s) making the affidavit has information which explains why evidence establishing the applicant's/member's claim or citizenship does not exist or cannot be readily obtained, the affidavit must contain this information as well;

(v) The State must obtain a separate affidavit from the applicant/member or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained; and

(vi) The affidavits must be signed under penalty of perjury.

(c) **Alienage verification requirements.** Medicaid services are provided as listed to the defined groups as indicated in this subsection if they meet all other factors of eligibility.

(1) **Eligible aliens (qualified aliens).** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services. A qualified alien is:

(A) an alien who was admitted to the United States and has resided in the United States for a period greater than five years from the date of entry and who was:

(i) lawfully admitted for permanent residence under the Immigration and Nationality Act;

(ii) paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;

(iii) granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or

(iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.

(B) an alien who was admitted to the United States and who was:

(i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;

(ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted;

(iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;

(iv) a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;

(v) an alien who is a veteran as defined in 38 U.S.C. § 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;

(vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;

(vii) the spouse or unmarried dependent child of an individual described in (C) of this paragraph.

(viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or

(ix) admitted as an Amerasian immigrant.

(C) permanent residents who first entered the country under (B) of this paragraph and who later converted to lawful permanent residence status.

(2) **Other aliens lawfully admitted for permanent residence (non-qualified aliens).** Non-qualified aliens are those individuals who were admitted to the United States and who do not meet any of the definitions in paragraph (1) of this subsection. Non-qualified aliens are ineligible for Medicaid for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. <u>The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.</u>

(3) **Undocumented aliens.** Undocumented aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when the individual has a medical condition (including emergency

labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(4) **Ineligible aliens.**

(A) Ineligible aliens who do not fall into the categories in (1) and (2) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ineligible for Medicaid, including emergency services, because of the temporary nature of their admission status. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(B) These individuals are generally issued Form I-94, Arrival Departure Record, on which an expiration date is entered. This form is not the same Form I-94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I-94 that is titled "Arrival-Departure Record - Parole Edition". Two other forms that do not give the individual "Immigrant" status are Form I-186, Nonresident Alien Mexican Border Crossing Card, and Form SW-434, Mexican Border Visitors Permit.

(5) **Preauthorization.** Preauthorization is required for payment of emergency medical services rendered to non-qualified and undocumented aliens. Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE).

(d) **Alienage.** A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the BCIS. These are individuals who entered this country with the express intention of residing here permanently.

(2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement.

(3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist-dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for Medicaid if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I-94 endorsed "Voluntary Departure Granted-Employment Authorized", or

(B) The following court-ordered notice sent by BCIS to each of those individuals permitted to remain in the United States: "Due to a Court Order in Silva vs. Levi, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice. Your employment in the United States is authorized".

(4) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I-94, Arrival-Departure Record (Parole Edition). If Form I-94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoos who have entered the United States from Mexico who carry Form I-151 or Form I-551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I-151 or Form I-551 and therefore, meet the citizenship and alienage requirements. Still other Kickapoos are classified as Mexican Nationals by the BCIS. They carry Form I-94, Arrival-Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the ~~non-immigrant~~ ineligible alien status described in ~~(d)(1)~~ (c)(4)(B) of this Section.

(5) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least one-half American Indian blood. This does not include the non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50 percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

(6) **Marshall Islanders.** Marshall Islanders are classified as permanent non-immigrants by BCIS. They are eligible for emergency services only.

317:35-5-26. Residence requirements; residents of public institutions; homeless persons; and residents of IHS, BIA or Tribal controlled dormitories

(a) **Residence.** To be eligible for ~~Medicaid~~ SoonerCare services, the applicant must be residing in the State of Oklahoma with intent to remain at the time the medical service is received. A durational residence requirement is not imposed.

(1) Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of Oklahoma residence.

(2) Oklahoma residence does not include transients or visitors passing through the state but does not preclude persons who do not have a fixed address if intent is established.

(3) Intent to remain or return is defined as a clear statement of plans to remain or return in addition to other evidence and/or corroborative statements of others.

(4) When a non-resident makes application for ~~Medicaid~~ SoonerCare benefits, the local office provides services necessary to make available to the applicant any ~~Medicaid~~ SoonerCare services for which he/she might be eligible from his/her state of residence. The local office contacts the state or county of the applicant's residence to explore possible eligibility for medical benefits from the state and to obtain information needed for the determination of medical eligibility for the services received while in Oklahoma.

(b) **Individuals residing in institutions (correctional facilities and institutions for mental disease).** The ~~Medicaid~~ SoonerCare program will only pay for services rendered to adults (21 through 64 years of age) who are inpatients in an institution for mental disease (IMD), juveniles in the custody of the Office of Juvenile Affairs who are inmates in a state-owned and operated facility, or inmates in a correctional facility, when these individuals are admitted as an inpatient to a hospital, nursing facility, juvenile psychiatric facility or an intermediate care facility for the mentally retarded and meet all other eligibility requirements.

(c) **Homeless individuals.** Individuals are not required to have a fixed address in order to be eligible for assistance. Individuals who lack a fixed or regular residence, who have temporary accommodations, i.e., supervised shelters, residence of other individuals, a hallway, bus station, car or other similar places, are considered as "homeless".

(d) **Individuals residing in IHS, BIA or Tribal controlled dormitories.** Individuals that reside in a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school are considered Oklahoma residents for SoonerCare eligibility purposes.

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41.9. Resource disregards

In determining need, the following are not considered as resources:

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

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

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

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

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

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide;

(C) Proceeds of a loan secured by an exempt asset are not an asset;

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

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

(7) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well

as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

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

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

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

(11) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

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

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

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

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

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

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

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

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

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

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

(22) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed against the individual if he/she disposes of part or all of the payment. The rules at OAC 317:35-5-41.6 regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment;

(23) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

(24) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);

(25) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419); and

(26) For individuals with an Oklahoma Long-Term Care Partnership Program approved policy, resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer are disregarded at the time of application for long-term care services provided by SoonerCare. The Oklahoma Insurance Department approves policies as Long-term Care Partnership Program policies.

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

PART 3. APPLICATION PROCEDURES

317:35-6-15. Application for SoonerCare Health Benefits for Pregnant Women and Families with Children; forms

(a) **Application.** An application for categorically needy pregnant women and families with children consists of the Health Benefits Application. The application form is signed by the individual, parent, spouse, guardian, or someone else acting on the individual's behalf. A categorically needy individual does not have to have received a medical service nor expect to receive one to be certified for Health Benefits for Pregnant Women and Families with Children.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other

medical facility, Health Department, or in the county ~~DHS~~ OKDHS office. A face to face interview is not required. Applications may be mailed or faxed to the local county ~~DHS~~ OKDHS office. If faxed, it is not necessary to send the original application. When an individual indicates a need for ~~Health Benefits~~ health benefits, the physician or facility may forward an application to the ~~DHS~~ OKDHS county office of the patient's residence for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application.

(2) Form ~~MS-MA-5~~ 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification for a need for medical service. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the Health Benefits Application form or Form ~~MS-MA-5~~ 08MA005E constitutes an application for ~~Medicaid~~ SoonerCare.

(4) If Form ~~MS-MA-5~~ 08MA005E is received and an application cannot be completed, receipt of Form ~~MS-MA-5~~ 08MA005E constitutes an application which must be registered and subsequently denied. The ~~client~~ member and provider are notified by computer-generated notice.

(b) **Date of application.** When application is made in the county office, the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application or Form ~~MS-MA-5~~ 08MA005E is stamped into the county office. When an application is faxed, the application date is the date the fax is received. When a request for Health Benefits is first made by an oral request to the county office, and the application form is signed later, the date of the oral request is entered in "red" on the application form above the date the form is signed. The date of the oral request is the date of application to be shown on the computer form. When Form ~~MS-MA-5~~ 08MA005E is received in the county office prior to the completion of the application form, the date that Form ~~MS-MA-5~~ 08MA005E is received is considered as the date of application and must be registered as an application. Certain providers may take applications and then forward them to the ~~DHS~~ OKDHS county office for Health Benefits eligibility determination. Under this circumstance, the application date is the date the ~~client~~ member signed the application form for the provider.

SUBCHAPTER 7. MEDICAL SERVICES

PART 3. APPLICATION PROCEDURES

317:35-7-15. Application for Medical Services; forms

(a) **Application.** An application for Medical Services consists of the Medical Assistance Application. The application form is signed by the individual, parent, spouse, guardian or someone else acting on the individual's behalf. A categorically needy individual does not have to have received a medical service nor expect to receive one to be certified for ~~Medicaid~~ SoonerCare.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility or in the county ~~DHS~~ OKDHS office. A face to face interview is not required. Applications may be mailed or faxed to the local county OKDHS office. If faxed, it is not necessary to send the original application. When an individual indicates a need for ~~Medicaid~~ health benefits, the physician or facility may forward an application or ~~MS-MA-5~~ 08MA005E to the ~~DHS~~ OKDHS county office of the patient's residence for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application.

(2) Form ~~MS-MA-5~~ 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification for a need for medical service. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the Medical Assistance Application form or Form ~~MS-MA-5~~ 08MA005E constitutes an application for ~~Medicaid~~ SoonerCare.

(4) If Form ~~MS-MA-5~~ 08MA005E is received and an application cannot be completed, receipt of Form ~~MS-MA-5~~ 08MA005E constitutes an application which must be registered and subsequently denied. The ~~client~~ member and provider are notified by computer-generated notice.

(5) If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the Medical Assistance Application form.

(b) **Date of application.** When application is made in the county office, the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application or Form ~~MS-MA-5~~ 08MA005E is stamped into the county office. When an application is faxed, the application date is the date the fax is received. When a request for ~~Medicaid~~ SoonerCare is first made by an oral request to the county office, and the application form is signed later, the date of the oral request is entered in "red" on the application form above the date the form is signed. The date of the oral request is the date of application to be shown on the computer form. When Form ~~MS-MA-5~~ 08MA005E is received in the county office prior to the completion of the application form, the date that Form ~~MS-MA-5~~ 08MA005E is received is considered as the date of application and must be registered as an application. Certain providers may take applications and then forward them to the ~~DHS~~ OKDHS county office for ~~Medicaid~~ SoonerCare eligibility determination. Under this circumstance, the application date is the date the ~~client~~ member signed the application form for the provider.

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

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

(a) Women and men ages 19 and above are eligible to receive family planning services if they meet all of the conditions of eligibility in paragraphs (1), (2), ~~and~~ (3), and (4) of this ~~Section~~ Subsection. This is regardless of pregnancy or paternity history and includes women who gain eligibility for family planning services due to a pregnancy, but whose eligibility ends 60 days postpartum.

(1) The countable income is at or below 185% of the federal poverty level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member of the benefit group. Deductions for work related expenses for self-employed individuals are found at OAC 317:35-10-26(b)(1).

(2) ~~The individual is not otherwise~~ Individuals eligible for ~~Medicaid~~ SoonerCare~~.~~ can choose to enroll only in the Family Planning Waiver Program with the option of applying for SoonerCare at any time.

(3) The individual is uninsured. Persons who have Medicare or creditable health insurance coverage are not eligible for the Family Planning Waiver program. A stand alone policy such as dental, vision or pharmacy is not considered creditable health insurance coverage.

(4) The individual has not undergone a sterilization procedure.

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

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

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

SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 2. MEDICAID RECOVERY PROGRAM

317:35-9-15. Medicaid recovery

(a) **General overview.** The Omnibus Budget Reconciliation Act of 1993 mandates the ~~state~~ State to seek recovery against the estate of certain Title XIX members who received medical care on or after July 1, 1994, and who were 55 years of age or older when the care was received. The payment of Title XIX by the Oklahoma Health Care Authority (OHCA) on behalf of a member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the ~~Authority~~ OHCA subject to recovery by legal action either in the form of a lien filed against the real property of the member and/or a claim made against the estate of the member. Only Title XIX received on or after July 1, 1994, will be subject to provisions of this Part. Recovery for payments made under Title XIX for nursing care is limited by several factors, including the family composition at the time the lien is imposed and/or at the time of the member's death and by the creation of undue hardship at the time the lien is imposed or the claim is made against the estate. [See OAC ~~317:35-5-41(c)(6)(H)~~ 317:35-5-41.8(a)(3)(H) for consideration of home property as a countable resource.] State Supplemental Payments are not considered when determining the countable income. The types of medical care for which recovery can be sought include:

(1) nursing facility services~~,~~;
(2) home and community based services~~,~~;
(3) related hospital services~~,~~;
(4) prescription drug services~~,~~;
(5) physician services~~,~~; and
(6) transportation services.

(b) **Recovery through lien.** The Oklahoma Health Care Authority (OHCA) may file and enforce a lien, after notice and opportunity for a hearing (OKDHS will conduct hearings), against the real property of a member who is an inpatient in a nursing facility, ICF/MR or other medical institution in certain instances.

(1) **Exceptions to filing a lien.**

(A) A lien may not be filed on the home property if the member's family includes:

(~~A~~ i) a surviving spouse residing in the home~~, or~~ ;

(~~B~~ ii) a child or children age 20 or less lawfully residing in the home~~, or~~ ;

(~~C~~ iii) a disabled child or children of any age lawfully residing in the home~~,~~ ; or

(~~D~~ iv) a brother or sister of the member who has an equity interest in the home and has been residing in the home for at least one year immediately prior to the member's admission to the nursing facility and who has continued to live there on a continuous basis since that time.

(B) If an individual covered under an Oklahoma Long-term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual for the amount of assets or resources disregarded.

(2) **Reasonable expectation to return home.** A lien may be filed only after it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return to the home. To return home means the member leaves the nursing facility and resides in the home on which the lien has been placed for a period of at least 90 days without being re-admitted as an inpatient to a facility providing nursing care. Hospitalizations of short duration that do not include

convalescent care are not counted in the 90 day period. Upon certification for Title XIX for nursing care, OKDHS provides written notice to the member that a one-year period of inpatient care ~~shall constitute~~ constitutes a determination by the OKDHS that there is no reasonable expectation that the member will be discharged and return home for a period of at least 90 days. The member or the member's representative is asked to declare intent to return home by signing the OKDHS Form 08MA024E, Acknowledgment of Intent to Return Home/Medicaid Recovery Program ~~form~~. Intent is defined here as a clear statement of plans in addition to other evidence and/or corroborative statements of others. Should the intent be to return home, the member must be informed that a one-year period of care at a nursing facility or facilities constitutes a determination that the member cannot reasonably be expected to be discharged and return home. When this determination has been made, the member receives a notice and opportunity for hearing. This notification occurs prior to filing of a lien. At the end of the 12-month period, a lien may be filed against the member's real property unless medical evidence is provided to support the feasibility of his/her returning to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for the return to the home.

(3) **Undue hardship waiver.** When enforcing a lien or a recovery from an estate [see (c) of this Section] would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that the individual's health or life would be endangered. Undue hardship exists when application of the rule would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, when the individual or his/her family is merely inconvenienced or when their ~~life style~~ lifestyle is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual will receive written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual will receive written notice of the process under which an adverse determination can be appealed. The OHCA Legal Division staff will receive notification on all undue hardship waiver decisions.

(4) **Filing the lien.** After it has been determined that the member cannot reasonably be expected to be discharged from the nursing facility and return home and the member has been given notice of an intent to file a lien against the real property and an opportunity for a hearing on the matter, a lien is filed by the Oklahoma Health Care Authority, Third Party Liability Unit, for record against the legal description of the real property in the office of the county clerk of the county in which the property is located. A copy of the lien is sent by OHCA to the member or his/her representative ~~by certified mail~~. The lien must contain the following information:

(A) the name and mailing address of the member, spouse, legal guardian, authorized representative, or individual acting on behalf of the member~~,~~;

(B) the amount of Title XIX paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for Title XIX on the member's behalf~~,~~;

(C) the date the member began receiving compensated inpatient care at a nursing facility or nursing facilities, intermediate care facility for the mentally retarded or other medical institution~~,~~;

(D) the legal description of the real property against which the lien will be recorded~~,~~; and

(E) the address of the Oklahoma Health Care Authority.

(5) **Enforcing the lien.** The lien filed by OHCA for Title XIX correctly received may be enforced before or after the death of the member. But it may be enforced only:

(A) after the death of the surviving spouse of the member or until such time as the surviving spouse abandons the homestead to reside elsewhere;

(B) when there is no child of the member, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the member, natural or adopted, who is blind or disabled, as defined in OAC 317:35-1-2, residing in the home;

(D) when no brother or sister of the member is lawfully residing in the home, who has resided there for at least one year immediately before the date of the member's admission to the nursing facility, and has resided there on a continuous basis since that time; and

(E) when no son or daughter of the member is lawfully residing in the home who has resided there for at least two years immediately before the date of the member's admission to the nursing facility, and establishes to the satisfaction of the ~~DHS~~ OKDHS that he or she provided care to the member which permitted the member to reside at home rather than in an institution and has resided there on continuous basis since that time.

(6) **Dissolving the lien.** The lien remains on the property even after transfer of title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The member or member's representative may discharge the lien at any time by paying the amount of lien to the OHCA. Should the payment of the debt secured by the lien be made to the county office, the payment is forwarded to OHCA/Third Party Liability, so that the lien can be released within 50 days. After that time, the member

or the member's representative may request in writing that it be done. This request must describe the lien and the property with reasonable certainty. By statute, a fine may be levied against the lien holder if it is not released in a timely manner.

(B) The member leaves the nursing facility and resides in a property to which the lien is attached, for a period of more than 90 days without being re-admitted to a facility providing nursing care, even though there may have been no reasonable expectation that this would occur. If the member is re-admitted to a nursing facility during this period, and does return to his/her home after being released, another 90 days must be completed before the lien can be dissolved.

(7) **Capital resources.** Rules on the determination of capital resources for individuals related to the aged, blind, or disabled (See OAC 317:35-5-41 through 317:35-5-41.7) apply to the proceeds received for the property in excess of the amount of the lien after the lien is satisfied.

(c) **Recovery from estates.**

(1) If the member was age 55 or older when the nursing care was received, adjustment or recovery may be made only after the death of the individual's spouse, if any, and at a time when there are no surviving children age 20 or less and no surviving disabled children of any age living in the home. Oklahoma Statutes contain stringent time frames concerning when and how claims against an estate in probate are filed and paid. Therefore, timely updating of computer input forms indicating the death of the member is crucial to insure the OHCA's ability to file timely against the estate.

(2) The estate consists of all real and personal property and other assets included in member's estate as defined by Title 58 of the Oklahoma Statutes. Although county staff ordinarily will not be responsible for inventorying or assessing the estate, assets and property that are not considered in determining eligibility should be documented in the case record.

(3) After updating of computer input form indicating member's death, a computer generated report is sent to OHCA/Third Party Liability (TPL). This report will serve as notification to OHCA/TPL to initiate estate recovery.

(4) Undue hardship waivers may be granted for estate recovery as provided in (b)(3) of the Section.

(5) If an individual covered under an Oklahoma Long-Term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual's estate for the amount of assets or resources disregarded.

PART 5. DETERMINATION OF MEDICAL ELIGIBILITY FOR ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

317:35-9-45. Determination of medical eligibility for care in a private ICF/MR

(a) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/MR care is based on results of a current comprehensive psychological evaluation by a licensed psychologist or state staff psychologist, documentation of MR or related condition prior to age 22, and the need for active treatment according to federal standards. Pre-approval is not necessary for individuals who are severely or profoundly retarded. Pre-approval is made by LOCEU analysts.

(b) **Medical eligibility for ICF/MR services.** Within ~~30~~ 10 calendar days after services begin, the facility must submit the original of the ~~Long-Term Care Assessment form (LTC-300)~~ Nursing Facility Level of Care Assessment (Form LTC-300R) to LOCEU. Required attachments include current (within 90 days of requested approval date) medical information signed by a physician, a current (within 12 months of requested approval date) psychological evaluation, a copy of the pertinent section of the Individual Developmental Plan or other appropriate documentation relative to discharge planning and the need for ICF/MR level of care, and a statement that the ~~client~~ member is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on MEDATS. Pre-approval is not needed for individuals who are classified as being severely or profoundly mentally retarded on current psychological evaluation.

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

PART 7. DETERMINATION OF FINANCIAL ELIGIBILITY

317:35-9-67. Determining financial eligibility of categorically needy individuals

Financial eligibility for ICF/MR, HCBW/MR, and individuals age 65 or older in mental health hospitals medical care for categorically needy individuals is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.** In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(A) spouse; and

(B) parent(s) and minor children of their own. Individuals related to AFDC but not receiving a money

payment are not entitled to one-half income disregard following the earned income deduction.

(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule X.

(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule I. A.

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the individual's countable income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule VI. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering an ICF/MR, see OAC 317:35-9-68 (a)(3) to determine financial eligibility.

(A) The categorically needy standard on OKDHS Appendix C-1, Schedule VI, is applicable for individuals related to ABD. If the individual is in an ICF/MR and has received services for 30 days or longer, the categorically needy standard in OKDHS Appendix C-1, Schedule VIII. B., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard on OKDHS Appendix C-1, Schedule VI, is used. The rules on determination of income and resources are applicable only when an individual has entered ~~a~~ an ICF/MR and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends [Refer to OAC 317:35-9-68 (a)(3)(B)(x)]. An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the member and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(B) In determining eligibility for HCBW/MR services, refer to OAC 317:35-9-68(b).

(C) In determining eligibility for individuals age 65 or older in mental health hospitals, refer to OAC 317:35-9-68(c).

(3) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF, ICF/MR or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for SoonerCare if the individual is eligible at institutionalization. If the individual is not eligible for SoonerCare at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for SoonerCare. Any subsequent transfer is also subject to this rule. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's child who is under 21 or who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to OKDHS

State Office, FSSD, Health Related and Medical Services, for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF services and the continuance of eligibility for other SoonerCare services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual. The cost of care during the penalty period cannot be used to shorten or end the penalty period.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, HCBW/MR, or ADvantage waiver services for a period of resource ineligibility.

(4) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look-back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an ICF/MR or receiving HCBW/MR services.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months dropping any leftover portion) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

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

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization~~,~~;

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer~~,~~;

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance~~,~~;

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child~~,~~;

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse

if the assets are not subsequently transferred to still another person for less than fair market value~~,~~ ;

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65~~,~~ ; or

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of ICF/MR or HCBW/MR services and the continuance of eligibility for other SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for NF, ICF/MR, HCBW/MR, or ADvantage waiver services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated ~~shall be~~ is considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(5) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance. However, individuals that have purchased an Oklahoma Long-Term Care Partnership Program approved policy may be completely or partially exempted from this Section depending on the monetary extent of the insurance benefits paid.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an ICF/MR or receiving HCBW/MR services.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; ~~or~~ and

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) when there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

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

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse; or

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security; or

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purpose of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of ICF/MR or HCBW/MR services and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services or HCBW for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated ~~shall be~~ is considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(6) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-10. Determining financial eligibility/categorical relationship for the ADvantage program

Financial eligibility for the ADvantage program is determined as follows:

(1) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual categorically related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see OAC 317:35-19-21 to determine financial eligibility.

(A) The categorically needy standard on OKDHS Appendix C-1, Schedule VI, is applicable for individuals categorically related to ABD.

(B) If the individual is receiving ADvantage program services and has received services for 30 days or longer, the categorically needy standard in OKDHS Appendix C-1, Schedule VIII. B.1., is used. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends. If the individual does not require services past the 30 days, the categorically needy standard in OKDHS Appendix C-1, Schedule VI., is used.

(2) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving ADvantage waiver services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for Title XIX if the individual is eligible at institutionalization. If the individual is not eligible for Title XIX at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for Title XIX. Any subsequent transfer is also subject to the rules in this paragraph. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility level of care in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) the transfer was prior to July 1, 1988;

(ii) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child who is under age 21 or is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the ADvantage program; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's entry into the ADvantage program;

(iii) the individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility;

(iv) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance;

(v) the resource was transferred to the individual's minor child who is blind or totally disabled;

(vi) the resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value; or

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment for ADvantage program services and the continuance of eligibility for other Title XIX services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for ADvantage program services for a period of resource ineligibility.

(3) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for SoonerCare. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is receiving ADvantage program services.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in an NF level of care in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

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

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child who is under age 21 or is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of ADvantage program services and the continuance of eligibility for other SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for ADvantage program services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated ~~shall be~~ is considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(4) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for SoonerCare. However, individuals that have purchased an Oklahoma Long-Term Care Partnership Program approved policy may be completely or partially exempted from this Section depending on the monetary extent of the insurance benefits paid.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is receiving ADvantage program services.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; ~~or~~ and

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) when there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

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

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse; or

(II) the individual's child who is under age 21 or is blind or totally disabled as determined by Social Security; or

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of ADvantage

program services and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for ADvantage program services for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated ~~shall be~~ is considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(5) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-4. Medicaid recovery

(a) **General overview.** The Omnibus Budget Reconciliation Act of 1993 mandates the state to seek recovery against the estate of certain Title XIX members who received medical care on or after July 1, 1994, and who were 55 years of age or older when the care was received. The payment of Title XIX by the Oklahoma Health Care Authority (OHCA) on behalf of a member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the ~~Authority~~ OHCA subject to recovery by legal action either in the form of a lien filed against the real property of the member and/or a claim made against the estate of the member. Only Title XIX received on or after July 1, 1994, will be subject to provisions of this part. Recovery for payments made under Title XIX for nursing care is limited by several factors, including the family composition at the time the lien is imposed and/or at the time of the member's death and by the creation of undue hardship at the time the lien is imposed or the claim is made against the estate. [See OAC ~~317:35-5-41(c)(6)(H)~~ 317:35-5-41.8(a)(3)(H) for consideration of home property as a countable resource.] State Supplemental Payments are not considered when determining the countable income. The types of medical care for which recovery can be sought include:

(1) nursing facility services,
(2) home and community based services,
(3) related hospital services,
(4) prescription drug services,
(5) physician services, and
(6) transportation services.

(b) **Recovery through lien.** The Oklahoma Health Care Authority (OHCA) may file and enforce a lien, after notice and opportunity for a hearing, (OKDHS will conduct hearings) against the real property of a member who is an inpatient in a nursing facility, ICF/MR or other medical institution in certain instances.

(1) **Exceptions to filing a lien.**

(A) A lien may not be filed on the home property if the member's family includes:

(~~A~~ i) a surviving spouse residing in the home~~, or~~ ;

(~~B~~ ii) a child or children age 20 or less lawfully residing in the home~~, or~~ ;

(~~C~~ iii) a disabled child or children of any age lawfully residing in the home~~,~~ ; or

(~~D~~ iv) a brother or sister of the member who has an equity interest in the home and has been residing in the home for at least one year immediately prior to the member's admission to the nursing facility and who has continued to live there on a continuous basis since that time.

(B) If an individual covered under an Oklahoma Long-Term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual for the amount of assets or resources disregarded.

(2) **Reasonable expectation to return home.** A lien may be filed only after it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return to the home. To return home means the member leaves the nursing facility and resides in the home on which the lien has been placed for a period of at least 90 days without being

re-admitted as an inpatient to a facility providing nursing care. Hospitalizations of short duration that do not include convalescent care are not counted in the 90 day period. Upon certification for Title XIX for nursing care, OKDHS provides written notice to the member that a one-year period of inpatient care ~~shall constitute~~ constitutes a determination by the OKDHS that there is no reasonable expectation that the member will be discharged and return home for a period of at least three months. The member or the member's representative is asked to declare intent to return home by signing the OKDHS Form 08MA024E, Acknowledgment of Intent to Return Home/Medicaid Recovery Program ~~form~~. Intent is defined here as a clear statement of plans in addition to other evidence and/or corroborative statements of others. Should the intent be to return home, the member must be informed that a one-year period of care at a nursing facility or facilities constitutes a determination that the member cannot reasonably be expected to be discharged and return home. When this determination has been made, the member receives a notice and opportunity for hearing. This notification occurs prior to filing of a lien. At the end of the 12-month period, a lien may be filed against the member's real property unless medical evidence is provided to support the feasibility of his/her returning to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for the return to the home.

(3) **Undue hardship waiver.** When enforcing a lien or a recovery from an estate [see (C) of this Section] would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that the individual's health or life would be endangered. Undue hardship exists when application of the rule would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, where the individual or his/her family is merely inconvenienced or where their ~~life style~~ lifestyle is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual will receive written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual will receive written notice of the process under which an adverse determination can be appealed. The OHCA Legal Division staff will receive notification on all undue hardship waiver decisions.

(4) **Filing the lien.** After it has been determined that the member cannot reasonably be expected to be discharged from the nursing facility and return home and the member has been given notice of the intent to file a lien against the real property and an opportunity for a hearing on the matter, a lien is filed by the Oklahoma Health Care Authority, Third Party Liability Unit, for record against the legal description of the real property in the office of the county clerk of the county in which the property is located. A copy of the lien is sent by OHCA to the member or his/her representative ~~by certified mail~~. The lien must contain the following information:

(A) the name and mailing address of the member, member's spouse, legal guardian, authorized representative, or individual acting on behalf of the member,

(B) the amount of Title XIX paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for XIX on the member's behalf,

(C) the date the member began receiving compensated inpatient care at a nursing facility or nursing facilities, intermediate care facility for the mentally retarded or other medical institution,

(D) the legal description of the real property against which the lien will be recorded, and

(E) the address of the Oklahoma Health Care Authority.

(5) **Enforcing the lien.** The lien filed by the OHCA for Title XIX correctly received may be enforced before or after the death of the member. But it may be enforced only:

(A) after the death of the surviving spouse of the member or until such time as the surviving spouse abandons the homestead to reside elsewhere;

(B) when there is no child of the member, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the member, natural or adopted, who is blind or disabled as defined in, OAC 317:35-1-2 residing in the home;

(D) when no brother or sister of the member is lawfully residing in the home, who has resided there for at least one year immediately before the date of the member's admission to the nursing facility, and has resided there on a continuous basis since that time; and

(E) when no son or daughter of the member is lawfully residing in the home who has resided there for at least two years immediately before the date of the member's admission to the nursing facility, and establishes to the satisfaction of the OKDHS that he or she provided care to the member which permitted the member to reside at home rather than in an institution and has resided there on continuous basis since that time.

(6) **Dissolving the lien.** The lien remains on the property even after transfer of title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The member or member's representative may discharge the lien at any time by paying the amount of lien to the OHCA. Should the payment of the debt secured by the lien be made to the county office, the payment is forwarded to OHCA/Third Party Liability, so that the lien can be

released within 50 days. After that time, the member or the member's representative may request in writing that it be done. This request must describe the lien and the property with reasonable certainty. By statute, a fine may be levied against the lien holder if it is not released in a timely manner.

(B) The member leaves the nursing facility and resides in a property to which the lien is attached, for a period of more than 90 days without being re-admitted to a facility providing nursing care, even though there may have been no reasonable expectation that this would occur. If the member is re-admitted to a nursing facility during this period, and does return to his/her home after being released, another 90 days must be completed before the lien can be dissolved.

(7) **Capital resources.** Rules on the determination of capital resources for individuals related to the aged, blind, or disabled (See OAC 317:35-5-41 through 317:35-5-41.7) apply to the proceeds received for the property in excess of the amount of the lien after the lien is satisfied.

(c) **Recovery ~~From Estates~~ from estates.**

(1) If the member was age 55 or older when the nursing care was received, adjustment or recovery may be made only after the death of the individual's spouse, if any, and at a time when there are no surviving children age 20 or less and no surviving disabled children of any age living in the home. Oklahoma Statutes contain stringent time frames concerning when and how claims against an estate in probate are filed and paid. Therefore, timely updating of computer input forms indicating the death of the member is crucial to insure the OHCA's ability to file timely against the estate.

(2) The estate consists of all real and personal property and other assets included in member's estate as defined by Title 58 of the Oklahoma Statutes. Although county staff ordinarily will not be responsible for inventorying or assessing the estate, assets and property that are not considered in determining eligibility should be documented in the case record.

(3) After updating of computer input form indicating member's death, a computer generated report is sent to OHCA/Third Party Liability (TPL). This report will serve as notification to OHCA/TPL to initiate estate recovery.

(4) Undue hardship waivers may be granted for estate recovery as provided in (b)(3) of the Section.

(5) If an individual covered under an Oklahoma Long-Term Care Partnership Program approved policy received benefits for which assets or resources were disregarded as provided for in OAC 317:35-5-41.9, the Oklahoma Health Care Authority will not seek recovery from the individual's estate for the amount of assets or resources disregarded.

317:35-19-9. PASRR screening process

(a) **Level I screen for PASRR.**

(1) OHCA Form ~~LTC-300A~~ LTC-300R, ~~Long-Term Care Pre-admission Screen, Section I~~ Nursing Facility Level of Care Assessment, must be completed by an authorized NF official or designee. An authorized NF official or designee must consist of one of the following:

~~(A) A licensed nurse from OKDHS;~~

(~~B~~ A) The nursing facility administrator or co-administrator;

(~~C~~ B) A licensed nurse, social service director, or social worker~~, or other authorized NF official or designee~~ from the nursing facility; or

(~~D~~ C) A licensed nurse, social service director, or social worker from the hospital.

~~(2) Section II of the LTC-300A must be completed by an authorized NF official or designee.~~

(~~3~~ 2) Prior to admission, the authorized NF official must evaluate the properly completed OHCA Form ~~LTC-300A~~ LTC-300R and the Minimum Data Set (MDS), if available, as well as all other readily available medical and social information, to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. ~~This evaluation~~ Form LTC-300R constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II is necessary prior to allowing the patient to be admitted.

(~~4~~ 3) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A "yes" response to any question from ~~the Level I Screen~~ Form LTC-300R, Section E, will ~~result in a consultation with LOCEU for the~~ require the nursing facility to contact the Level of Care Evaluation Unit (LOCEU) for a consultation to determine if a Level II assessment ~~prior to admission~~ is needed. The NF is also responsible for consulting with the LOCEU regarding any MI/MR/related condition information that becomes known either from completion of the MDS or throughout the resident's stay. The original ~~LTC-300A~~ Form LTC-300R ~~form and copy, as well as a copy of the MDS, comprises the PASRR eligibility information packet, and is to be~~ must be submitted to the LOCEU by mail within ~~30~~ 10 days of the resident's admission. SoonerCare payment may not be made for a resident whose LTC-300R requirements have not been satisfied in a timely manner.

(~~5~~ 4) Upon receipt and review of the PASRR eligibility information packet, the LOCEU may, in coordination with the Oklahoma Department of Human Services (OKHDS) area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II assessment is not required, as determined by the LOCEU, the area nurse, or nurse designee, documents this and continues with the process of determining medical eligibility. If a Level II is required, a medical decision is not made until the area nurse is notified of the outcome of the Level II assessment. The results of the Level II assessment are considered in the medical eligibility decision. The area nurse, or nurse designee, makes the medical eligibility decision within ten working days of receipt of the medical information when a Level II assessment is not required. If a Level II

assessment is required, the area nurse makes the decision within five working days if appropriate.

(b) **Pre-admission Level II assessment for PASRR.** The authorized official is responsible for consulting with the OHCA LOCEU in determining whether a Level II assessment is necessary. The decision for Level II assessment is made by the LOCEU.

(1) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR assessment:

(A) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past~~.~~;

(B) The patient does not have a diagnosis of mental retardation or related condition~~.~~; or

(C) The patient has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery (Exempted Hospital Discharge). If an individual is admitted to an NF based on Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed only if all of the following three conditions are met:

(i) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(ii) The individual must require NF services for the condition for which he/she received care in the hospital; and

(iii) The attending physician must certify before admission to the facility that the individual is likely to require less than 30 days of nursing facility services. The nursing facility will be required to furnish documentation to the OHCA upon request.

(2) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility until the LOCEU is contacted to determine if a Level II PASRR assessment must be performed. Results of any Level II PASRR assessment ordered must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(3) The OHCA Level of Care Evaluation Unit authorizes Advance Group Determinations for the MI and MR Authorities in the categories listed in the following categories listed in (A) through (C) of this paragraph. Preliminary screening by the LOCEU should indicate eligibility for nursing facility level of care prior to consideration of the provisional admission.

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

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

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

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

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

(i) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

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

(c) **PASRR Level II resident review.** The resident review is used primarily as a follow-up to the pre-admission assessment.

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

(2) A Level II resident review may be conducted the following year for each resident of a nursing facility who was found to experience a serious mental illness with no primary diagnosis of dementia on his or her pre-admission Level II to determine whether, because of the resident's physical and mental condition, the resident requires specialized services.

(3) A Level II resident review may be conducted for each resident of a nursing facility who has mental illness or mental retardation or other related condition when there is a significant change in the resident's mental condition. If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to have a consultation with the LOCEU concerning the need to conduct a resident review.

(4) Individuals who were determined to have a serious mental illness (as defined by CMS) on their last PASRR Level II evaluation will receive a resident review at least within one year of the previous evaluation.

(d) **Results of pre-admission Level II assessment and Resident Review.** Through contractual arrangements between the Oklahoma Health Care Authority and the Mental Illness/Mental Retardation ~~authorities~~ Authorities/Community Mental Health Centers, individualized assessments are conducted and findings presented in written evaluative reports. The reports recommend if nursing facility services are needed, if specialized services or less than specialized services are needed, and if the individual meets the federal PASRR definition of mental illness or mental retardation or related conditions. Evaluative reports are delivered to the ~~Authority~~ OHCA's LOCEU within federal regulatory and state contractual timelines to allow the LOCEU to process formal, written notification to patient, guardian, NF and significant others.

(e) **Evaluation of pre-admission Level II or Resident Review assessment to determine Medicaid medical eligibility for long term care.** The determination of medical eligibility for care in a nursing facility is made by the area nurse (or nurse designee) unless the individual has mental retardation or related condition or a serious mental illness (as defined by CMS). The procedures for obtaining and submitting information required for a decision are outlined in this subsection. When an active long term care patient enters the facility and nursing care is being requested:

(1) The pre-admission screening process must be performed and must allow the patient to be admitted.

(2) The facility will notify the local county office by the OKDHS ~~form ABCDM-83~~ Form 08MA083E, Notification Regarding Patient in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice and ~~ABCDM-96 form~~ Form 08MA084E, Management of Recipient's Funds, of the ~~client~~ member's admission.

(3) The local county office will send the NF the OKDHS ~~form ABCDM-37D~~ Form 08MA038E, Notice ~~to Nursing Care Facility or LTCA~~ Regarding Financial Eligibility, indicating actions that are needed or have been taken regarding the ~~client~~ member.

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

The Preadmission Screening process does not apply to readmission of an individual back to the same NF following a continuous medical hospital stay. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. Inter-facility transfers are also subject to preadmission screening. In the case of transfer of a resident from an NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASRR ~~LTC-300A~~ Form LTC-300R and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated ~~LTC-300A~~ Form LTC-300R that reflects the resident's current status to LOCEU within ~~30~~ 10 days of the transfer. Failure to do so could result in recoupment of funds.

317:35-19-16. PASRR appeals process

(a) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening or an annual resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county OKDHS office to discuss a hearing. Forms for requesting a fair hearing (OKDHS ~~form H-1~~ Form 13MP001E, Request for a Fair Hearing), as well as assistance in completing the forms, can be obtained at the local county OKDHS office. Any request for a hearing must be made no later than ~~30~~ 20 days following the date of written notice. Appeals of these decisions are available under OAC 317:2-1-2. There is no distinction between the ~~Medicaid~~ SoonerCare and ~~non-Medicaid~~ non-SoonerCare patient; therefore, all individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

(b) When the individual is found to experience ~~MR or MI~~ MI, MR, or related condition through the Level II screen, the PASRR determination made by the MR/MI authorities cannot be countermanded by the ~~state Medicaid agency~~ Oklahoma Health Care Authority, either in the claims process or through other utilization control/review processes, or by the ~~state survey and certification agency~~ Oklahoma State Department of Health. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the MR/MI authorities.

317:35-19-18. Change in level of long-term medical care

(a) When a ~~client~~ member is receiving Personal Care services and requests nursing facility care or when a ~~client~~ member is in a nursing facility and requests Personal Care services, a new ~~UCAT~~ Uniform Comprehensive Assessment Tool (UCAT) is required. The UCAT is updated if the ~~client~~ member is in the nursing facility and requests ADvantage waiver services. No new medical decision is needed. Also, no new medical decision is needed for admission to a nursing facility from home if the period of absence from the nursing facility is less than 90 days. No new medical decision is needed if the ~~client~~ member loses financial eligibility but maintains medical eligibility by having a current medical decision and by remaining in the facility during the period of financial ineligibility.

(b) When there is a decision that a ~~client~~ member approved for one level of long term care is eligible for a different level of care, the local office is advised by update of the file. If the change is from facility care to Personal Care, a new UCAT, Part III care plan, service plan, and other required forms are submitted to the area nurse, or nurse designee. If the Personal Care ~~recipient~~ member requests a decision regarding facility care prior to admission to a facility, the LTC nurse is responsible for submitting the UCAT, Part III, and ~~LTC-300A~~ Form LTC-300R to the area nurse, or nurse designee for a decision. When the area nurse, or nurse designee, determines that a nursing care ~~recipient~~ member no longer needs this level of care, payment may be continued while the ~~recipient~~ member, or other responsible person, makes other arrangements. The length of such continuation of payment depends upon the circumstances, but must allow time for the appropriate advance notice to the ~~recipient~~ member and cannot exceed 60 days from the date of the decision.

317:35-19-20. Determining financial eligibility of categorically needy individuals

Financial eligibility for NF medical care is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.**

(A) In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(i) spouse; and

(ii) parent(s) and minor children of their own.

(I) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule X.

(II) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule I. A.

(B) Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see paragraph (3) of OAC 317:35-19-21 to determine financial eligibility.

(A) The categorically needy standard on OKDHS Appendix C-1, Schedule VI., is applicable for individuals related to ABD. If the individual is in an NF and has received services for 30 days or longer, the categorically needy standard in OKDHS Appendix C-1, Schedule VIII. B.1., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard in OKDHS Appendix C-1, Schedule VI., is used. The rules on determination of income and resources are applicable only when an individual has entered a NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(B) An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the member and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(3) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF, ICF/MR, or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for SoonerCare if the individual is eligible at institutionalization. If the individual is not eligible for SoonerCare at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for SoonerCare. Any subsequent transfer is also subject to this policy. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty

period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's minor child who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, ICF/MR, ~~HCBWS/MR~~ HCBW/MR, or ADvantage waiver services for a period of resource ineligibility.

(4) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

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

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated ~~shall be~~ is considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(5) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance. However, individuals that have purchased an Oklahoma Long-Term Care Partnership Program approved policy may be completely or partially exempted from this Section depending on the monetary extent of the insurance benefits paid.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; ~~or~~ and

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average cost to a private patient in a nursing facility in Oklahoma. There is

no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

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

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated ~~shall be~~ is considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(6) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI

317:35-22-1. Pregnancy related benefits covered under Title XXI

(a) The revision of the definition of child at 42 CFR 457.10, allows states to cover pregnancy related services under Title XXI, individuals who would not otherwise qualify for services under SoonerCare. This coverage is intended to benefit newborn children who are Oklahoma residents at birth.

(b) To receive pregnancy related services under Title XXI, the pregnant woman must:

(1) be otherwise ineligible for any other categorically SoonerCare eligibility group;

(2) reside in Oklahoma with the intent to remain at the time services are rendered;

(3) have household income at or below 185% FPL; and

(4) not be covered by creditable insurance, the term creditable insurance means coverage under a group health plan or other health insurance as defined in the Health Insurance Portability and Accountability Act (HIPAA).

(c) All services are subject to post payment review by the OHCA or its designated agent.

317:35-22-2. Scope of coverage

(a) Pregnancy related services provided are prenatal, delivery, postnatal care when included in the global delivery fee, and other related services that are medically necessary to optimize pregnancy outcomes within the defined program benefits.

(b) Only two visits per month for other related services to evaluate and/or treat conditions that may adversely impact the pregnancy are covered.

317:35-22-2.1. Non-covered services

(a) Services and benefits provided to evaluate and/or treat maternal conditions that are not related to or impact the pregnancy outcome.

(b) Non-emergency transportation.

(c) Dental.

317:35-22-3. Need for pregnancy related services for the unborn child

The woman must be pregnant and not eligible under OAC 317:35-5-6.

317:35-22-4. Citizenship

Citizenship is not a factor of eligibility for the pregnant individual. However, as this coverage is intended to benefit the newborn child who will be a U.S. citizens at birth, the pregnant individual will not qualify for this coverage if she intends to leave Oklahoma before the child is born.

317:35-22-5. Social Security number

Social Security Number and Alienage is not a factor of eligibility for pregnant individuals who are covered under this program.

317:35-22-6. Income

Income is determined in accordance with OAC 317:35-10 for individuals categorically related to pregnancy related benefits covered under Title XXI.

317:35-22-7. Resources

There is no resource test for pregnancy related services covered under Title XXI.

317:35-22-8. Period of eligibility

The individual who is covered for pregnancy related benefits under Title XXI retains eligibility for the prenatal period and delivery of the child. Eligibility is terminated at the end of the month of the delivery or upon termination of the pregnancy.

317:35-22-9. Notification of eligibility

When eligibility for the pregnancy benefits covered under Title XXI is established, the OKDHS county office updates the computer form and the appropriate notice is computer generated to the member and provider.

317:35-22-10. Denials

If denied the computer input form is updated and the appropriate notice is computer generated to the client and provider.

317:35-22-11. Closures

Health benefit cases are closed by the OKDHS county office at any time during the certification period that the case becomes ineligible. A computer-generated notice is sent to the member and the provider.

[OAR Docket #08-688; filed 4-22-08]

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

[OAR Docket #08-690]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41. [AMENDED]
317:35-5-41.1. through 317:35-5-41.8. [NEW]
317: 35-5-41.10. through 317:35-5-41.11. [NEW]
317:35-5-45. through 317:35-5-47. [AMENDED]
317:35-5-49. [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 5. Determination of Medical Eligibility for ICF/MR, HCBW/MR, and Individuals Age 65 and Older in Mental Health Hospitals
317:35-9-48.1. [NEW]
Part 7. Determination of Financial Eligibility
317:35-9-65. [AMENDED]
317:35-9-68. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-9. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-19. [AMENDED]
317:35-19-21. [AMENDED]
(Reference APA WF # 07-21 and 07-24)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 97-248 Tax Equity and Fiscal Responsibility Act of 1982; Public Law 109-171 Deficit Reduction Act of 2005
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Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
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Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
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317:35-5-41.1. through 317:35-5-41.8. [NEW}
317:35-5-41.10. through 317:35-5-41.11. [NEW]
317:35-5-45. through 317:35-5-47. [AMENDED]
317:35-5-49. [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 7. Determination of Financial Eligibility
317:35-9-65. [AMENDED]
317:35-9-68. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-9. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-19. [AMENDED]
317:35-19-21. [AMENDED]
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07-1413
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules are revised to establish guidelines for determining Intermediate Care Facility for the Mentally Retarded (ICF/MR)level of care for children as a condition of eligibility for the Tax Equity and Fiscal Responsibility Act (TEFRA). The TEFRA program provides needed services to children allowing them to remain in their own home. The institutional level of care determination allows the child's eligibility to be determined as though the child were institutionalized and therefore only his/her income and resources are considered in the eligibility determination. If guidelines are not established, children may be inappropriately institutionalized. Rule revisions are needed to add guidelines for ICF/MR level of care to provide a necessary component of children's applications to the TEFRA program.

Agency rules are revised to comply with Sections of Public Law 109-171, known as the Deficit Reduction Act of 2005 (DRA), regarding SoonerCare eligibility for long-term care services. The DRA requires tightening of eligibility rules in certain areas to help deter the abuse of sheltering of assets in order to qualify for long-term care services provided by Medicaid. Section 6012 of the DRA requires a change in the disclosure and treatment of annuities purchased on or after February 8, 2006. Prior to the DRA, annuities were treated as exempt assets and no consideration of an individual's annuities held or recently transferred was given when determining eligibility for long-term care services provided by SoonerCare. Section 6014 of the DRA establishes an upper limit for the excluded value of a home when determining the value of an individual's assets for purposes of SoonerCare eligibility for long-term care services. An individual will not be eligible for nursing facility services or other long-term care services provided by SoonerCare if the equity interest in his or her home exceeds $500,000. Prior to the DRA, the full value of any primary residence was disregarded when determining eligibility for long-term care services provided by SoonerCare. Section 6016(c) of the DRA requires that the definition of assets for purposes of determining SoonerCare eligibility include certain funds used to purchase a promissory note, loan or mortgage. Section 6016(d) of the DRA requires that the definition of assets for purposes of determining SoonerCare eligibility include any purchase of a life estate interest in another individual's home. Proposed revisions are needed to ensure federal financial participation through compliance with the DRA.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

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

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

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

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

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

(4) Only the resources of the child determined eligible for TEFRA are considered in determining eligibility.

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

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

(b) **Eligibility.** In determining eligibility based on resources, only those resources available for current use or those

which the member can convert for current use (no legal impediment involved) are considered as countable resources. Examples of legal impediments include, but are not limited to, clearing an estate, probate, petition to sell or appointment of legal guardian.

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

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

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

(4) The major types of capital resources are listed in ~~(c) and (d) of this Section~~ Sections OAC 317:35-5-41.1 through 317:35-5-41.7. The list is not intended to be all inclusive and consideration must be given to all resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(d) **Personal property.**~~

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

~~(2) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as reserve. The member's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the member does not have records to verify the amount on deposit, verification is obtained from bank records. Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the member or the Agency.~~

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

~~(B) Accounts which are owned jointly by the member and a person not receiving SoonerCare are considered available to the member in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the member is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one half of the account considered available to each.~~

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

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

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

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

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

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

~~value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.~~

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

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

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

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

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

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

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

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

~~(A) If the irrevocable election was made prior to July 1, 1986 and the member received assistance on July 1, 1986, the full amount of the irrevocable contract is not considered a countable resource. This exclusion applies only if the member does not add to the amount of the contract. Interest accrued on the contract is not considered as added by the member. Any break in assistance will require that the contract be evaluated at the time of reapplication according to rules in (B) of this paragraph.~~

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

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

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

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

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

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

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

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

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

~~(B) The amount which can be realized from notes and mortgages and similar instruments, if offered~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) Trust document;~~

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

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

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

~~(i) **Support trust.** The purpose of a support trust is the provision of support or care of a beneficiary. A support trust will generally contain language such as "to provide for the care, support and maintenance of ...", "to provide as necessary for the support of ...", or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort and general welfare." Except as provided in (I)-(III) of this unit, the amount~~

~~from a support trust deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee(s) for distribution of the maximum amount to the beneficiary. The beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise discretion with respect to distributions, may show that the amounts deemed available are not actually available by:~~

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

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

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

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

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

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

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

~~(IV) **Transfer of resources.** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the trustee's access~~

~~to the principal (for purposes of distributing it to the member or using it for the member's benefit) is restricted (e.g., if the trust stipulates that the trustee cannot access the principal but must distribute the income produced by that principal to the member, the principal is not an available resource and has, therefore, been transferred).~~

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

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

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

~~(I) the individual;~~

~~(II) the individual's spouse;~~

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

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

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

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

~~(I) In the case of a revocable trust, the principal is considered an available resource to the individual. Home property in a revocable trust under the direct control of the individual, spouse or legal representative retains the exemption as outlined in OAC 317:35-5-41(c)(6). Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the 60 months look back period.~~

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

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

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

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

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

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

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

~~(V) Establishment of this type of trust does not constitute a transfer of assets for less than~~

~~fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under the age of 65.~~

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

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

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

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

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

~~(I) The individual is in need of long term care and has countable income above the categorically needy standard for long term care (OKDHS Appendix C 1) but less than $3000 per month.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(II) The trust must be made irrevocable;~~

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

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

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

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

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

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

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

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

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

~~(A) **Annuities.**~~

~~(i) Annuities purchased prior to February 1, 2005. An annuity gives the right to receive fixed, periodic payments either for life or a term of years. The annuity instrument itself must be examined to determine the provisions and requirements of the annuity. For example, it is determined whether the individual can access the principal of the annuity; e.g., can it be cashed in. If so, the annuity is treated as a revocable trust (OAC 317:35-5-41(d)(9)(E)(iii)(I). If the individual cannot access the principal, the annuity is treated as an irrevocable trust. In this instance, it must also be determined what part of the annuity can, under any circumstances, be paid to, or for the benefit of the individual. When making such a determination, the date of application is used or, if later, the date of institutionalization (for an institutionalized individual) or the date of creation of the annuity (for a non-institutionalized individual). Also, these dates are used in determining whether the transfer of asset provisions apply to a particular annuity. If the annuity provides for payments to be made to the individual, those payments would be considered income to the individual. Any portion of the principal of the annuity that could be paid to or on behalf of the individual would be treated as a resource to the individual and portions of the annuity that cannot be paid to or for the benefit of the individual are treated as transfers of assets. Annuities may also be a transfer of assets for less than fair market value. The worker determines, in accordance with the OKDHS life expectancy tables, whether the member will receive fair market value from the annuity during his/her projected lifetime. Any funds used to purchase the annuity that will not be repaid to the member during his/her projected lifetime, are a transfer of assets and the appropriate penalty period is imposed.~~

~~(ii) Annuities purchased after January 31, 2005.~~

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

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

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

~~(i) **Countability of asset.** In each case, the document governing the retirement instrument must be examined to determine the availability of the retirement benefit at the time of application. Retirement benefits are considered countable resources if the benefits are available to the applicant and/or spouse. Availability means that the applicant and/or spouse has an option to receive retirement benefits or is actually receiving benefits. For example, a retirement instrument may make a fund available at the time of termination of~~

~~employment, at age 65, or at some other time. A retirement fund is not a countable resource if the applicant is currently working and must terminate employment in order to receive benefits. An individual may have the choice of withdrawing the monies from the retirement fund in a single payment or periodic payments (i.e., monthly, quarterly, etc.). If the individual elects to receive a periodic payment, the payments are considered as income as provided in OAC 317:35-5-42(c)(3). If the monies are received as a lump sum, the rules at OAC 317:35-5-42(c)(3)(C)(i) apply.~~

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

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

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

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

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

~~(ii) for employment purposes; or~~

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

~~(B) **Other automobiles.** The equity in other automobiles, pickups, and trucks is considered in relation to the reserve. The current market value, less encumbrances on the vehicle, is the equity. Only encumbrances that can be verified are considered in computing equity.~~

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

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

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

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

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

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

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

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

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

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

~~(ii) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.~~

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

~~(E) Indian payments or items purchased from Indian payments (including judgement funds or funds held in trust) distributed per capita by the Secretary~~

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

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

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

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

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

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

~~(K) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) **Resources of an applicant.** If the resource(s) of an applicant is in a form which is not available for immediate use, such as real estate, mineral rights, or one of many~~

~~other forms, and the applicant is trying to make the resource available, the applicant may be certified and given a reasonable amount of time to make this available. A reasonable amount of time would normally not exceed 90 days. The member is notified in writing that a period of time not to exceed 90 days will be given to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member.~~

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

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

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

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

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

~~(2) If the minor blind or disabled child:~~

~~(A) is residing in a nursing facility, or a medical facility if the confinement lasts or is expected to last for 30 days, the parent(s)' resources are not deemed to the child; or~~

~~(B) under age 19 is eligible for TEFRA, the parent's(s') resources are not deemed to the child.~~

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

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

317:35-5-41.1. Home/real property

(a) Home property is excluded from resources regardless of value unless the individual is applying for long-term care services. [See 317:35-5-41.8(a) (relating to eligibility for long-term care services)]

(b) For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile. Home property includes all property which is adjacent to the home. Home property in a revocable trust under the direct control of the individual, spouse, or legal representative retains the exemption as outlined in OAC 317:35-5-41.8(a)(2). Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered.

(1) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. When it is determined that the member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the resource. The member is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the member is making an effort to make the resource available, a reasonable period of time is given (not to exceed 90 days) to convert the resource. He/she is advised in writing that the 90-day period begins with the determination that the property be considered in relation to the resource. The 90-day period is given only if efforts are in progress to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member. A written notification is also provided to the member at any time an extension is allowed. Detailed documentation in the case record is required.

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

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

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

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

(6) Absences from home for up to 90 days for trips or visits or six months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence.

(7) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource. However, mineral rights which are not associated with the home property are considered as a resource. Since evaluation and scalability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property. Refer to (11)(B) of this subsection for treatment of mineral rights as non-trade or non-business property.

(8) The market value of real estate other than home property owned by the member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the member of a merchantable title to be determined when the resource approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral or written information which the applicant has on hand **and** counsel with persons who have specialized knowledge about this kind of resource. Refer to (11) of this subsection for exclusion of real estate that produces income.

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

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

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

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

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

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

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

an employee in connection with employment is excluded as property essential to self support. The income from the trade or business is determined as any other self-employment income.

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

317:35-5-41.2. Miscellaneous Personal property

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

(b) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a countable resource. The member's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the member does not have records to verify the amount on deposit, verification is obtained from bank records. Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the member or the Agency.

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

(2) Accounts which are owned jointly by the member and a person not receiving SoonerCare are considered available to the member in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the member is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.

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

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

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

(3) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the member's possession or by use of the OKDHS Form 08MP061E, Request to Insurance Company.

(4) Dividends which accrue and which remain with the insurance company increase the amount of resource. Dividends which are paid to the member are considered as income.

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

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

(e) **Burial funds.** Revocable burial funds not in excess of $1500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the

individual's spouse. Any amount in excess of $1500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies.

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

(2) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (1) of this subsection.

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

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

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

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

(1) If the irrevocable election was made prior to July 1, 1986, and the member received assistance on July 1, 1986, the full amount of the irrevocable contract is not considered a countable resource. This exclusion applies only if the member does not add to the amount of the contract. Interest accrued on the contract is not considered as added by the member. Any break in assistance will require that the contract be evaluated at the time of reapplication according to rules in (2) of this subsection.

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

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

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

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

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

(4) In instances where the OKDHS Form 08MA084E, Management of Recipient's Funds, is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the member.

(g) **Medical insurance.** If a member is covered by insurance other than SoonerCare, then SoonerCare is the payer of last resort and should not be bill until all other payers have paid. If payment is made directly to the member, the member must reimburse OHCA up to the amount paid by SoonerCare. Any amount remaining after payment to OHCA is considered as an available resource.

317:35-5-41.3. Automobiles, pickups, and trucks

Automobiles, pickups, and trucks are considered in the eligibility determination for SoonerCare benefits.

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

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

(B) for employment purposes; or

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

(2) **Other automobiles.** The equity in other automobiles, pickups, and trucks is considered as a countable resource. The current market value, less encumbrances on the vehicle, is the equity. Only encumbrances that can be verified are considered in computing equity.

(A) The market value of each year's make and model is established on the basis of the "Avg. Trade In" value as shown in the current publication of the National Automobile Dealers Association (NADA) on "Cars, Trucks, and Imports".

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

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

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

317:35-5-41.4. Stocks and bonds

(a) The member's equity in stocks and bonds (including U.S. Savings Bonds series A thru EE) is considered in relation to the maximum resource limit. The current market value less encumbrances is the equity. In general, determination of current market value can be obtained from daily newspaper quotations, brokerage houses, banks, etc.

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

317:35-5-41.5. Purchase of promissory notes, loans, or mortgages

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

(b) Promissory Notes, loans, and mortgages (including contracts for deed) which are income producing are liquid countable resources.

(c) For an individual who has purchased a promissory note, loan, or mortgage on or after February 8, 2006, and is applying for long-term care services, see OAC 317:35-5-41.8(b).

317:35-5-41.6. Trust accounts

Monies held in trust for an individual applying for or receiving

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

(1) **Availability determinations.** The worker should be able to determine the availability of a trust using the definitions and explanations listed in (2) of this subsection. However, in some cases, the worker may wish to submit a trust to the OKDHS State Office for determination of availability. In these instances, all pertinent data is submitted to Family Support Services Division, Attention: Health Related and Medical Services Section, for a decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Trust document;

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

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

(4) **Trust accounts established on or before August 10, 1993.** The rules found in (A) - (C) of this paragraph apply to trust accounts established on or before August 10, 1993.

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

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

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

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

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

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

(ii) **MQT resource treatment.** For revocable MQTs, the entire principal is an available resource to the member. Resources comprising the principal are subject to the individual resource exclusions (e.g., the home property exclusion) since the member can access those resource items without the intervention of the trustee. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the member, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the member (or to use it for the member's benefit), the entire principal is an available resource to the member. Resources transferred to such a trust lose individual resource consideration (e.g., home property transferred to such a trust is no longer home property and the home property exclusions do not apply). The value of the

property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to the member (or to be used for his/her benefit), but those distributions are not made, the member's countable resources increase cumulatively by the undistributed amount.

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

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

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

(5) **Trust accounts established after August 10, 1993.** The rules found in (A) - (C) of this paragraph apply to trust accounts established after August 10, 1993.

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

(i) the individual;

(ii) the individual's spouse;

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

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

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

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

(i) In the case of a revocable trust, the principal is considered an available resource to the individual. Home property in a revocable trust under the direct control of the individual, spouse or legal representative retains the exemption as outlined in OAC 317:35-5-41.8(a)(2). Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the 60 months look back period.

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

(6) **Exempt trusts.** Paragraph (5) of this subsection does not apply to the following trusts:

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

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

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

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

(iv) The exception for the trust continues after the disabled individual reaches age 65. However,

any addition or augmentation after age 65 involves assets that were not the assets of an individual under age 65; therefore, those assets are not subject to the exemption.

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

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

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

(viii) The OKDHS Form 08MA018E, Supplemental Needs Trust, is an example of the trust. Workers may give the sample form to the member or his/her representative to use or for their attorney's use.

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

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

(i) The individual is in need of long-term care and has countable income above the categorically needy standard for long-term care (OKDHS Appendix C-1) but less than $3000 per month.

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

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

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

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

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

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

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

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

(x) An example trust is included on OKDHS Form 08MA011E. Workers may give this to the member or his/her representative to use or for their attorney's use as a guide for the Medicaid Income Pension Trust.

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

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

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

(ii) The trust must be made irrevocable;

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

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

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

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

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

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

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

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

317:35-5-41.7. Retirement funds

The rules regarding the countable value, if any, of retirement funds are found in (1) - (2) of this subsection.

(1) **Annuities.**

(A) Annuities purchased prior to February 1, 2005. An annuity gives the right to receive fixed, periodic payments either for life or a term of years. The annuity instrument itself must be examined to determine the provisions and requirements of the annuity. For example, it is determined whether the individual can access the principal of the annuity; e.g., can it be cashed in. If so, the annuity is treated as a revocable trust (OAC 317:35-5-41.6(a)(5)(C)(i)). If the individual cannot access the principal, the annuity is treated as an irrevocable trust. In this instance, it must also be determined what part of the annuity can, under any circumstances, be paid to, or for the benefit of the individual. When making such a determination, the date of application is used or, if later, the date of institutionalization (for an institutionalized individual) or the date of creation of the annuity (for a non-institutionalized individual). Also, these dates are used in determining whether the transfer of asset provisions apply to a particular annuity. If the annuity provides for payments to be made to the individual, those payments would be considered income to the individual. Any portion of the principal of the annuity that could be paid to or on behalf of the individual would be treated as a resource to the individual and portions of the annuity that cannot be paid to or for the benefit of the individual are treated as transfers of assets. Annuities may also be a transfer of assets for less than fair market value. The worker determines, in accordance with the OKDHS life expectancy tables, whether the member will receive fair market value from the annuity during his/her projected lifetime. Any funds used to purchase the annuity that will not be repaid to the member during his/her projected lifetime, are a transfer of assets and the appropriate penalty period is imposed.

(B) Annuities purchased after January 31, 2005.

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

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

(C) For an individual who has purchased an annuity on or after February 8, 2006, and is applying for long-term care services, see OAC 317:35-5-41.8(c).

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

(A) **Countability of asset.** In each case, the document governing the retirement instrument must be examined to determine the availability of the retirement benefit at the time of application. Retirement benefits are considered countable resources if the benefits are available to the applicant and/or spouse. Availability means that the applicant and/or spouse has an option to receive retirement benefits or is actually receiving benefits. For example, a retirement instrument may make a fund available at the time of termination of employment, at age 65, or at some other time. A retirement fund is not a countable resource if the applicant is currently working and must terminate employment in order to receive benefits. An individual

may have the choice of withdrawing the monies from the retirement fund in a single payment or periodic payments (i.e., monthly, quarterly, etc.). If the individual elects to receive a periodic payment, the payments are considered as income as provided in OAC 317:35-5-42(c)(3). If the monies are received as a lump sum, the rules at OAC 317:35-5-42(c)(3)(C)(i) apply.

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

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

317:35-5-41.8. Eligibility regarding long-term care services

(a) **Home Property.** In determining eligibility for long-term care services for applications filed on or after January 1, 2006, home property is excluded from resources unless the individual's equity interest in his or her home exceeds $500,000.

(1) Long-term care services include nursing facility services and other long-term care services. For purposes of this Section, other long-term care services include services detailed in (A) through (B) of this paragraph.

(A) A level of care in any institution equivalent to nursing facility services; and

(B) Home and community-based services furnished under a waiver.

(2) An individual whose equity interest exceeds $500,000 is not eligible for long-term care services unless one of the following circumstances applies:

(A) The individual has a spouse who is lawfully residing in the individual's home;

(B) The individual has a child under the age of twenty-one who is lawfully residing in the individual's home;

(C) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home; or

(D) The denial would result in undue hardship. Undue hardship exists when denial of SoonerCare long-term care services based on an individual's home equity exceeding $500,000 would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life. If the undue hardship exists because the applicant was exploited, legal action must be pursued before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(3) Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The OKDHS Form 08MA010E, Acknowledgment of Temporary Absence/Home Property Policy, is completed at the time of application for nursing facility care when the applicant has home property. After explanation of temporary absence, the member, guardian or responsible person indicates whether there is or is not intent to return to the home and signs the form.

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

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

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

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

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

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

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

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

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

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

(b) **Promissory notes, loans, or mortgages.** The rules regarding the treatment of funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are found in (1) through (2) of this subsection.

(1) Funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are treated as assets transferred for less than fair market value in the amount of the outstanding balance due on the note, loan, or mortgage as of the date of the individual's application for medical assistance unless the note, loan, or mortgage meets all of the conditions in paragraphs (A) through (C) of this paragraph.

(A) The note, loan, or mortgage has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration).

(B) The note, loan, or mortgage provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made.

(C) The note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

(2) Funds used to purchase a promissory note, loan, or mortgage for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The note, loan, or mortgage was purchased before February 8, 2006; or

(B) The note, loan, or mortgage was purchased on or after February 8, 2006, and the conditions described in paragraph (1) of this subsection were met.

(c) **Annuities.** Treatment of annuities purchased on or after February 8, 2006.

(1) The entire amount used to purchase an annuity on or after February 8, 2006, is treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in (A) through (C) of this paragraph.

(A) The annuity is an annuity described in subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986.

(B) The annuity is purchased with proceeds from:

(i) An account or trust described in subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;

(ii) A simplified employee pension as defined in Section 408(k) of the United States Internal Revenue Code of 1986; or

(iii) A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986.

(C) The annuity:

(i) is irrevocable and nonassignable;

(ii) is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration; and

(iii) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(2) In addition, the entire amount used to purchase an annuity on or after February 8, 2006, is treated as a transfer of assets unless the Oklahoma Health Care Authority is named as the remainder beneficiary either:

(A) in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or

(B) in the second position after the community spouse, child under 21 years of age, or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.

(d) **Life Estates.** This subsection pertains to the purchase of a life estate in another individual's home.

(1) The entire amount used to purchase a life estate in another individual's home on or after February 8, 2006, is treated as assets transferred for less than fair market value, unless the purchaser resides in the home for at least one year after the date of the purchase.

(2) Funds used to purchase a life estate in another individual's home for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The life estate was purchased before February 8, 2006; or

(B) The life estate was purchased on or after February, 8, 2006, and the purchaser resided in the home for one year after the date of purchase.

317:35-5-41.10. Changes in capital resources

(a) **Capital resources of an applicant or member currently receiving assistance.** If the resource(s) of an applicant is in a form which is not available for immediate use, such as real estate, mineral rights, or one of many other forms, and the

applicant is trying to make the resource available, the applicant may be certified and given a reasonable amount of time to make this available. If a member who is currently receiving medical assistance acquires resources which increase his/her available resources at an amount above the maximum resource standard, he/she is given a reasonable amount of time to make the resources available. A reasonable amount of time would normally not exceed 90 days. The member is notified in writing that a period of time not to exceed 90 days will be given to make the resource available. Any extension beyond the initial 90 day period is justified only after interviewing the member, determining that a good faith effort is still being made and that failure to make the resource available is due to circumstances beyond the control of the member.

(b) **Money borrowed on member's resources.** Money borrowed on any of the member's resources, except the home, merely changes his/her resource from one form to another. Money borrowed on the home is evaluated in relation to the maximum resource standard.

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

317:35-5-41.11. Maximum resources

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

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

(2) If the minor blind or disabled child:

(A) is residing in a nursing facility, or a medical facility if the confinement lasts or is expected to last for 30 days, the parent(s)' resources are not deemed to the child; or

(B) under age 19 is eligible for TEFRA, the parent's(s') resources are not deemed to the child.

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

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

317:35-5-45. Determination of income and resources for categorical relationship to AFDC

Income is determined in accordance with OAC 317:35-10 for individuals categorically related to AFDC. Unless questionable, the income of categorically needy individuals who are categorically related to AFDC does not require verification. Individuals categorically related to AFDC are excluded from the AFDC resource test. Certain AFDC rules are specific to money payment cases and are not applicable when only ~~Medicaid~~ SoonerCare services are requested. Exceptions to the AFDC rules are:

(1) the deeming of the parent(s)' income to the minor parent;

(2) the deeming of the sponsor's income to the sponsored alien;

(3) the deeming of stepparent income to the stepchildren. The income of the stepparent who is not included for ~~Medicaid~~ SoonerCare in a family case is not deemed according to the stepparent liability. Only the amount of the stepparent's contribution to the individual is considered as income. The amount of contribution is determined according to OAC 317:35-10-26(a)(8), Person acting in the role of a spouse;

(4) the AFDC lump sum income rule. For purposes of ~~Medicaid~~ SoonerCare eligibility, a period of ineligibility is not computed;

(5) mandatory inclusion of minor blood-related siblings or minor dependent children. For ~~Medicaid~~ SoonerCare purposes, the family has the option to exclude minor blood-related siblings and/or minor dependent children;

(6) the exemption of real property as a resource for up to six months based on the ~~client~~ member signing OKDHS Form ~~C-6~~ 08TA016E, Agreement to Repay;

(7) the disregard of one half of the earned income;

(8) dependent care expense. For ~~Medicaid~~ SoonerCare only, dependent care expenses may be deducted for an in-home provider who, though not approved, would have qualified had the qualification process been followed;

(9) AFDC trust rule. The availability of trusts for all ~~Medicaid~~ SoonerCare only cases is determined according to ~~OAC 317:35-5-41(d)(9)~~ OAC 317:35-5-41.6;

(10) AFDC Striker rules. Striker status has no bearing on ~~Medicaid~~ SoonerCare eligibility;

(11) ET&E Sanction rule. The ET&E status has no bearing on ~~Medicaid~~ SoonerCare eligibility. However, a new ~~Medicaid~~ SoonerCare application is required.

317:35-5-46. Determination of income and resources for categorical relationship to pregnancy-related services

Countable income for an individual categorically related to pregnancy-related services is determined the same as

for an individual categorically related to AFDC. (See OAC 317:35-5-45). Eligibility is based on the income received in the first month of certification with changes in income not considered after certification. ~~Countable resources are determined using the methodology for SSI eligibility (OAC 317:35-5-41. A change in the individual's resources must be reported, as resource eligibility continues through the certification period.~~

317:35-5-47. Determination of income and resources for categorical relationship to Disability for TB infected individuals

Countable income and resources for an individual categorically related because of a diagnosis of TB are determined in accordance with rules for individuals determined aged, blind, or disabled. (See OAC 317:35-5-41 through 317:35-5-41.11 and 317:35-5-42.)

317:35-5-49. Determination of income and resources for categorical relationship to TEFRA

Countable income and resources for a child categorically related to disability for TEFRA are determined in accordance with rules for individuals determined aged, blind, or disabled (see OAC 317:35-5-41 through 317:35-5-41.11, 317:35-5-42, and 317:35-7-36). Income and resources may not exceed the maximum standards as shown on OKDHS Appendix C-1, Schedules VIII. B. and D.

SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 5. DETERMINATION OF MEDICAL ELIGIBILITY FOR ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

317:35-9-48.1. Determining ICF/MR institutional level of care for TEFRA children

In order to determine level of care for TEFRA children:

(1) The child must be age 18 years or younger and expected to meet the following criteria for at least 30 days.

(A) Applicants under age three must:

(i) have a diagnosis of a developmental disability; and

(ii) have been evaluated by the SoonerStart Early Intervention Program and found to have severe dysfunctional deficiencies with findings of at least two standard deviations in at least two developmental areas.

(B) Applicants age three years and older must:

(i) have a diagnosis of mental retardation or a developmental disability; and

(ii) have received a psychological evaluation by a licensed psychologist or school psychologist certified by the Oklahoma Department of Education (ODE) within the last 12 months. The evaluation must include intelligence testing that yields a full-scale intelligence quotient, and a full-scale functional or adaptive assessment that yields a composite functional age. Eligibility for TEFRA ICF/MR level of institutional care requires an IQ of 75 or less, and a full-scale functional assessment (Vineland or Battelle) indicating a functional age composite that does not exceed 50% of the child's chronological age. In no case shall eligibility be granted for a functional age greater than eight years.

(2) Psychological evaluations required for children who are approved for TEFRA under ICF/MR level of care. Children under age six will be required to undergo a full psychological evaluation, including both intelligence testing and adaptive/functional assessment, by a licensed psychologist or school psychologist certified by the ODE, at age three and again at age six to ascertain continued eligibility for TEFRA under the ICF/MR level of institutional care. The psychological evaluation must be completed and submitted to the LOCEU no later than 90 days following the child's third and sixth birthday.

PART 7. DETERMINATION OF FINANCIAL ELIGIBILITY

317:35-9-65. General financial eligibility requirements for ICF/MR, HCBW/MR, and individuals age 65 or older in mental health hospitals

Financial eligibility for these types of long-term medical care is determined using the rules on income and resources according to the category to which the individual is related. (See OAC 317:35-10 for individuals categorically related to AFDC, and OAC 317:35-7-36 for those categorically related to ABD.)

(1) Income, resources and expenses are evaluated on a monthly basis for all individuals requesting payment for long-term medical care.

(2) To be eligible for long-term care in an ICF/MR (private and public), HCBW/MR services and for persons 65 years or older in mental health hospitals, the individual must be determined categorically needy according to the standards appropriate to the categorical relationship.

(3) If the individual's gross income exceeds the categorically needy standard as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., refer to OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B) for rules on establishing a Medicaid Income Pension Trust.

(4) When eligibility for long-term care has been determined, the vendor payment amount, if applicable, is determined based on type of care, categorical relationship, community spouse, etc. Individuals determined eligible for HCBW/MR services will not have a vendor payment.

(5) The spenddown is applied to the vendor payment on the first claim(s) received on behalf of the individual.

(6) For an individual eligible for long-term care in an ICF/MR (private and public) or for an individual 65 years or older in a mental health hospital, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

317:35-9-68. Determining financial eligibility for care in an ICF/MR (public and private), for HCBW/MR services, and for persons age 65 or older in mental health hospitals

(a) **Determining financial eligibility for care in an ICF/MR.** Financial eligibility and spenddown for individuals in an ICF/MR is determined according to whether or not a spouse remains in the home.

(1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility for ICF/MR care.

(A) **Income eligibility.** To determine the income of the individual without a spouse, the rules in (i) - (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for ICF/MR services. If the individual's gross income exceeds this standard, refer to ~~Medicaid~~ SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~317:35-5-42(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for ICF/MR services. His/her countable cannot exceed the maximum resource standard listed in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** When eligibility for ICF/MR services has been determined, the vendor payment is computed. For an individual eligible for long-term care in an ICF/MR, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one month's vendor payment, the application is denied.

(2) **Individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital.** For an individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during institutionalization.

(A) **Income eligibility.** To determine income for an individual whose spouse ~~in~~ is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital, income determination is made individually. The income of either spouse is not considered as available to the other during institutionalization. The rules in (i) - (v) of this subparagraph apply in this situation.

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for ICF/MR care. If the individual's gross income exceeds this standard, refer to ~~Medicaid~~ SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual with a spouse who is institutionalized in a NF or ICF/MR, receives ADvantage or HCBW/MR services, or is 65 or older and in a mental health hospital to be eligible for ICF/MR services, his/her countable resources cannot exceed the maximum ~~reserve~~ resource standard for an individual listed in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** When eligibility for ICF/MR services has been determined, the vendor payment is computed. For an individual eligible for long-term care in an ICF/MR, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one month's vendor payment, the application is denied.

(3) **Individual with a spouse remaining in the home who does not receive ADvantage or HCBW/MR services.** When an individual and spouse are separated due to the individual entering an ICF/MR, income and resources are determined separately. However, the income and resources of the community spouse must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in the ICF/MR, income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the rules in this subparagraph apply:

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either the spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) If the individual's gross income exceeds the categorically needy standard as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., refer to ~~Medicaid~~ SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of resources for both spouses for the month of the individual's entry into the nursing facility. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse in the ICF/MR. ~~DHS~~ OKDHS Form ~~MA-11~~ 08MA011E, Assessment of Assets, is used for the assessment prior to application for ~~Medicaid~~ SoonerCare. The amount determined as the spousal share is used for all subsequent applications for ~~Medicaid~~ SoonerCare, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. When application for ~~Medicaid~~ SoonerCare is made at the same time the individual enters the ICF/MR, ~~DHS~~ OKDHS Form ~~MA-12~~ 08MA012E, Title XIX Worksheet, is used in lieu of ~~DHS~~ OKDHS Form ~~MA-11~~ 08MA011E.

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the first month of the entry of the spouse into the ICF/MR.

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value that can be protected for the community spouse, as shown on ~~DHS~~ OKDHS Appendix C-1, Section XI.

(iii) The minimum resource standard for the community spouse is found on ~~DHS~~ OKDHS Appendix C-1, Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse, the amount that is deemed must be legally transferred to the community spouse within one year of the effective date of certification for ~~Medicaid~~ SoonerCare. At the first redetermination of eligibility, the ~~social~~ worker must document that the resources have been transferred. After the first year of ~~Medicaid~~ SoonerCare eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standards and the institutionalized spouse is determined eligible for benefits, no resources of the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for ~~Medicaid~~ SoonerCare, the community spouse's share of resources is protected and the remainder considered available to the spouse in the ICF/MR.

(vii) The resources determined for the individual in the ICF/MR cannot exceed the maximum ~~reserve~~ resource standard for an individual as shown in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the month of the other spouse's entry into an ICF/MR, that amount is used when determining resource eligibility for a subsequent ~~Medicaid~~ SoonerCare application for ICF/MR.

(ix) Once a determination of eligibility for ~~Medicaid~~ SoonerCare is made, either spouse is entitled to a fair hearing. Any such hearing regarding the determination of the community spouse's resource allowance ~~shall be~~ is held within 30 days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

(I) the community spouse's monthly income allowance;

(II) the amount of monthly income otherwise available to the community spouse;

(III) determination of the spousal share of resource;

(IV) the attribution of resources (amount deemed); or

(V) the determination of the community spouse's resource allowance.

(x) The rules on determination of income and resources are applicable only when an individual has entered an ICF/MR and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(xi) The rules on resources included in this Section apply only to those cases in which an individual begins a continuous period of care in an ICF/MR on or after September 30, 1989.

(xii) If the individual was admitted prior to September 30, 1989, there is not a protected amount for the community spouse. Resources are separated according to spousal ownership with one-half of jointly owned resources counted for each. In this instance, each spouse's resources are considered separately and the resources of the community spouse does not affect the eligibility of the spouse in the ICF/MR.

(C) **Vendor payment.** After the institutionalized spouse has been determined eligible for long-term care, the vendor payment is computed. For an individual eligible for long-term care in an ICF/MR, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(D) **Excess resources.** If the equity in capital resources is in excess of the standards but less than the amount of one month's vendor payment, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of the vendor payment, the application is denied.

(b) **Determining financial eligibility for HCBW/MR.** For individuals determined eligible for HCBW/MR services, there is no vendor payment. Financial eligibility for HCBW/MR services for a single individual is determined the same as for ICF/MR services as outlined in paragraph (a)(1) of this Section with the exception of the vendor payment. Financial eligibility for HCBW/MR services for an individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives

ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital is determined the same as for ICF/MR services as outlined in paragraph (a)(2) of this Section with the exception of the vendor payment. Financial eligibility for HCBW/MR services for an individual with a spouse in the home who does not receive ADvantage or HCBW/MR services is determined the same as for an individual with a community spouse according to paragraph (a)(3) of this Section. If the individual is a minor child who can be determined categorically needy and SSP eligible by considering the parent(s)' income and resources in the deeming process, the case is handled in the usual manner. If the child is not eligible for SSP only because of the deeming of parent(s)' income/resources, financial eligibility for HCBW/MR services is determined using only the child's income/resources and exempting the parent(s)' income and resources from the deeming process.

(c) **Determining financial eligibility for persons age 65 years or older in mental health hospitals.** The eligibility determination for an individual age 65 or older in a mental health hospital as categorically needy is the same as for any other person who is institutionalized. (Refer to subsection (a) in this Section.) The same procedure for determining excess income to be applied to the vendor payment as described in this Section is applicable.

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-9. General financial eligibility requirements for the ADvantage program

Financial eligibility for ADvantage services is determined using the rules on income and resources according to the category to which the individual is related. (See OAC 317:35-7-36 for categorically related to ABD.) Only individuals who are categorically related to ABD may be served through the ADvantage waiver.

(1) Income, resources and expenses are evaluated on a monthly basis for all individuals requesting payment for the ADvantage program.

(2) To be eligible for long-term care in the ADvantage program, the individual must be determined categorically needy according to the ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1. If the individual's gross income exceeds this standard, see OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B).

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-19. General financial eligibility requirements for NF and skilled nursing care

(a) **Financial eligibility for NF care.** Financial eligibility for NF care is determined using the rules on income and resources according to the category to which the individual is related. (See OAC 317:35-10 for individuals categorically related to AFDC, and OAC 317:35-7-36 for those categorically related to ABD.)

(1) Income, resources and expenses are evaluated on a monthly basis for all individuals requesting payment for NF care. Each individual requesting payment for NF care is allowed a personal needs allowance.

(2) To be eligible for long-term care in an NF, the individual must be determined categorically needy according to the standards appropriate to the categorical relationship.

(3) If the individual's gross income exceeds the categorically needy standard as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., refer to OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B) for rules on establishing a Medicaid Income Pension Trust.

(4) When eligibility for long-term care has been determined, the spenddown amount is determined based on type of care, categorical relationship, community spouse, etc.

(5) The spenddown is applied to the vendor payment on the first NF claim(s) received on behalf of the individual.

(6) For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(b) **Financial eligibility for skilled nursing.** Skilled Nursing Care is covered as part of the Medicare Part A coverage. For ~~clients~~ members who are currently receiving this benefit through the QMB program, no further action is needed. For individuals who do not have an active ~~Medicaid~~ SoonerCare case, an application is processed to receive the Medicare crossover and deductible benefits. Income eligibility is based on the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VI., for the first 30 days. After the initial 30 days, income eligibility is based on the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1.

(1) QMB eligible individuals in skilled nursing care are allowed the resource standard as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VI, but must meet the ~~Medicaid~~ SoonerCare resource standard as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D., for NF level of care. For individuals with no active case, use the resource standard shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(2) Rules concerning transfer of assets do not apply to skilled level of care.

317:35-19-21. Determining financial eligibility for care in NF

Financial eligibility and vendor payment calculations for individuals in an NF are determined according to whether or not a spouse remains in the home.

(1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility.

(A) **Income eligibility.** To determine the income of the individual without a spouse, the rules in (i) - (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for NF services. If the individual's gross income exceeds this standard, refer to ~~Medicaid~~ SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for NF services, his/her countable resources cannot exceed the maximum resource standard listed in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** When eligibility for NF care has been determined, the vendor payment is computed. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one month's vendor payment, the application is denied.

(2) **Individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital.** For an individual with a spouse who is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during institutionalization.

(A) **Income eligibility.** To determine income for an individual whose spouse is institutionalized in a NF or ICF/MR, or who receives ADvantage or HCBW/MR services, or is 65 or over and in a mental health hospital, income determination is made individually. The income of either spouse is not considered as available to the other during institutionalization. The rules in (i) - (v) of this subparagraph apply in this situation.

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., to be eligible for ADvantage services. If the individual's gross income exceeds this standard, refer to ~~Medicaid~~ SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual with a spouse who is institutionalized in a NF or ICF/MR, receives ADvantage or HCBW/MR services, or is 65 or older and in a mental health hospital to be eligible for NF services, his/her countable resources cannot exceed the maximum ~~reserve~~ resource standard for an individual listed in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(C) **Vendor payment.** When eligibility for NF services has been determined, the spenddown calculation is used to compute the vendor payment. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~

member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(D) **First month.** For the first month of care, the following procedures apply when determining the vendor payment:

(i) When an individual enters the facility on the first day of the month, all countable income is considered with the facility maintenance standard allowed.

(ii) When an individual enters the facility after the first day of the month, all countable income is considered with the own home standard allowed in computation of the vendor payment. Only the remaining income actually available is used to compute the vendor payment.

(E) **Equity in capital resources.** If the equity in capital resources is in excess of the standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of one month's vendor payment, the application is denied.

(3) **Individual with a spouse remaining in the home who does not receive ADvantage or HCBW/MR services.** When an individual and spouse are separated due to the individual entering an NF, income and resources are determined separately. However, the income and resources of the community spouse must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in the NF, income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the following rules in this subparagraph apply:

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either the spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) If the individual's gross income exceeds the categorically needy standard as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B. 1., refer to ~~Medicaid~~ SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC ~~317:35-5-41(d)(9)(F)(ii)~~ 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of resources for both spouses for the month of the individual's entry into the nursing facility. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse in the NF. ~~DHS~~ OKDHS ~~form~~ Form ~~MA-11~~ 08MA011E, Assessment of Assets, is used for the assessment prior to application for ~~Medicaid~~ SoonerCare. The amount determined as the spousal share is used for all subsequent applications for ~~Medicaid~~ SoonerCare, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. When application for ~~Medicaid~~ SoonerCare is made at the same time the individual enters the NF, ~~DHS~~ OKDHS ~~form~~ Form ~~MA-12~~ 08MA012E, Title XIX Worksheet, is used in lieu of ~~DHS~~ OKDHS ~~form~~ Form ~~MA-11~~ 08MA011E.

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the first month of the entry of the spouse into the NF.

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value that can be protected for the community spouse, as shown on ~~DHS~~ OKDHS Appendix C-1, Schedule XI.

(iii) The minimum resource standard for the community spouse, as established by the OHCA, is found on ~~DHS~~ OKDHS Appendix C-1, Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse, the amount that is deemed must be legally transferred to the community spouse within one year of the effective date of certification for ~~Medicaid~~ SoonerCare. At the first redetermination of eligibility, the ~~social~~ worker must document that the resources have been transferred. After the first year of ~~Medicaid~~ SoonerCare eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standards and the institutionalized spouse is determined eligible for benefits, no resources of

the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for ~~Medicaid~~ SoonerCare, the community spouse's share of resources is protected and the remainder considered available to the spouse in the NF.

(vii) The resources determined above for the individual in the NF cannot exceed the maximum ~~reserve~~ resource standard for an individual as shown in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the month of the other spouse's entry into NF, that amount is used when determining resource eligibility for a subsequent ~~Medicaid~~ SoonerCare application for NF.

(ix) Once a determination of eligibility for ~~Medicaid~~ SoonerCare is made, either spouse is entitled to a fair hearing. Any such hearing regarding the determination of the community spouse's resource allowance ~~shall be~~ is held within 30 days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

(I) the community spouse's monthly income allowance;

(II) the amount of monthly income otherwise available to the community spouse;

(III) determination of the spousal share of resource;

(IV) the attribution of resources (amount deemed); or

(V) the determination of the community spouse's resource allowance.

(x) The rules on determination of income and resources are applicable only when an individual has entered an NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(xi) The rules on resources included in this Section apply only to those cases in which an individual begins a continuous period of care in an NF on or after September 30, 1989.

(xii) If the individual was admitted prior to September 30, 1989, there is not a protected amount for the community spouse. Resources are separated according to spousal ownership with one-half of jointly owned resources counted for each. In this instance, each spouse's resources are considered separately and the resources of the community spouse does not affect the eligibility of the spouse in the NF.

(C) **Vendor payment.** After the institutionalized spouse has been determined eligible for long-term care, the vendor payment is computed. For an individual eligible for long-term care in a NF, the individual's share of the vendor payment is not prorated over the month. As ~~Medicaid~~ SoonerCare is the payer of last resort, the full amount of the ~~recipient's~~ member's share of the vendor payment must first be applied to the facility's charges before ~~Medicaid~~ SoonerCare reimbursement begins.

(D) **Excess resources.** If the equity in capital resources is in excess of the standards but less than the amount of one month's vendor payment, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources, along with excess income to be considered against the vendor payment, are in excess of the vendor payment, the application is denied.

[OAR Docket #08-690; filed 4-22-08]

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

[OAR Docket #08-689]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. O-EPIC PA Employee Eligibility
317:45-9-1. [AMENDED]
Subchapter 11. O-EPIC IP
Part 3. O-EPIC IP Memeber Health Care Benefits
317:45-11-11. [AMENDED]
Part 5. O-EPIC Individual Plan Member Eligibility
317:45-11-20. [AMENDED]
317:45-11-21.1. [NEW]
(Reference APA WF # 07-19, 07-39 AND 07-53)

AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 56 O.S. 2001, as amended; and 42 CFR §435.117; House Bill 1225 of the 1st Session of the 51st Oklahoma Legislature

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Superseded rules:
Subchapter 11. O-EPIC IP
Part 5. O-EPIC Individual Plan Member Eligibility
317:45-11-21.1. [NEW]
Gubernatorial approval:
July 27, 2007
Register publication:
25 Ok Reg 171
Docket number:
07-1402
(Reference APA WF # 07-19)
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Subchapter 9. O-EPIC PA Employee Eligibility
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Subchapter 11. O-EPIC IP
Part 5. O-EPIC Individual Plan Member Eligibility
317:45-11-20. [AMENDED]
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September 12, 2007
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07-1408
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 11. O-EPIC IP
Part 3. O-EPIC IP Member Health Care Benefits
317:45-11-11. [AMENDED]
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25 Ok Reg 439
Docket number:
07-1618
(Reference APA WF # 07-53)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

Rule revisions are needed to allow for 12 months of SoonerCare eligibility from birth for children born to O-EPIC Individual Plan (IP) members. Currently these children can receive SoonerCare benefits only after their mothers complete and return an application to OKDHS. This process often delays newborns and children from receiving needed medical benefits which puts children at risk for long-term disabilities and adverse health conditions related to untreated or preventable illnesses. Deeming newborns of O-EPIC IP members for SoonerCare at birth to 12 months of age will assure that these children receive needed medical benefits to treat and prevent illnesses. These rules mirror the same process for the deeming of low income families with children's newborn eligible for SoonerCare medical benefits for the first year of the newborn's life.

Agency rules are revised to increase the current O-EPIC Employer Sponsored Insurance (ESI) and O-EPIC Individual Plan (IP) maximum income standards to 200% of the federal poverty level. Currently, only working adults with countable household income at or below 185% of the federal poverty level can qualify for O-EPIC ESI or IP. Revisions are needed to comply with House Bill 1225 of the 1st Session of the 51st Oklahoma Legislature to the extent that OHCA's currently approved SoonerCare 1115 demonstration waiver allows. Revisions will extend the option to purchase affordable health insurance to a larger group of low income, uninsured working adults.

Rules are revised to exclude as covered benefits in the Oklahoma Employer and Employee Partnership for Insurance Coverage Individual Plan (O-EPIC IP), services of an International Board Certified Lactation Consultant (IBCLC), Maternal and Infant Health Licensed Clinical Social Worker (MIHLCSW), and enhanced services for medically high risk pregnancies as found in OAC 317:30-5-22.1. Last month, the OHCA Board approved rules to allow OHCA to contract directly with IBCLCs and MIHLCSWs as well as expand services for medically high risk pregnant members. The O-EPIC IP program establishes access to affordable health coverage for low-income working adults and their spouses. O-EPIC IP is a limited benefit program so certain health care services included in SoonerCare are not covered in the O-EPIC IP benefit package. Exisiting policy states that all O-EPIC IP benefits are subject to the same rules as the SoonerCare program which would include the expanded benefits for high-risk members. Therefore, O-EPIC IP rules are revised in order to exclude these three services for pregnant and postpartum women.

CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 25, 2008:

SUBCHAPTER 9. O-EPIC PA EMPLOYEE ELIGIBILITY

317:45-9-1. Employee eligibility requirements

(a) Employee premium assistance applications are made with the TPA.

(b) The TPA electronically submits the application to the Oklahoma Department of Human Services (OKDHS) for a determination of eligibility. The eligibility determination is processed within 30 days from the date the application is received by the TPA. The employee is notified in writing of the eligibility decision.

(c) All O-EPIC eligible employees described in this Section are enrolled in their Employer's QHP. Employees eligible for O-EPIC must:

(1) have a countable household income at or below ~~185%~~ 200% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member;

(2) be a US citizen or alien as described in OAC 317:35-5-25;

(3) be Oklahoma residents;

(4) provide his/her social security number;

(5) ~~be~~ not be currently enrolled in, or have an open application for, ~~Medicaid~~ SoonerCare/Medicare;

(6) be employed with a qualified employer at a business location in Oklahoma;

(7) be age 19 through age 64;

(8) be eligible for enrollment in the employer's Qualified Health Plan;

(9) be working for primary employer(s) who all meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(10) select one of the Qualified Health Plans the employer is offering.

(d) An employee's spouse is eligible for O-EPIC if:

(1) the employer's health plan includes coverage for spouses;

(2) the employee is eligible for O-EPIC;

(3) if employed, the spouse's primary employer(s) meets employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(4) the spouse is enrolled in the same health plan as the employee.

(e) If an employee or spouse is eligible for multiple O-EPIC Qualified Health Plans, each may receive a subsidy under only one health plan.

SUBCHAPTER 11. O-EPIC IP

PART 3. O-EPIC IP MEMBER HEALTH CARE BENEFITS

317:45-11-11. O-EPIC IP non-covered services

Certain health care services are not covered in the O-EPIC IP benefit package listed in OAC 317:45-11-10. These services include, but are not limited to:

(1) services that the member's PCP or O-EPIC does not consider medically necessary;

(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;

(3) organ and tissue transplant services;

(4) treatment of obesity;

(5) procedures, services and supplies related to sex transformation;

(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;

(7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);

(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;

(9) experimental procedures, drugs or treatments;

(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in OAC 317:30-5-696;

(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;

(12) physical medicine including speech, physical, occupational, chiropractic, acupuncture and osteopathic manipulation therapy;

(13) hearing services;

(14) transportation [emergent or non-emergent (air or ground)];

(15) rehabilitation (inpatient);

(16) cardiac rehabilitation;

(17) allergy testing and treatment;

(18) home health care with the exception of medications, intravenous (IV) therapy, supplies;

(19) hospice regardless of location;

(20) Temporomandibular Joint Dysfunction (TMD) (TMJ);

(21) genetic counseling;

(22) fertility evaluation/treatment/and services;

(23) sterilization reversal;

(24) Christian Science Nurse;

(25) Christian Science Practitioner;

(26) skilled nursing facility;

(27) longterm care;

(28) stand by services;

(29) thermograms; ~~and~~

(30) abortions (for exceptions, refer to OAC 317:30-5-6)~~.~~;

(31) services of a Lactation Consultant;

(32) services of a Maternal and Infant Health Licensed Clinical Social Worker; and

(33) enhanced services for medically high risk pregnancies as found in OAC 317:30-5-22.1.

PART 5. O-EPIC INDIVIDUAL PLAN MEMBER ELIGIBILITY

317:45-11-20. O-EPIC Individual Plan eligibility requirements

(a) Employees not eligible for participating in an employer's Qualified Health Plan (QHP), employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability may apply for the O-EPIC Individual Plan. Applicants cannot obtain O-EPIC IP coverage if they are eligible for O-EPIC PA.

(b) Applications may be found on the World Wide Web or may be requested by calling the O-EPIC helpline. Completed applications are submitted to the TPA.

(c) The TPA electronically submits the application to the Oklahoma Department of Human Services (OKDHS) for a determination of eligibility. The eligibility determination is processed within 30 days from the date the complete application is received by the TPA. The applicant is notified in writing of the eligibility decision.

(d) In order to be eligible for the IP, the applicant must:

(1) choose a valid PCP according to the guidelines listed in OAC 317:45-11-22, at the time they make application;

(2) be a US citizen or alien as described in OAC 317:35-5-25;

(3) be an Oklahoma resident;

(4) provide his/her social security number;

(5) ~~be~~ not be currently enrolled in, or have an open application for, ~~Medicaid~~ SoonerCare/Medicare;

(6) be age 19 through 64; and

(7) make premium payments by the due date on the invoice.

(e) If employed and working for an approved O-EPIC employer who offers a QHP, the applicant must meet the requirements in subsection (d) of this Section and:

(1) have household income at or below ~~185%~~ 200% of the Federal Poverty Level.

(2) be ineligible for participation in their employer's QHP due to number of hours worked.

(3) have received notification from O-EPIC indicating their employer has applied for O-EPIC and has been approved.

(f) If employed and working for an employer who doesn't offer a QHP, the applicant must meet the requirements in subsection (d) of this Section and:

(1) have a countable household income at or below ~~185%~~ 200% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member; and

(2) have received notification from O-EPIC indicating their employer has applied and has been approved with the attestation that they are not offering a QHP.

(g) If self-employed, the applicant must meet the requirements in subsection (d) of this Section and:

(1) must have household income at or below ~~185%~~ 200% of the Federal Poverty Level;

(2) verify self-employment by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms; and

(3) verify current income by providing appropriate supporting documentation.

(h) If unemployed seeking work, the applicant must meet the requirements in subsection (d) of this Section and:

(1) must have household income at or below ~~185%~~ 200% of the Federal Poverty Level; and

(2) verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:

(A) OESC eligibility letter,

(B) OESC weekly unemployment payment statement, or

(C) bank statement showing state treasurer deposit.

(i) If working with a disability, the applicant must meet the requirements in subsection (d) of this Section and:

(1) must have household income at or below 200% of the Federal Poverty Level based on a family size of one; and

(2) verify eligibility by providing a copy of their:

(A) ticket to work, or

(B) ticket to work offer letter.

317:45-11-21.1. Certification of newborn child deemed eligible

(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Oklahoma Employer and Employee Partnership for Insurance Coverage Individual Plan (O-EPIC IP). (For purposes of this subparagraph, a newborn child is defined as any child under the age of one year). The newborn child is deemed eligible through the last day of the month the child attains the age of one year.

(b) The newborn child's eligibility is not dependent on the mother's continued eligibility for O-EPIC IP. The child's eligibility is based on the original eligibility determination of the mother for O-EPIC IP and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(c) The newborn child's certification period is shortened only in the event the child:

(1) leaves the mother's home;

(2) loses Oklahoma residence;

(3) has medical needs included in another assistance case; or

(4) expires.

(d) No other conditions of eligibility are applicable, including social security number enumeration; however, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.

[OAR Docket #08-689; filed 4-22-08]

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

[OAR Docket #08-706]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 1. General Provisions
340:2-1-5 [AMENDED]
340:2-1-8 [AMENDED]
Part 3. Internal Human Resources
340:2-1-25 through 340:2-1-29 [AMENDED]
Part 7. Recruitment, Selection, and Placement
340:2-1-76 through 340:2-1-79 [AMENDED]
340:2-1-81 through 340:2-1-82 [AMENDED]
340:2-1-84 through 340:2-1-86 [AMENDED]
(Reference APA WF 07-38)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section1-1950.1 of Title 63 of the Oklahoma Statutes.
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None requested.
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April 11, 2008

Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 23, 2008.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 2 permanent rule amendments: (1) denote Oklahoma Department of Human Services (OKDHS) responsibility regarding response to unemployment benefit claims; (2) remove language that is internal OKDHS procedure; (3) correct a scrivener error; (4) indicate procedural changes due Office of Personnel Management (OPM) requirements; (5) correct an authority citation; (6) clarify processes for applying for OKDHS employment; (7) reflect changes in OKDHS form numbers created by the OKDHS forms system; (8) denote documentation a new employee is required to provide; (9) clarify probationary requirements for specific types of newly hired employees; (10) clarify processes regarding employee selection criteria; (11) remove unnecessary language; and (12) improve wording.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2008:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 1. GENERAL PROVISIONS

340:2-1-5. ~~Benefits~~ Employee benefits

~~(a) **Old Age and Survivor's Disability Insurance (OASDI).** The Oklahoma Department of Human Services (OKDHS) and the employee jointly participate in the OASDI program. Each month the employee's share of the premium, which goes to the OASDI, is withheld from his or her check and remitted quarterly along with OKDHS' share of the premium.~~

~~(b) **Oklahoma Public Employees Retirement System (OPERS).** OKDHS makes a monthly payment into OPERS for each participating employee. The benefits under OPERS are described in the OKDHS retirement handbook. Copies are available in each OKDHS office. The age of an employee at date of employment is not a consideration in determining eligibility for membership in OPERS. Each employee is eligible for coverage the first day of the month immediately following his or her date of employment, if the requirements in (1) through (4) of this subsection are met. The:~~

~~(1) position the employee holds is not seasonal or temporary, unless the employee is a retiree who returns to state employment;~~

~~(2) position the employee holds requires at least 1,000 hours of work per year;~~

~~(3) employee's salary or wage is at least $305.50 per month or a salary established by statute to be more than $305.50 per month; and~~

~~(4) employee is not currently a contributing member of another retirement plan authorized under any other law of the state for the same employment and is not a contributing member of the Federal Civil Service Retirement System.~~

~~(c) **Longevity payment.** Longevity pay is a lump sum payment to all employees having two or more years of continuous state service in full-time status or in part-time status working more than 1,000 hours per year. Longevity is paid each year in the month following the employee's annual longevity anniversary date. In accordance with Section 840-2.18 of Title 74 of the Oklahoma Statutes, payment is based upon the number of years of state service. The employee's longevity date is affected when an employee has 30 consecutive days or more leave without pay. An employee receiving temporary total disability (TTD) due to a work-related illness or injury is eligible for longevity payment only for 12 months. If an employee remains on leave without pay one year due to a workers' compensation injury, his or her longevity payment is discontinued. [74 O.S. § 840-2.21(H)] An employee leaving state service before his or her anniversary date does not receive any prorating of the longevity payment. Exception is made for employees who retire or are separated from OKDHS due to a reduction-in-force. A prorated longevity payment is paid to the employee, his or her spouse, or surviving dependent(s) when an employee dies while employed.~~

(a) **Benefits.** Oklahoma Department of Human Services (OKDHS) employee benefits include:

(1) a core benefit allowance for the employee's mandatory coverage of:

(A) health insurance;

(B) dental insurance;

(C) basic life insurance; and

(D) disability insurance;

(2) an additional benefit allowance for the employee's dependent health, dental, and basic life insurance coverage;

(3) premium conversion for qualifying insurance benefits, if the employee elects;

(4) a reimbursement account, if the employee elects, for:

(A) child care;

(B) qualifying medical expenses; or

(C) both;

(5) retirement benefit through Oklahoma Public Employees Retirement System (OPERS).

(~~d~~b) **Unemployment compensation.** Employees of OKDHS may qualify for unemployment compensation under certain circumstances. [Part 2, Eligibility, of the Oklahoma Employment Security Act as amended by the 1988 Session of the Oklahoma Legislature effective May 5, 1988] When an individual files for unemployment compensation, the Oklahoma Employment Security Commission (OESC) notifies OKDHS ~~or its agent~~ with Form OES-617, Notice of Application for Unemployment Compensation, in-state application, or Form IB-3, Claimant/Employer Separation Statement, out-of-state

application. ~~Information pertaining to OKDHS or its agent, such as name, address, phone, and fax number, may be obtained from the Human Resources Management Division (HRMD).~~ Human Resources Management Division (HRMD) provides a written response for all claims received. To be filed timely, ~~OKDHS' or its agent's~~ OKDHS response to OESC must be postmarked within ten calendar days of the date of notice. If the response is not filed timely, the eligibility for compensation is determined from the information provided by the claimant. Local offices fully cooperate in providing information requested by OKDHS ~~or its agent~~ to ensure timely filing of the response. When a notice of application for unemployment compensation is received in the local offices~~,~~ ~~hospitals,~~ or institutions, it is immediately faxed to HRMD ~~or OKDHS' agent,~~ with the hard copy forwarded to ~~the~~ HRMD ~~or the OKDHS' agent~~.

(~~e~~c) **Eligibility for OKDHS program benefits.** Benefits through ~~OKDHS'~~ OKDHS programs are available to an employee and his or her legal dependent(s) who meets all conditions of eligibility for the specific program for which application is made. The application for benefits, the determination of original eligibility and continuing eligibility, and the delivery of services are handled in the same manner as for any other individual, except that an employee cannot certify himself or herself, relatives, or unrelated persons living in the employee's home.

(~~f~~d) **Other benefits.** Other benefits, ~~including workers' compensation,~~ deferred compensation, leave, and holidays~~,~~ ~~health insurance, dental insurance, life insurance, disability insurance, and flexible benefits,~~ are provided to employees in accordance with state law and OKDHS policy. The eligibility requirements, effective date, and specific provisions of these benefits vary and are addressed elsewhere in policy.

340:2-1-8. Employee ethics and other employment

(a) **Other employment, prohibition against use of position for personal gain, and avoidance of conflicts of interest.** ~~Employees are~~ An employee is subject to appropriate corrective or disciplinary action if ~~they fail~~ the employee fails to comply with the Rules of the Ethics Commission. [74 O. S. Ch. 62]

(1) Under these provisions, every employee must, during office hours, devote full time and attention, to Oklahoma Department of Human Services (OKDHS) business. An employee may not use:

(A) office hours for private gain, including activities involved in a business enterprise, such as livestock or crop farming, sale of real estate, or other business which involves self-employment; nor

(B) paid time, state offices, telephones, supplies, and equipment to further the programs or activities of private, non-profit organizations, even when the objectives of the private organization are compatible with those of OKDHS. Exceptions may occur as authorized by the division director and only for activities in which OKDHS can legitimately expend agency dollars, for example, when OKDHS is a member of an organization or in situations where OKDHS has responsibility as a member of a board or commission by law or by appointment of the executive or legislative branch of government.

(2) An employee may accept other employment outside of the employee's OKDHS regular office hours provided such employment is approved in advance and does not interfere with or is not in conflict with the employee's work within OKDHS.

(3) It is vitally important that an OKDHS ~~employees~~ employee avoid ~~both~~ actual and perceived conflicts of interest in activities ~~that have a strong likelihood of appearing to the general public to be conflicts of interest~~, such as employment with a provider who contracts with OKDHS. The employment or other activities of a spouse or other close family member may create the appearance of a conflict of interest and cause members of the general public to question the objectivity of OKDHS decision-making.

(4) An OKDHS employee may not be employed by another state agency or any provider contracting with OKDHS without the prior written approval of the employee's division director.

(b) **Related employees.** Placement in a position that results in relatives occupying positions within a division, office, facility, or area where one relative occupies a senior administrative position must be approved in writing by the OKDHS Director or designee. OKDHS reserves the right to make placements and work assignments of personnel as necessary to eliminate or prevent situations of this nature. OKDHS policy prohibits, unless waived by the OKDHS Director or designee, the employment of any person in a position that results in:

(1) immediate supervision by a relative. Relative is defined as spouse, ~~children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins, or foster relationships~~ child, parent, stepparent, parent-in-law, grandchild, grandparent, brother, sister, stepchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, first cousin, or foster relationship;

(2) placement in a position within a relative's line of authority or chain of command; or

(3) two or more relatives reporting to the same immediate supervisor.

(c) **Processing applications for OKDHS benefits or services on behalf of an employee's relative or for persons living in the employee's home.** In performing their official duties, employees are impartial and perform their duties in a manner that maintains impartiality. Employees who engage in improper client relationships, as referenced in this Section, are subject to appropriate corrective or disciplinary action.

(1) An employee may not:

(A) process, certify, or approve an application for benefits, payments, or services for any relative as defined in subsection (b) of this Section, or for any unrelated person living in the employee's household.

This includes a relationship to a relative that has been terminated by death, divorce, or other reasons; nor

(B) act as authorized representatives for clients receiving OKDHS program benefits without the specific written approval of the local administrator after a determination has been made that no one else is available to serve.

(2) In those offices with limited staff, it may be necessary for an employee to take an application for a person(s) listed in subsection (b) of this Section. The employee cannot certify the person(s) for benefits, payments, or services.

(d) **Client relationships.** In keeping with the mission of OKDHS to serve and protect clients, OKDHS employees assist clients in developing independence and self-sufficiency while recognizing their rights. A client is defined as a program applicant, recipient, patient, resident of an OKDHS facility, and any other person receiving or making application for OKDHS services. Rights of clients include, but are not limited to:

(1) privacy and the expectation that information obtained by OKDHS employees in the course of their duties is held confidential;

(2) treatment that conveys dignity, respect, courtesy, fairness, and good faith;

(3) expectation of high standards of personal conduct from OKDHS employees;

(4) freedom from discrimination on the basis of race, gender, age, color, creed, national origin, religion, or disability;

(5) freedom from sexual harassment;

(6) freedom from coercion to give gifts or services of value; and

(7) freedom from interference by OKDHS employees with regard to matters of individual belief or faith.

PART 3. INTERNAL HUMAN RESOURCES

340:2-1-25. Application

(a) ~~**Classified service**~~ **Persons seeking initial employment.** Any person interested in securing initial employment in the classified service may take the open competitive examination through the Office of Personnel Management (OPM). The ~~individual~~ person must meet the minimum education and experience qualifications for the job family for which he or she is applying. Application ~~to take an examination is made to OPM on Form OPM-4, State of Oklahoma Employment Application~~ must be submitted to the OPM designated application system for eligibility determination and approval for merit testing as appropriate.

(1) Applications for non-competitive positions in the classified service are submitted ~~directly to Oklahoma Department of Human Services (OKDHS) work locations using such jobs~~ to the OPM designated application system. These are primarily used in residential facilities and group homes.

(2) Form ~~P-1~~ 11PE001E, Application for Employment, is provided to the applicant prior to the initial interview or at the time of contact when his or her name appears within the hiring rule on an OPM ~~certificate of eligibles~~ E-List. The applicant returns Form ~~P-1~~ 11PE001E to the local Oklahoma Department of Human Services (OKDHS) office.

(3) The interviewing official or local administrator is responsible for preparing Form ~~P-6~~ 11PE006E, Form Letter to Employment Reference, or Form ~~P-7~~ 11PE007E, Form Letter to Personal Reference. The applicant has a right to review the information obtained from these inquiries.

(4) The interviewing official is responsible for explaining benefits and conditions of employment.

(5) Applications of persons recommended for employment are sent by the selecting official to the appropriate local office or the designated Human Resources Management Division (HRMD) office with the completed Form ~~P-S-76~~ 11PE076E, Applicant List, and as applicable the OPM E-List.

(b) **Permanent classified employee or applicant for reinstatement.** An application for an announced position is submitted directly to OKDHS Human Resources Management Division (HRMD). An OKDHS employee must submit a valid Form 11PE012E, Data Summary Sheet. An interagency applicant electing to use Form OPM-4B, Personal Data Summary Sheet, in lieu of Form 11PE012E is required to complete a supplemental questionnaire provided by HRMD to be considered for an interview. If Form OPM-4B is utilized, the job announcement number and a means to contact the applicant must be provided.

(1) The interviewing official or local administrator is responsible for preparing Form 11PE006E or Form 11PE007E. The applicant has a right to review the information obtained from these inquiries.

(2) The interviewing official is responsible for explaining benefits and conditions of employment.

(3) The application of a person recommended for employment is sent by the selecting official to the appropriate local office or the designated HRMD office with the completed Form 11PE076E and, as applicable, the OPM E-List.

(~~b~~c) **Unclassified service.** OKDHS may post positions in the unclassified service. [OAC 340:2-1-76(13) ~~and (14)~~] ~~Persons~~ A person interested in applying for an unclassified ~~positions submit~~ position submits any of the documents listed in ~~(1) through (3) of~~ this subsection and any additional~~,~~ requested documentation to HRMD. An acceptable application ~~document~~ is:

(1) a resume with a cover letter or a transmittal document that identifies the announcement number and a means to contact the applicant. In order to be eligible to be considered for an interview, the applicant is required to complete a supplemental questionnaire provided by HRMD; or

~~(2) Form P-1 with a cover letter or a transmittal document that identifies the announcement number; or~~

(~~3~~2) Form ~~P-12, Application Data Sheet~~ 11PE012E.

340:2-1-26. Employment and assignment

(a) **Selection from Office of Personnel Management (OPM) ~~certificate of eligibles (certificate) also known as the merit register~~ E-List.** The process to fill a position is initiated by use of Form ~~P-31-A~~ 11PE031E, Announcement Requisition, which is forwarded to the Human Resources Management Division (HRMD), Oklahoma Department of Human Services (OKDHS). When HRMD is notified of vacancies, and these are not filled by promotion, demotion, transfer, or reinstatement in accordance with OKDHS recruitment, selection, and placement policy and procedures, HRMD may request an OPM ~~certificate~~ E-List. OPM supplies names of eligible individuals. The hiring rule is the top ten available eligibles, or anyone whose name is tied with the lowest ranked eligible within the hiring rule. [OAC 530:10-9-92 and 74 O. S. § 840-4.13] OKDHS ~~makes~~ may make its selection from the OPM ~~certificate~~ E-List within the hiring rule. ~~OKDHS may request OPM to supply a certificate consisting only of names of those persons who are residents of a local area that has been established by OKDHS for the local office. OKDHS may then select a candidate from this OPM certificate.~~ In selecting new personnel from the OPM ~~certificate~~ E-List, OKDHS may consider any information legally available concerning each applicant, including data recorded on the application, reports of interviews with applicants and references, performance evaluations, letters of reference, and background checks. OKDHS does not discriminate in any of its employment policies and is an equal opportunity employer.

(b) **Determination of availability.** Upon receipt of the OPM ~~certificate~~ E-List, HRMD ~~submits~~ forwards the OPM ~~certificate~~ E-List to the requesting official. This official contacts applicants ~~within the hiring rule~~ on the list by mail or e-mail to determine if the applicants are available for an interview.

(1) If an applicant declines an offer of appointment, fails to report for ~~a personal~~ an interview, or fails to report for duty, the circumstances are documented for the record. An eligible candidate may be considered to have declined and may be removed from consideration ~~if he or she fails to reply to a written inquiry within seven calendar days, exclusive of the date of mailing, or if the applicant verbally declines an offer, or an opportunity for an interview with a representative of OKDHS.~~ when he or she:

(A) fails to reply to a written invitation to interview within seven calendar days, exclusive of the date of mailing;

(B) is contacted by e-mail with an invitation to interview and fails to respond to the electronic inquiry within 72 hours; or

(C) verbally declines an opportunity to interview with a representative of OKDHS.

(2) Information regarding ~~an~~ a selected applicant's availability for appointment is transmitted to HRMD with any other pertinent information obtained regarding the applicant at the time. Form ~~P-S-76~~ 11PE076E, Applicant List, ~~an~~ is returned to HRMD and as relevant, the OPM ~~certificate~~ E-List~~, or both, are returned to HRMD~~.

(3) Appointment to certain positions within OKDHS requires the completion of a background check. [OAC 340:2-1-56]

(4) A conditional offer of employment is made to an applicant pending the passing of the required drug screening. [OAC 340:2-1-43(b)(1)]

(c) **Notice of appointment.** Since OKDHS administers ~~a~~ statewide ~~program~~ programs, staff are assigned in accordance with the particular needs of OKDHS. Form OPM-14, Request for Personnel Action, showing the OPM position identification number, job family with level and job code, place of assignment, pay band and salary, is provided to the new employee as notice of his or her appointment.

340:2-1-27. Report of entrance on duty

(a) **Required documents.** On the day a new employee enters on duty, the supervisor of the unit of assignment completes Form ~~ADM-68~~ 11AD068E, Report of Accession, and forwards it to the Human Resources Management Division (HRMD). Documents attached to Form ~~ADM-68~~ 11AD068E include:

(1) a copy of the employee's Social Security card. The employee's name on all personnel and payroll records is shown exactly as it appears on the Social Security card~~;~~. If the employee is unable to provide the required original Social Security card, the employee must present a receipt of application for the replacement card within three business days of entering on duty or the employee will be immediately separated from duty;

(2) Secretary of State (SOS) Form 100, Loyalty Oath. A signed, written loyalty oath is required for each new employee. A new SOS Form 100 is submitted with each appointment following a consecutive 30-day break in service;

(3) Form W-4, Employees Withholding Allowance Certificate, or Form W-5, Earned Income Advance Payment Certificate;

(4) Form 515-01-97R, Enrollment Application in State Retirement, except for temporary appointments. It is mandatory that each employee enrolls in the Oklahoma Public ~~Employee's~~ Employees Retirement System, except for temporary appointments;

(5) Notice of Employee's Right to Continue Group Health Coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA), except for temporary appointments;

(6) Form ~~P-1-D~~ 11PE201D, Application Supplement;

(7) Form ~~F-23~~ 10PL023E, Employee Longevity Service Worksheet, except for temporary appointments;

(8) Department of Homeland Security, United States Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification. Pursuant to the Immigration Reform and Control Act of 1986, Form I-9 is completed by the employing unit on the first day of employment. If the employee is unable to provide the ~~required,~~ acceptable original document(s)~~,~~ as listed on the Form I-9, the employee must present a receipt for the application for the document(s) within three business days of entering on duty or the employee will be immediately separated

from duty. However, an employee working three days or less must produce the required original documents for the completion of Form I-9 on the first day of duty. An employee who presented a receipt for the application of a document must present the required original document within 90 calendar days of entering on duty or he or she will be immediately separated from duty;

(9) verification of tribal affiliation, if the employee wishes designation as Native American;

(10) insurance benefits enrollment forms, except for temporary appointments;

(11) Form ~~ADM 133~~ 11AD133E, Employee Acknowledgment of Confidentiality of Computer Accessible Case Records and Computer and Internet Usage Restrictions; and

(12) ~~a written employee acknowledgement is~~ the employee's acceptance of the conditional job offer agreeing to classification, status, salary and to serving a probationary period ~~when entering~~ upon entrance to the classified service as a direct hire, ~~with no prior state service,~~ as a reinstatement, or any other hire that does not utilize the Office of Personnel Management (OPM) ~~certificate~~ E-List.

(b) **Missing documents.** If all documents are not available on the date of entry on duty, all available documents are submitted. Missing documents are submitted as soon as possible, but no later than required by law. All of the documents listed in (a)(1) through (12) of this Section are required in accordance with state and federal laws.

340:2-1-28. Probationary or trial period, classified service

(a) **Probationary period upon initial appointment.** The probationary period for any appointed employee is one-year or until waived after the employee has served six months. The probationary period may not be extended beyond one year but may be adjusted, per Merit Rule OAC ~~530:10-11-30~~ 530:10-11-36. An employee in a leave without pay status in excess of 40 working hours will have the probationary period ~~extended~~ adjusted equal to his or her leave without pay time in excess of 40 hours.

(1) The probationary period is a working test period during which a classified employee is required to demonstrate fitness for the job family and level to which appointed. The decision to grant a probationary employee permanent status is based upon written evaluations, recommendations, or other pertinent information. The division may require early award of permanent status to be reviewed and approved above supervisor level. When permanent status is granted, the employee and OPM receive confirmation from the Human Resources Management Division (HRMD).

(2) Services of an employee on probationary status may be terminated at any time.

(3) Employee benefits are available to probationary employees in accordance with specific benefit policies. ~~A change in shift assignment of a probationary employee, in excess of 30 calendar days, requires prior approval of OPM. A probationary employee is not:~~

~~(A) eligible for promotion or demotion;~~

~~(B) eligible to apply for OKDHS job announcements until successful completion of the probationary period;~~

~~(C) transferred from the original locality where appointed;~~

~~(D) changed from part-time to full-time; and~~

~~(E) transferred to a position in another job family.~~

(4) A change in shift assignment or significant change of duties of a probationary employee, in excess of 30 calendar days, requires prior approval of OPM.

(5) A probationary employee is not:

(A) eligible for promotion or demotion;

(B) eligible to apply for OKDHS job announcements until successful completion of the probationary period;

(C) transferred from the original locality where appointed;

(D) changed from part-time to full-time; and

(E) transferred to a position in another job family.

(b) **Trial period upon promotion or lateral transfer.** A classified employee who is promoted or laterally transferred serves a six-month trial period in the job family and level to which the employee is promoted or laterally transferred. The trial period may be waived in writing at any time.

(1) During the trial period, if an employee does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family and level, at the salary the employee would have received if the promotion or lateral transfer had not taken place.

(2) The reason for denying permanent status in the promotional or lateral transfer position is submitted in writing to the employee before the end of the trial period, and a copy is filed with OPM.

(c) **Trial period upon voluntary demotion.** Voluntary demotion of a classified OKDHS employee requires a six-month trial period. The voluntarily demoting employee is notified in writing of a trial period prior to the effective date of the voluntary demotion. The trial period may be cancelled at any time.

(1) During the trial period, if the employee does not prove satisfactory in the new job, the employee is reinstated to the former position or another in the same job family.

(2) The employee is provided written notice of the reason for failure to allow the employee to acquire permanent status in the job to which demoted. A copy is filed with OPM.

(d) **Interagency transfer.** Interagency transfers, including demotions, promotions, and lateral transfers, require a six-month trial period, provided OKDHS utilizes the employee's previously held job family and level. A six-month trial period is required for interagency in-class transfers, as well. The employee must be notified in writing prior to entering on duty that a trial period is required. The trial period may be waived in writing at any time.

(1) If the employee does not prove satisfactory in the new job, the employee is reinstated to a position within the

receiving agency in the former job family in the same pay band for which the employee is qualified at the salary the employee would have received if the promotion, demotion, or lateral transfer had not taken place.

(2) The employee is provided written notice of the reasons for denying the employee permanent status in the job, and a copy is filed with OPM.

340:2-1-29. Appointments

(a) **Types of appointments.** All appointments are made either to the classified service or to specific positions in the unclassified service. Appointments are made in accordance with applicable Oklahoma Administrative Code (OAC) Rules, Merit System of Personnel Administration Rules (Merit Rules), and Oklahoma Department of Human Services (OKDHS) policy.

(1) **Classified service.** Classified service refers to employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration (Merit System) by constitutional amendment or state statute.

(2) **Unclassified service.** Unclassified service refers to employees and positions excluded from coverage of the Merit System, by constitutional amendment, state statute, or executive order and approved by the OKDHS Director. Employment in the unclassified service is considered employment-at-will.

(b) **Reinstatement.** A former employee, who had permanent status in the classified service, is eligible to be considered for reinstatement in accordance with OKDHS policy. The Human Resources Management Division (HRMD) obtains verification from the Office of Personnel Management (OPM) of the applicant's eligibility for reinstatement.

(1) Reinstatement eligibility may equal up to the period of service in probationary and subsequent permanent classified status.

(2) If a permanent, classified employee leaves a permanent, classified position for an unclassified position with no break in service, [OAC 530:10-15-10(c)(1)(G)] the period of time during which the person is eligible for reinstatement begins on the date of separation from the unclassified position rather than the date of separation from the classified position.

(3) The unclassified service does not add to the period of time eligible for reinstatement.

(4) Reinstatements to the classified service are probationary under the terms outlined in OAC 340:2-1-28 for new employees, provided the former employee has been notified, and has acknowledged in writing an understanding that probation is a condition of the job offer.

(5) An applicant whose eligibility date expires within 21 calendar days of the closing date of an individual announcement is notified that:

(A) there is insufficient time for the selection process to be completed prior to the end of his or her eligibility; and

(B) he or she may compete for appointment in the classified service by submission of an application to ~~the Office of Personnel Management~~ OPM. [Merit Rule OAC 530:10-9-10]

(c) **Direct hire and hard to fill appointments.** Appointments in the classified service made under the direct hire and hard to fill, Merit Rule 530:10-9-110 require serving a probationary period.

(~~c~~d) **Temporary appointments.** When OKDHS requires the service of persons on a temporary basis, a person may be appointed into the unclassified service without regard to other provisions governing appointments. No person is appointed under this provision for more than a total of 999 hours in a 12-month period from the date of initial hire with any or all state agencies. Temporary appointments do not confer any privileges, rights of appeal, or rights of position, transfer, reinstatement, nor any other rights to any classified position under the Merit System, nor is any temporary employee entitled to any employee benefits. Local administrators and supervisors are responsible for ensuring that temporary employees do not work more than 999 hours within a 12-month period from the date of initial hire. [74 O.S. § 840-5.5(A)(8)]

PART 7. RECRUITMENT, SELECTION, AND PLACEMENT

340:2-1-76. Appointments and changes in employee ~~job family descriptor (JFD) and level or position that are~~ classification not subject to ~~the~~ vacancy posting provisions ~~of the rules in this Part~~

Unless otherwise indicated, the local administrator submits Form ~~P 31 A~~ 11PE031E, Announcement Requisition, to the Human Resources Management Division (HRMD) to effect personnel vacancies. Appointments and changes in employee job family descriptor (JFD) and level or position not subject to the vacancy notice posting provisions of the policies in this Part are:

(1) temporary appointments;

(2) detail to special duty or other temporary assignments that do not affect an employee's base JFD and level or classification;

(3) intra-agency lateral transfer of a permanent employee from one position to another position in the same JFD and level, in-class, or another JFD in the same pay band;

(4) voluntary and involuntary demotion to a vacant position;

(5) direct reclassification made when a new JFD is adopted that better describes an incumbent's job;

(6) position reallocation;

(7) classified service noncompetitive job level;

(8) career progression promotions;

(9) positions limited to the prescribed length of time of the course of training or extension study;

(10) positions where OKDHS has elected to establish separate policies or to test pilot rules within specific organizational units, and where such policies are publicized prior to implementation;

(11) positions converted from the classified to the unclassified service, or from the unclassified to the classified service by appointment, reinstatement, or position reallocation of an incumbent in accordance with applicable Merit System of Personnel Administration Rules (Merit Rules) and OKDHS policy and procedures;

(12) transfer of an employee, position, or both, from one work organization to another; and

(13) positions in the unclassified service. The OKDHS Director may waive the vacancy posting provisions of this policy for positions in the unclassified service. Approval of a waiver request may not be delegated, except for unclassified lawyer positions exempt from OKDHS vacancy posting procedures.

340:2-1-77. Vacancy posting procedures

(a) **Vacancy posting decision.** All vacant positions in the classified service are posted in accordance with the rules in this Section prior to the filling of such vacancies except as provided in OAC 340:2-1-76.

(b) **Vacancy posting for positions in the classified service.**

(1) Each posting is posted for a minimum of ten working days excluding holidays and weekends with the exception that positions that generally have a satisfactory pool of candidates may be posted for a minimum of six working days.

(2) Listings of recruitment announcements are posted on the Oklahoma Department of Human Services (OKDHS) ~~Infonet~~ InfoNet under Employee Self-Service~~, or~~ and the external ~~www.okdhs.org~~ http://www.okdhs.org/ Web site.

~~(3) Within a given job family descriptor (JFD) and level where continuous multiple vacancies occur throughout OKDHS or within specific organizational units, multiple continuous announcement (MCA) vacancies may be posted for 12 calendar months. An MCA includes all required information in paragraph (1) of this subsection. Persons applying in response to MCAs identify each county of interest. The Human Resources Management Division (HRMD) maintains applications of candidates for each JFD posted for MCAs.~~

(c) **Vacancy posting for positions in the unclassified service.** Positions in the unclassified service are posted for application, except as provided in OAC 340:2-1-76(13). The process outlined in this Section may be used or, at the discretion of the appointing authority, applications may be solicited through newspapers, journals, or other recruiting methods.

(d) **Trial period upon interagency promotion or demotion.** A non-OKDHS employee selected for interagency promotion or demotion is required to serve a trial period in accordance with ~~OKDHS policy~~ OAC 340:2-1-28(b), (c), and (d) and the Merit System of Personnel Administration Rules (Merit Rules) governing such actions. The determining factor is whether the former job held by the new employee is within ~~OKDHS'~~ OKDHS existing JFDs.

(e) **Notification of cancellation.** A vacancy posting may be canceled at any time by the OKDHS Director, senior administrator, division director, area director, local administrator, or HRMD. Notice of cancellation is provided to HRMD. If the cancellation occurs before Form ~~P-S-76~~ 11PE076E, Applicant List, is issued, then HRMD notifies all applicants of the cancellation. If the cancellation occurs after Form ~~P-S-76~~ 11PE076E is issued, the local administrator notifies all applicants on Form ~~P-S-76~~ 11PE076E and any other contacted candidates from the Office of Personnel Management (OPM) ~~certificate~~ E-List.

(f) **Vacancy posting extension of application period.** If a decision is made to extend the posting period beyond the initial request, a new announcement number is not required. The requesting official coordinates the extension of the announcement with HRMD. All requests to extend the announcement period are made to HRMD while the announcement is still open.

(g) **Reposting of an announcement.** To repost a position, a new vacancy posting is issued by HRMD.

~~(h) **Review procedure.** Employees who apply for a promotion or transfer in accordance with these procedures are free from restraint, interference, coercion, discrimination, and reprisal.~~

340:2-1-78. Method of application

(a) To be eligible to compete for a position, ~~applicants~~ an applicant must ensure that a properly completed current version of Form ~~P-12~~ 11PE012E, ~~Application~~ Data Summary Sheet, is received at the designated location by ~~5:00 p.m. on the closing date~~ the application deadline as specified on the vacancy posting. Alternate methods of submission include:

(1) faxing the application to the designated location in the job announcement. Fax telephone numbers are located on Form ~~P-12~~ 11PE012E; or

(2) sending the application as an attachment to an e-mail for announcements that allow e-mail applications. E-mail applications are sent to the Web ~~site~~ address specified in the job announcement. If invited to interview, the applicant is required to sign the application attesting to the authenticity of the information before a hiring decision is made. Failure to sign the application when requested results in withdrawal of the application from further consideration.

(b) An OKDHS ~~employees~~ employee interested in intra-agency transfer or demotion for a specific position which has not been announced with an OKDHS Job Announcement number must submit a written request, which may be an e-mail message to the local administrator of the position.

(c) ~~Illegible applications~~ An illegible, incomplete, or obsolete application, as determined by the Human Resources Management Division (HRMD), ~~are~~ is not accepted. The applicant is notified.

340:2-1-79. Eligibility to compete for positions in the classified service

(a) Eligible applicants must possess the required minimum education and experience for the job family descriptor (JFD) and level and any announced selective qualifications within 30 days of the closing date of an announcement.

(b) If the vacancy posting indicates Oklahoma Department of Human Services (OKDHS) employees only, then applicants must be a:

(1) current permanent, classified OKDHS employee;

(2) former permanent, classified OKDHS employee with current permanent, classified status with another state agency;

(3) current unclassified, OKDHS employee with reinstatement eligibility to the classified service; or

(4) former permanent, classified OKDHS employee with reinstatement eligibility to the classified service.

(c) If the vacancy posting indicates all sources, then applicants must:

(1) meet any of the criteria listed in subsection (b) of this Section;

(2) be a current permanent, classified employee with another state agency; or

(3) be a former permanent, classified employee with another state agency with reinstatement eligibility to the classified service.

(d) If the vacancy posting indicates all sources, the selecting official may consider:

(1) candidates from an Office of Personnel Management (OPM) ~~certificate of eligibles (certificate)~~ E-list; or

~~(2) candidates whose names are added to an OPM certificate for a noncompetitive class in accordance with Merit System of Personnel Administration Rules; or~~

(~~3~~2) candidates entitled to benefits under the Special Disabled Veterans Employment Act, exempt from OPM examination requirement. [72 O.S. § 403]

(e) If the vacancy posting indicates all sources permitted by Merit Rules or OKDHS only, the selecting official may consider candidates with severe disabilities pursuant to Section 840-4.12G of Title 74 of the Oklahoma Statutes certified as severely disabled through the Department of Rehabilitation Services, and exempt from OPM examination requirements.

(1) Minimum qualifications for the JFD and level must be met by the applicant.

(A) The applicant possesses a letter issued by OPM to the applicant stating the JFD and level for which the applicant is qualified.

(B) The OPM eligibility letter expires after ~~six months~~ one year, if not renewed.

(2) The selecting official may:

(A) accept the applicant's letter and application directly up to the closing date of the announced position; or

(B) refer the applicant to apply on internal OKDHS announced positions.

(3) Section 840-4.12G of Title 74 of the Oklahoma Statutes does not apply to permanent classified employees seeking promotion, demotion, or an intra-agency transfers.

340:2-1-81. Issuing ~~OKDHS Form P-S-76,~~ Applicant List~~,~~ and ~~Office of Personnel Management (OPM) certificate of eligibles (certificate)~~ E-List

(a) The Human Resources Management Division (HRMD) prepares Form ~~P-S-76~~ 11PE076E, Applicant List, for the announced position. Applicants are screened to determine eligibility.

(b) If the position is in the classified service and announced as such, applicants may be considered from all sources. The local administrator may request that HRMD issue an Office of Personnel Management (OPM) ~~certificate~~ E-List for the announced job family descriptor and level and authorized announced alternate hiring level, as applicable. For positions that have been identified as underutilized in the current fiscal year in the Oklahoma Department of Human Services (OKDHS) Affirmative Action Plan, a special OPM ~~certificate~~ E-List is requested by the local administrator under the provisions of the Fair Employment Practices Act (FEPA) for which a goal has been established. The selecting official:

(1) must work Form ~~P-S-76~~ 11PE076E; and

(2) may work the regular OPM ~~certificate(s)~~ E-list(s) which includes the:

(A) FEPA ~~certificate~~ List; and

(B) Priority Reemployment ~~Certificate~~ E-List.

340:2-1-82. Job-related selection criteria

(a) At the time a decision is made to fill a position, the supervisor of the position is responsible for reviewing and determining job-related selection criteria based on the duties of the position. These job-related selection criteria are used to develop interview questions and any other selection procedures, such as skill assessments, simulations, or case studies. The Human Resources Management Division (HRMD) is available to assist with development of interview questions.

(b) The selecting official is normally in the program's upper organizational structure for the position being filled. The selecting official is identified on Form ~~P-S-76~~ 11PE076E, Applicant List, when it is returned to HRMD.

(c) The selecting official considers local affirmative action goals and reviews the job-related information in paragraphs (1) through (2) of this subsection when selecting applicants for interview and making the selection decision. Job-related information is:

(1) Form ~~P-1~~ 11PE001E, Application for Employment, Form ~~P-12~~ 11PE012E, ~~Application~~ Data Summary Sheet, or resume; and

(2) the employee's most recent Form OPM-111, Performance Management Process (PMP), which must be considered. Selection advisory committees may also review earlier Forms OPM-111 only when done consistently for all applicants.

(d) Work histories, if available, job-related references, and other job-related documents may be considered if done consistently for all candidates.

(e) The selecting official is responsible for validation of work experience and education required for the position. For

example, if the minimum requirement for a position is a bachelor's degree, a copy of the transcript or signed registrar's letter affirming the degree has been awarded, must be reviewed.

(f) A felony conviction does not exclude an applicant from being hired as an employee of the State of Oklahoma. Before making a conditional job offer to an applicant with a felony conviction, written approval in the form of a memo or e-mail must be obtained from the division director or the executive officer to whom the division director reports. This approval is included in the official personnel file.

340:2-1-84. Interviews for positions in the classified service

(a) When a position is announced as open to applicants from all sources, interviews may be conducted at the discretion of the selecting official from the Office of Personnel Management (OPM) ~~certificate of eligibles~~ E-List, Fair Employment Practices Act (FEPA) ~~certificate~~ List, and Form ~~P-S-76~~ 11PE076E, Applicant List.

(b) The selecting official ensures at least five candidates from Form ~~P-S-76~~ 11PE076E, Applicant List, are ~~contacted~~ invited for an interview. The minimum interview requirement applies only to current Oklahoma Department of Human Services (OKDHS) employees. Once a decision is made on the five candidates to be interviewed, if one or more applicants declines an interview, they do not need to be replaced. If five or fewer candidates are on Form ~~P-S-76~~ 11PE076E, all are offered an interview. Candidates interviewed within the last six months for the same job family descriptor and level by the same selecting official or identical selection advisory committee need not be interviewed again. Such prior interviews are considered toward meeting the minimum interview requirement.

(c) The selecting official at his or her discretion may fill the position, cancel, or reannounce the position.

(d) The selecting official ensures that the interview time, date, ~~and~~ location and any approved selective qualification are conveyed to candidates selected for interviews.

(e) A permanent classified employee of OKDHS or any other agency is responsible for submitting the most recent finalized Form OPM-111, Performance Management Process (PMP), at the time the interview is held, unless required to provide it prior to the interview.

(f) An OKDHS employee interviewed through these procedures is considered on duty when prior supervisory notification is given and he or she is currently a permanent status employee. Travel expenses are the responsibility of the employee. Time away from duty to interview for a position outside of OKDHS is charged as annual leave.

340:2-1-85. Final selection

(a) The local administrator is responsible for completing Form ~~P-S-76~~ 11PE076E, Applicant List, obtaining reviews or approvals from higher management levels, and forwarding the completed Form ~~P-S-76~~ 11PE076E immediately to the Human Resources Management Division (HRMD) upon the employee's acceptance of a job offer. In a ~~county office~~ human services center, the county director is responsible for reviewing Form ~~P-S-76~~ 11PE076E to ensure compliance with the Oklahoma Department of Human Services (OKDHS) policy and Merit System of Personnel Administration Rules governing the selection process and signing the form to indicate the review has taken place.

(b) The salary approved for the selection is in compliance with OAC 340:2-1-87.

340:2-1-86. Delegation of responsibility for vacancy posting and selection procedures ~~to divisions, facilities, and local offices~~

The Human Resources Management Division (HRMD) director or designee may approve the delegation of responsibility for vacancy posting and procedures to divisions, facilities, or local offices. Such delegation must comply with all applicable Oklahoma Department of Human Services (OKDHS) policy and Merit System of Personnel Administration Rules.

(1) Local administrators may delegate authority to recommend the final selection of candidates.

(2) If the local administrator approves the selection, he or she obtains the required clearances through all supervisory channels prior to submission of the selection to HRMD for finalization.

(3) All dates are tentative until the local personnel office is notified by HRMD of finalization of Form ~~P-31-A~~ 11PE031E, Announcement Requisition. Employee transfers and effective dates are in compliance with OAC 340:2-1-85.

[OAR Docket #08-706; filed 4-23-08]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

[OAR Docket #08-708]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Low Income Home Energy Assistance Program
340:20-1-3 through 340:20-1-4 [AMENDED]
340:20-1-7 through 340:20-1-8 [AMENDED]
340:20-1-11 [AMENDED]
340:20-1-13 [AMENDED]
340:20-1-15 [AMENDED]
340:20-1-17 [AMENDED]
(Reference APA WF 07-20 and 07-39)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Sections 96.80 through 96.89 of Title 45 of the Code of Federal Regulations; Public Law 97-35, as amended; and Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.
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Subchapter 1. Low Income Home Energy Assistance Program
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 20 permanent rule amendments: (1) correct when Low Income Home Energy Assistance Program (LIHEAP) payments are made; (2) clarify how income eligibility is determined; (3) remove resource standards from the rules as they are shown on an OKDHS appendix; (4) remove reference to an obsolete form; (4) add clarifying language; (5) use current terminology; (6) show current form names and numbers; (7) establish rules regarding the verification of the lawful presence in the United States (U.S.) for persons 14 years of age or older who are applying for state or federal public benefits; and (8) update rules regarding who is an eligible alien.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2008:

SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

340:20-1-3. Scope

(a) The operation of the ~~entire~~ Low Income Home Energy Assistance Program (LIHEAP) is contingent upon the receipt of federal funds. Delay in federal funding can cause changes in planned time frames for the program.

(b) Selected ~~ABCDS cases~~ households already approved for other benefits administered by the Family Support Services Division (FSSD) are normally pre-authorized during October. All other households must complete an application.

(1) The ~~Heating Assistance Program~~ heating assistance part of LIHEAP normally begins the first working day in December, and applications are taken for a month or less.

(2) ~~One~~ After certification, one payment is made ~~in February~~ directly to the designated supplier of the primary source of home heating on behalf of approved households responsible for their own utilities unless a situation arises which ~~might~~ may necessitate two or more payments. Examples of situations that ~~might~~ may necessitate two or more payments include a delay in federal funding, release of contingency funds by the President, and similar situations.

(3) Payments are made weekly for the duration of the program.

(c) The same payment schedule in (b) of this Section is used for unsubsidized renters and roomers with utilities included in their rent and for households whose energy source is wood, coal, heating oil, or kerosene, except that payments are made directly to approved households.

(d) Primary sources of home energy include natural gas, electricity, propane, firewood, kerosene, coal, or butane.

(1) LIHEAP payments are made for utility expenses, deposits, and reconnect charges applicable to the ~~households~~ household's primary source of home energy. ~~Reconnect~~ If both the client and OKDHS paid reconnect charges or deposits, ~~that have been paid with program funds must be reimbursed by~~ the utility supplier ~~to~~ must reimburse the client for those charges.

(2) When other utilities are included with the fuel bill and the amount for the primary source of home energy cannot be identified, or when the fuel vendor only accepts payment for the combined amount, the combined amount may be paid through LIHEAP.

(e) Payments are not made for blankets, emergency repair on the home, new or additional heating equipment, or heating appliances. Propane tank rental and delivery charges are not covered, if they are identifiable.

340:20-1-4. Coordination with Native American energy programs

Applications are accepted and processed from members of Native American tribes which have been approved to administer their own program ~~(see DHS Appendix D-4-b)~~. ~~Steps are taken~~ The Oklahoma Department of Human Services (OKDHS) coordinates with each participating tribe to prevent duplication of assistance.

(1) Any Native American household that has applied for Low Income Home Energy Assistance Program (LIHEAP) payments through the tribal agency is not eligible for LIHEAP certification through ~~DHS~~ OKDHS regardless of whether they have expended their tribal LIHEAP maximum authorized amount.

(2) ~~If the~~ When a Native American household applies first through ~~DHS~~ OKDHS for LIHEAP or is a member of a tribe that does not have its own LIHEAP ~~program~~, they are given the same consideration as any other household. If a tribal member is approved for ~~the DHS~~ OKDHS LIHEAP and later wants to apply for a tribal LIHEAP, the ~~DHS~~ OKDHS certification is canceled, as long as payment has not already been made.

340:20-1-7. Outreach

~~It is the responsibility of the County Administrator coordinate outreach by providing~~ The Oklahoma Department of Human Services (OKDHS) provides information and ~~presenting programs~~ presentations regarding the Low Income Home Energy Assistance Program (LIHEAP) to interested individuals and community agencies ~~such as Community Action Agencies and the local service providers, public and private organizations serving and representing elderly and handicapped persons, federal government offices, home energy suppliers, the public education system, local law enforcement agencies, community-based organizations and the mass media. The outreach efforts are to continue~~ for the duration of the program.

340:20-1-8. ~~Legalized aliens~~ Citizenship and alien status

(a) ~~Pursuant to the Immigration and Reform Act of 1986 [P.L. 99-603], former illegal aliens who met Immigration and Naturalization Services (INS) requirements could be granted temporary resident status beginning May 1987 and ending May 1988. These legalized, or amnesty, aliens were ineligible for all components of LIHEAP for a five year period beginning with the date lawful temporary resident status was granted. The five year ineligibility period for all amnesty aliens (and certain nationals of Afghanistan, Ethiopia, Poland and Uganda) has expired.~~ To be eligible for Low Income Home Energy Assistance Program (LIHEAP) benefits an individual must be:

(1) a United States (U.S.) citizen;

(2) a U.S. non-citizen national;

(3) an alien who is both qualified and eligible; or

(4) an alien not required to meet qualified alien status.

(b) ~~Legalized or amnesty aliens are now eligible to participate in LIHEAP. Aliens who were granted lawful status should have a unique identification card issued by INS, either an I-688 (Temporary Resident Card) for lawful temporary residents, or an I-551 (Resident Alien Card or "green card") for lawful permanent residents.~~ Pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes, all persons 14 years of age and older must declare whether they are residing in the U.S. lawfully and may be required to sign Form 08MP005E, Citizenship Affidavit, in accordance with OAC 340:65-3-1(g).

340:20-1-11. Income and liquid resources

(a) **Income.** ~~Gross~~ All gross earned and unearned income received by the household is considered in determining financial eligibility except for those income sources shown at (b) of this Section. Eligible households must meet the income standard less ~~exclusions are considered in determining financial eligibility~~ the earned income deduction as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(1) Income which is received on an annual basis is prorated over 12 months to arrive at the average monthly income.

(2) If the income is not received on a regular monthly basis, refer to OAC 340:10-3-31.

(3) Total income is rounded to the nearest dollar.

(4) When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is considered.

(5) When an illegal alien is part of an eligible household, the countable portion of ~~earned and unearned income of an illegal adult alien countable for household~~ his or her income is computed as outlined in ~~(1) - (4)~~ (A) through (E) of this subsection.

(~~1~~A) ~~Deduct $120 for each employed household member from the gross earned income.~~ For each employed household member, subtract the earned income deduction as shown on Appendix C-7.

(~~2~~B) Add the unearned income of the illegal alien.

(~~3~~C) Subtract the need standard on ~~Oklahoma Department of Human Services~~ OKDHS Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards Schedule IX, for the appropriate number of persons. Persons counted for the need standard are the illegal alien and his or her illegal alien dependents who:

(~~A~~i) are claimable for federal personal income taxes;

(~~B~~ii) live in the same household; and

(~~C~~iii) are not included in determining the Low Income Home Energy Assistance Program (LIHEAP) benefit level because they are illegal aliens.

(~~4~~D) Subtract the actual amounts paid by the illegal alien to dependents not living in the household as well as actual child support and alimony payments to non-household members.

(E) ~~This~~ The remaining amount is the amount considered available to the household members eligible for LIHEAP ~~household~~.

(b) **Income disregards.** In determining income, disregard:

(1) the food ~~stamp~~ benefit amount under the Food Stamp Act of 1977;

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

(3) educational grants, including work study, or scholarships, that are contingent upon the student regularly attending school. The student's classification, whether graduate or undergraduate, is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan is from an individual or financial institution in the loan business.

(B) If the loan is from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide;

(5) Indian payments including judgment funds or funds held in trust and distributed per capita by the Secretary of the Interior Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, disregard any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, for example, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, are disregarded as long as they meet the distribution requirements as stated in this paragraph. ~~However, any~~ Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowance for school expenses made available upon petition in writing from trust funds of the student;

(7) benefits from State and Community Programs on Aging [Title III]. Income from the Older American Community Service Employment Act [Title V], including American Association of Retired Persons (AARP) and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income;

(8) unearned income received by a child receiving Temporary Assistance for Needy Families (TANF), such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance, from a program funded by the Workforce Investment Act (WIA) including Job Corps income, and WIA earned income received as wages, not to exceed six months in any calendar year;

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

(10) payments to volunteers under the Domestic Volunteer Service Act of 1973, Volunteers in Service to America (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

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

(12) any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska native, which are exempt from taxation under the Settlement Act;

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

(14) earnings of a minor dependent child who is a full-time student;

(15) rental or housing subsidies by governmental agencies, for example, United States Department of Housing and Urban Development (HUD), received in-kind or in cash for rent, mortgage payments, or utilities;

(16) reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training. Uniform allowances are disregarded if the uniform is uniquely identified with company name or logo;

(17) advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;

(18) refunds of state EITC as a result of filing a state income tax return;

(19) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.) are not considered as income or as a resource in determining eligibility for or the amount of the benefit;

(20) payments received for Emergency Assistance to Needy Families with Children;

(21) Medicare buy-in premium;

(22) work related expenses that are applicable under the TANF Program;

(23) payments made by others on the household's behalf;

(24) in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages;

(25) payments made under the Radiation Exposure Compensation Act (P.L. 101-426) enacted October 15, 1990;

(26) federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;

(27) interests of individual Native Americans in trust or restricted lands;

(28) income up to $2,000 per year received by individual Native Americans, which is derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as income;

(29) payments made to individuals because of their status as victims of Nazi persecution; and

(30) monetary allowances as described in ~~United States Code (USC)~~ Section 1823(c) of Title 38 of the United States Code (USC) provided to certain individuals who are children of Vietnam War veterans.

(c) **Resources.** Liquid resources, such as cash on hand, checking or savings accounts, certificates of deposits, stocks or bonds, cannot exceed the allowable resource level as shown on OKDHS Appendix C-7. ~~For households that are not categorically eligible, liquid resources cannot exceed $2,000 for one person, $3,000 for two persons and $50 for each additional person in the household.~~ The applicant's statement is accepted as verification unless the information received is inconsistent or questionable.

340:20-1-13. Verification

(a) **Income and resources eligibility.** Income is verified for the Low Income Home Energy Assistance Program (LIHEAP) using the same procedures as for Temporary Assistance for Needy Families (TANF) at OAC 340:10-3. ~~The client's statement regarding liquid resources is acceptable unless questionable. Determination may be made by case record, SDX, award letters, and similar documents.~~

(1) If all members of the household are included in ~~the categorical case~~ TANF, State Supplemental Payment, or food benefits, verification of income and resources is established by ~~the~~ that case record.

(2) All other applications have eligibility determination based on current month's income and resources of the total household. ~~In those cases where an individual does odd jobs and it is not possible to verify income, Form LI-HEAP-2, Declaration of Income, is used.~~

(b) **Vulnerability determination.** To determine vulnerability, a household must show that it is subject to the expense of home energy.

(1) A household which pays energy costs directly to suppliers establishes vulnerability by billing information on the utility statement.

(2) ~~Authorization for an eligible renter or roomer~~ A household whose energy cost is included in the shelter payment must ~~contain verification of this arrangement~~ provide proof it is subject to the expense of home energy. ~~The case file may be used for verification of categorical authorizations, if the file contains the required information. For those cases not verifying the arrangement and all non-categorical cases, proof, such as~~ Proof may include a statement from the landlord or a rent receipt designating inclusion of fuel cost~~, is required~~.

(3) Subsidized households whose heating costs are included in their rent but are assessed an ~~"~~energy surcharge~~"~~ must provide documentation of the assessed surcharge. These households are then considered partially vulnerable and are eligible for LIHEAP, if they meet other eligibility criteria.

340:20-1-15. Other procedures

(a) **Referral for low income weatherization assistance.** Homeowner households who are eligible for Low Income Home Energy Assistance Program (LIHEAP) may be eligible for low income weatherization assistance through funds ~~DHS~~ Oklahoma Department of Human Services (OKDHS) allocates to the Oklahoma Department of Commerce (ODOC) for the weatherization assistance program. ~~Renters are not eligible for LIHEAP weatherization services.~~ The actual weatherization services are provided locally through Community Action Agencies pursuant to approval from ODOC. Renters are not eligible for LIHEAP weatherization services.

(1) The ~~State Office~~ Family Support Services Division (FSSD) LIHEAP Section staff provides ODOC with a ~~listing~~ list of clients approved for LIHEAP ~~clients~~. The list is then transmitted by ODOC to ~~the~~ local ~~community action offices~~ Community Action Agencies for use in ~~selecting~~ identifying homeowner households eligible for LIHEAP weatherization assistance.

(2) The ~~DHS county office~~ local OKDHS human services center (HSC) staff responds to direct inquiries from the local Community Action Agency or local weatherization ~~contractors~~ contractor concerning the eligibility for LIHEAP of households not appearing on the ~~listing~~ list.

(3) The ~~county office~~ HSC accepts LIHEAP referrals from local contractors and ~~expedite~~ expedites the processing of the LIHEAP application. ~~The county identifies homebound potential clients included in such referrals.~~

(4) The HSC county director sends representatives to projects and meetings of local contractors for intake and certification of potentially eligible individuals ~~whenever~~ when, in the sole discretion of the ~~County Director~~ HSC county director, this outreach can effectively and efficiently be accomplished. The ~~county~~ HSC staff inquires about the condition of the LIHEAP applicant's residence and refers LIHEAP homeowner clients in need of weatherization services, and who have not received weatherization services in a prior year, to the Community Action Agency or the local weatherization contractor.

(b) **~~Appeals~~ Fair hearing.** ~~Appeals~~ Fair hearing rules at OAC 340:2-5 that apply to the Temporary Assistance for Needy Families (TANF) category also apply to ~~the Low Income Home Energy Assistance Program~~ LIHEAP except that immediate adverse action may be taken on open cases without an advance notice. Because of the emergency situation that may exist ~~for Expedited Services and ECAP~~, ~~requests~~ a request for ~~hearings in these categories are~~ a hearing is expedited. ~~County directors review cases appealed on the basis of an alleged administrative error and either direct needed corrections or refer for a fair hearing.~~

(c) **Overpayments.** When ~~the county~~ HSC staff determines an overpayment exists, the worker submits a memo explaining the overpayment ~~is sent~~ to the ~~State Office, Family Support Services Division, Special Programs/LIHEAP~~ FSSD LIHEAP Section. All overpayments are used as part of the LIHEAP monitoring process rather than in a collection process.

(d) **Referral for vendor fraud.** ~~If the county~~ When HSC staff becomes aware of situations where a vendor accepts payment from ~~DHS~~ OKDHS on behalf of a household, but fails to provide service, either wholly or in part, as legally required, ~~the State Office~~ HSC staff contacts the FSSD LIHEAP ~~Unit is contacted~~ Section for potential referral to the ~~DHS Audit Unit~~ OKDHS Office of Inspector General (OIG).

(e) **Transfers.** Cases being transferred do not normally need to be closed.

340:20-1-17. Energy ~~Crisis Assistance~~ crisis assistance

(a) **Energy ~~Crisis Assistance~~ crisis assistance.** Energy crisis situations are handled ~~through Expedited Services (ES)~~ during the regular heating assistance program, and through the Energy Crisis Assistance Program (ECAP) in March. ~~All applications for Energy Crisis Assistance~~ Clients in a crisis situation must ~~be made~~ make application by contacting the local ~~Oklahoma Department of Human Services (OKDHS) office~~ human

services center (HSC). ~~The procedures and eligibility conditions in (1) through (8) of this subsection apply to both ES and ECAP.~~

(1) If a household is approved for ~~Energy Crisis Assistance, either ES or ECAP,~~ assistance ~~is provided~~ to resolve the crisis situation, the application is processed within 48 hours from the time ~~of~~ the HSC receives the application.

(2) ~~If~~ When the crisis situation is verified by a designated authority as life-threatening and the household qualifies for assistance, the application must be processed so that assistance is provided to resolve the crisis situation within 18 hours following receipt of the application ~~provided, the household is eligible for crisis assistance benefits~~. ~~The life-threatening decision must be documented in detail in the case record.~~ Authority for designating a crisis situation as life-threatening is limited to a:

(A) physician;

(B) public health official;

(C) licensed practitioner of the healing arts; or

(D) ~~OKDHS~~ HSC county director.

~~(3) Following verification of the crisis and determination of eligibility, the certifying worker contacts the fuel supplier as soon as possible to request delivery of fuel. Form LIHEAP-37-J, Notice of Eligibility For Energy Crisis Assistance, is then issued to the supplier or to the client to take to the supplier.~~

~~(4) ES and ECAP are utilized for households having an energy crisis who do not exceed the income and liquid resource standards. Income and resource criteria for Energy Crisis Assistance are the same as for heating assistance found in OAC 340:20-1-11 except if the energy crisis is due to garnishment or recoupment of an overpayment, other than OKDHS, the garnishment or recoupment amount is subtracted to arrive at net income for ES or ECAP.~~

~~(5) A household that exceeds income and liquid resource standards is ineligible. Even if income and liquid resources are equal to or below the standard, the worker must verify that the energy crisis need cannot be met by available income and liquid resources. The household also must have had service discontinued or terminated by the seasonal primary energy supplier, or received:~~

~~(A) notice of a scheduled cut-off within 72 hours;~~

~~(B) notice of a refusal to provide additional energy needs by the supplier when supply of fuel will be depleted within 72 hours or less; or~~

~~(C) information regarding fee for a new connection.~~

~~(6) The worker must ascertain why the energy bill has not been paid. For a household to be eligible for ES or ECAP, some precipitating factor must exist which caused the household's inability to pay their energy bill. Simply not paying the bill when there was no household crisis does not qualify a household for ES or ECAP. Factors preventing payment of the energy bill include, but are not limited to, situations causing the household to make a choice between paying the energy bill and:~~

~~(A) purchasing sufficient food for the household;~~

~~(B) paying for emergency situations such as medical expenses or disaster recovery; or~~

~~(C) providing clothing for children in the household.~~

~~(7) Counties must use discretion in determining what constitutes good cause for a household not paying the utility bill. Any practical reason is acceptable. If in doubt, the Family Support Services Division (FSSD), Low Income Home Energy Assistance Program (LIHEAP) Unit, is available for consultation.~~

~~(8) If the energy supplier will not establish or restore service for the amount of the ES or ECAP payment, combined with whatever other resource is available or can be developed, the crisis payment cannot be authorized.~~

~~(9) All payments for crisis assistance are made directly to energy suppliers with rare exceptions.~~

~~(b) **Expedited Services (ES).** During the open application period in December, energy crisis situations are addressed by approving eligible households for ES.~~

~~(1) A household approved for ES is not eligible for a heating assistance payment in February. The ES benefit from the Estimated Benefit Level Matrix is the appropriate amount based on the best estimate by OKDHS of the total amount of federal funds that will be available in relation to the number of households expected to be approved.~~

~~(2) ES payments are made weekly after the heating assistance application period begins in December. The household benefit level for ES and heating assistance is the same unless it is necessary to adjust the heating assistance benefit, either up or down, before the February payment is made.~~

(~~c~~b) **Energy Crisis Assistance Program (ECAP).** Based upon previous years' program experience, reasonable funds are reserved until March 15 of each year for ECAP. All ECAP applications must be made on Form ~~LIHEAP-1-B~~ 08LH002E, Application for Low Income Home Energy Assistance.

(1) **Eligibility criteria.**

(A) Households with an energy crisis must not exceed the income and liquid resource standards on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. Income and resource criteria for ECAP are the same as for heating assistance found in OAC 340:20-1-11 with the exception of garnishment or recoupment of an overpayment. For ECAP, the garnishment or recoupment amount of income, other than OKDHS benefits, is subtracted to arrive at net income.

(B) The household must have had service discontinued or terminated by the seasonal primary energy supplier, or received:

(i) notice of a scheduled cut-off within 72 hours;

(ii) notice of a refusal to provide additional energy needs by the supplier when supply of fuel will be depleted within 72 hours or less; or

(iii) information regarding fee for a new connection.

(C) For a household to be eligible for ECAP, some precipitating factor must exist which caused the household's inability to pay their energy bill. The worker must ascertain why the energy bill has not been paid. Factors preventing payment of the energy bill include, but are not limited to, situations causing the household to make a choice between paying the energy bill and:

(i) purchasing sufficient food for the household;

(ii) paying for emergency situations such as medical expenses or disaster recovery; or

(iii) providing clothing for children in the household.

(D) The worker must verify that the energy crisis need cannot be met by available income and liquid resources, even if income and liquid resources are equal to or below the standard.

(E) If the energy supplier refuses to establish or restore service for the amount of the ECAP payment, combined with whatever other resource is available or can be developed, the ECAP payment cannot be authorized.

(F) In instances where the maximum amount of ECAP and other available emergency programs do not meet the crisis, the case must be documented as having a feasible plan for maintaining or restoring service before an ECAP payment can be authorized.

(2) **Administrative procedures.**

(A) The authorized benefit for ECAP is limited to a one-time-only payment for the amount necessary to connect, restore, or maintain energy service to the household.

(B) OKDHS makes payments for crisis assistance directly to energy suppliers with rare exceptions.

(C) The authorized benefit cannot include the cost of propane or butane tank delivery. ~~In instances where the maximum amount of ECAP and other available emergency programs do not meet the crisis, the case must be documented as having a feasible plan for maintaining or restoring service before an ECAP payment can be authorized.~~

(D) Payment may only be authorized for the seasonal primary source of energy, although it is possible for the primary energy source to change in some situations. If an interim period of ECAP assistance is implemented, the client may choose the primary energy source.

(E) If a cooling program is implemented, payment is only authorized for the primary energy source for cooling. [OAC 340:20-1-10(b)]

[OAR Docket #08-708; filed 4-23-08]

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

[OAR Docket #08-741]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Scope and Applicability
340:25-1-1.1 through 340:25-1-2.1 [AMENDED]
Subchapter 5. Operational Policies
Part 11. CSED System Security
340:25-5-75 [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110.1 [AMENDED]
340:25-5-114 [AMENDED]
340:25-5-117 [AMENDED]
340:25-5-123 through 340:25-5-124 [AMENDED]
340:25-5-124.2 through 340:25-5-124.3 [AMENDED]
Part 17. Past Support
340:25-5-140 [AMENDED]
Part 20. Medical Support
340:25-5-168 [AMENDED]
340:25-5-171 [AMENDED]
Part 21. Establishment
340:25-5-176 [AMENDED]
340:25-5-178 [AMENDED]
340:24-5-179.1 [AMENDED]
Part 22. Review and Modification
340:25-5-198.2 [AMENDED]
Part 23. Enforcement
340:25-5-200 [AMENDED]
340:25-5-212 [AMENDED]
Part 25. Federal Offset Programs
340:25-5-215 [AMENDED]
Part 27. State Tax Refund Offset Program
340:25-5-235 [AMENDED]
340:25-5-244 [AMENDED]
Part 33. Interstate and International Cases
340:25-5-270 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-350.3 through 340:25-5-351 [AMENDED]
(Reference APA WF 07-15 and 07-35)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Article XXV, Sections 453, 454, 454A, and 454B of the Social Security Act, codified in Sections 653, 654, 654a and 654b of Title 42 of the United States Code (U.S.C.); Section 1738B of Title 28 U.S.C.; United States House Resolution 3130, Public Law 105-200; Sections 302.31, 302.32, 302.38, 303.6, 307.11, 307.13, and Part 310 of Title 45 of the Code of Federal Regulations (CFR); Section 303-102 and 303.32 of Title 45 CFR (National Medical Support Notice Parts A and B); Sections 652 and 666 of Title 42 of the U.S.C. (federal Deficit Reduction Act of 2005); Section 1171.2 of Title 12 of the Oklahoma Statutes (federal Deficit Reduction Act of 2005); Sections 112, 139, and 139.1 of Title 43; Sections 237 and 240.20 of Title 56 of the Oklahoma Statutes; Sections 11-6 through 11-11 of Chapter 50 of Title 710 of the Oklahoma Administrative Code; and Section 205.2 of Title 68 of the Oklahoma Statutes (Oklahoma Senate Bill 814).

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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Operational Policies
Part 27. State Tax Refund Offset Program
340:25-5-244 [AMENDED]
(Reference APA WF 07-15)
Gubernatorial approval:
October 16, 2007
Register publication:
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Docket number:
07-1435
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Child Support Enforcement Division rules are revised to: (1) remove and add definitions; (2) specify that judgments for medical support include birthing costs; (3) change location information; (4) add teletypewriter numbers for the hearing impaired, and telephone numbers for the Cherokee and Osage Nation Child Support Offices; (5) specify that noncooperation also means authorizing child supports be made through, or failing to forward to CSED child support payments received from, other entities other than the Centralized Support Registry; (6) add that a case may be closed due to a noncustodial parent's disability and lack of income; (7) add policy to clarify CSED office assignment and case transfer when the case is a Family and Domestic district court case; (8) add policy to clarify CSED office assignment and case transfer when the applicant is eligible for tribal child support services; (9) add policy to clarify CSED office assignment and case transfer when there is no Family and Domestic district court case and parental rights have been terminated; (10) specify CSED does not calculate a past-due support balance or take action to enforce past-due support until 30 days from the date of mailing of the notice; (11) specify that both parents are required to secure health insurance for minor child(ren) and standards for health coverage and exceptions to those standards; (12) specify CSED modifies a child support order when review indicates modification would result in an enforceable medical support order; (13) add policy to direct that when noncustodial parent contacts CSED within 30 days of a default paternity order, CSED requests the court vacate the default paternity order and pursues genetic testing; (14) describe what CSED considers as best evidence available that when determining a parent's child support obligation and specifying that when the noncustodial parent contacts CSED within 30 days of a default child support order, and provides information to calculate an accurate child support obligation, CSED requests the court enter a new order; (15) specifies that CSED reserve the issue of support for a prior period until the noncustodial parent is no longer receiving TANF or Supplemental Security Income; (16) specifies CSED modifies a child support order when there is evidence enforcement of a medical support order against a custodial person is inappropriate; (17) adds policy that when CSED discovers assets not previously reported, levies against a noncustodial parent's assets may manually or automatically issue unless the noncustodial parent is in full and timely compliance with a court-ordered payment plan and specifies what CSED considers as full and timely compliance with a court-ordered payment plan; provides for release of funds from levy; (18) specifies federal income tax refund intercepts must be distributed as past-due support to the custodial person; (19) specifies interest is considered as past child support; (20) adds policy that CSED sends a notice to the noncustodial parent whenever a state tax refund is offset and changes the time for requesting a hearing from 60 days to 30 days; (21) specifies that a payor must submit payment by cashier's check or money order when CSED refuses to accept a personal check or direct debit; (22) adds policy on the debit card program; (23) specifies that CSED does not apply interest collections from federal income tax refund offsets to state debt unless CSED has been unable to locate the custodial person; (24) amendments to make a variety of housekeeping changes, including reformatting, updating legal citations, clarifying language to be consistent with current usage, and correcting punctuation and syntax.

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.1. Definitions

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

"Address of record" means an address for a party or a custodial person in the Central Case Registry of the Child Support Enforcement Division (CSED) that is used for service of process in support, custody, and visitation actions. An address of record may be different from the party's or custodial person's physical address.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.* [10 O.S. § 7700-102]

"Annual notice" means the yearly notice provided for in Section 237A of Title 56 of the Oklahoma Statutes to notify the noncustodial parent and custodial person of the amount due, actions that may be taken to enforce the child support obligation, actions required of the noncustodial parent and custodial person, and other related information and instructions.

"Arrears," "arrearage," or **"past-due support"** means the total amount of unpaid support obligations that has accrued under a support order. See also the definition for "delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations.

"Authorized representative" means a person designated by a custodial person, noncustodial parent, or biological parent according to OAC 340:25-1-3.1.

"Biological parent" means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or has received child support services and all of the records and actions associated with the group.

"Central Case Registry" means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry under Section 654a

of Title 42 of the United States Code. CSED maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

"Centralized Support Registry" means a repository maintained by CSED to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes. It serves as Oklahoma's State Disbursement Unit under Section 654b of Title 42 of the United States Code. The Centralized Support Registry processes payments:

(A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes* until all monies owed for child support are no longer owed;

(B) *in all other cases in which support is being paid by income withholding*; and

(C) when a court orders payments to be made through the Centralized Support Registry. [43 O.S. § 413]

"CSED" means the Child Support Enforcement Division of the Oklahoma Department of Human Services. CSED includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, Native American tribal organizations, and others. CSED includes all of these offices and their employees and agents.

"Custodial person" or **"custodian"** means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid.* [12 O.S. §1170 and 56 O.S. § 237.7]

"District office" means a child support enforcement office operated by OKDHS or through contract or agreement with OKDHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Full-service case" means a child support case for which CSED provides all appropriate IV-D services as described in OAC 340:25-1-1.2.

"High-volume administrative enforcement cases in interstate actions" means, on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes. [42 U.S.C. § 666]

"Income assignment" means an assignment, by operation of law or by court or administrative order, of a portion of the monies, income, or periodic earnings due and owing by the noncustodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Interstate case" means a case in which at least one party resides in another state or country, or a support order was entered in another state or country.

"IV-A" means Title IV, Part A, of the Social Security Act, codified in Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in Part B of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code, generally relating to child support.

"IV-D case" means a child support case receiving IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"IV-E" means Title IV, Part E, of the Social Security Act, codified in Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering foster care.

"IV-E foster care" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for IV-E foster care.

"Medicaid" or **"Title XIX"** means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in Subchapter XIX of Chapter 7 of Title 42 of the United States Code.

"Medical enforcement only case" or **"MEO case"** means a child support case for which CSED provides only IV-D services related to securing medical support to non-TANF Medicaid recipients.

"Medical support" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

"Member of military service" or **"servicemember"** means any member of the uniformed service on active duty, including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, and the National Oceanic and Atmospheric Administration, members of the Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries if their service is similar to military service. [50A U.S.C. §§ 511, 514, and 516] A servicemember may be a noncustodial parent or a custodial person.

"Noncustodial parent" means a parent who does not have primary physical custody of the child(ren).

"Non-IV-D case" means a private child support case not receiving IV-D services.

"Non-IV-E foster care" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal IV-E participation requirements.

"OAH" means the OKDHS Office of Administrative Hearings: Child Support, which conducts child support enforcement administrative hearings. [56 O.S. § 237.7]

"Obligee" or **"person entitled"** means:

(A) *a person to whom a support debt or support obligation is owed*;

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services; or*

(C) *a person designated in a support order or as otherwise specified by the court.* [56 O.S. § 237.7]

"Obligor" means the person who is required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Offset" means an amount of money intercepted from a noncustodial parent's state or federal tax refund, or from an administrative payment such as federal retirement benefits, to satisfy a child support debt.

"OKDHS" means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the Child Support Enforcement Program for the State of Oklahoma.

"Overpayment" means a payment to a custodial person, noncustodial parent, or other entity by CSED to which the entity or person is not entitled.

"Participant in a case" means a child, parent or alleged father, or custodial person associated with a child support enforcement case.

"Past support" means past-due support or support for a prior period. See the definition for " arrears" in this Section.

"Payment plan" includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support. [43 O.S. § 139.1 and 56 O.S. § 237.7] A payment plan is intended to incrementally reduce arrears.

"Payor" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Presumed father" means *a man who, by operation of law* under 10 O.S. § 7700-204, *is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding*. [10 O.S. § 7700-102]

"Social Security Act" means Public Law 74-271, approved August 14, 1935, as currently in effect.

"State's attorney" means a lawyer employed in the child support program to represent the state in rendering services pursuant to the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"Support" means all payments or other obligations due and owing to the custodial person or person entitled by the noncustodial parent under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in Section 118 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

"Support for a prior period" means the amount of child support ordered under the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" means a *judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.* [43 O.S. § 601-101]

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

~~**"Tribal office"** means the Chickasaw Nation Tribal Child Support Enforcement Office.~~

~~**"Tribal office case"** means a child support case assigned to the Chickasaw Nation Tribal Child Support Enforcement Office under OAC 340:25-5-124.2.~~

"Tribunal" means a court or administrative agency authorized to establish, enforce, or modify support orders, or determine parentage. [43 O.S. § 601-101]

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes.

"Unreimbursed public assistance" means money paid as cash assistance from IV-A and IV-E programs that has not yet been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, the UPA is codified in Sections 7700-101 through 7700-902 of Title 10 of the Oklahoma Statutes.

340:25-1-1.2. Structure and services

(a) **Structure.**

(1) Under Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, every state must designate a single state agency to administer a statewide plan for child support enforcement. The Oklahoma Department of Human Services is the designated agency in Oklahoma. The Child Support Enforcement Division (CSED) administers the plan.

(2) CSED provides services through a state office and other offices throughout the state that may be administered through service agreements or contracts with district attorneys and other entities, such as Community Action Program agencies and Native American tribal organizations, to provide legal child support enforcement services.

(3) The primary function of CSED is to provide child support enforcement services in all IV-A TANF, IV-E foster care, and non-TANF Medicaid cases where eligibility is due to the absence of one or both parents, and in other cases for persons who have applied for services. CSED also provides these services in cases forwarded by:

(A) IV-D agencies of other states; and

(B) Native American tribes and foreign jurisdictions, as appropriate.

(4) CSED complies with the standards for an effective program and the organization and staffing requirements prescribed by Part 303 of Title 45 of the Code of Federal Regulations.

(b) **Services.** CSED services include, but are not limited to:

(1) establishment of paternity, child support obligations, ~~and~~ ongoing medical support, and ongoing child care obligations through administrative and court actions;

(2) enforcement of child support, fixed sums and judgments for medical support including birthing costs, health care coverage, fixed ongoing child care costs, judgments for child care costs, and in some instances spousal support obligations;

(3) location of noncustodial parents and their assets by establishing intrastate and interstate links with local, state, and federal agencies, private sources, and international central authorities;

(4) review of cases for modification of support orders as appropriate;

(5) collection and distribution of support payments in accordance with state and federal law; and

(6) establishment and maintenance of accounting and other records in accordance with state and federal law.

(c) **Excluded services.** CSED services do not include:

(1) establishment or modification of spousal support, visitation, or custody; and

(2) establishment of judgment for unreimbursed medical expenses or child care costs that are not included in the fixed monthly child support obligation.

(d) **Limited services.** CSED provides limited services only at the request of an initiating interstate IV-D agency or an international central authority under Sections 601-101 through 901 of Title 43 of the Oklahoma Statutes and Section 303.7 of Title 45 of the Code of Federal Regulations. CSED provides limited services, when appropriate, even if no individual noncustodial parent or custodial person resides in Oklahoma.

340:25-1-2. Legal base

(a) **Federal law.** Sections 651 through 669b of Title 42 of the United States Code is the primary basis in federal law for Oklahoma's Child Support Enforcement Program. The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code, applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's Child Support Enforcement Program.

(b) **State law.** Oklahoma Statutes covering child support enforcement include, but are not limited to:

(1) Sections ~~78,~~ 80, 83, 84, 90.4, 90.5, 7005-1.4, and 7700-101 through 7700-902 of Title 10;

(2) Sections 1170 and 1171.2 through 1171.4 of Title 12;

(3) Sections 566, 567, and 852 of Title 21;

(4) Sections 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-901 of Title 43;

(5) Sections 166.1, 183, 230.60 and 231 through 240.23 of Title 56;

(6) Sections 1-311.2 and 1-311.3 of Title 63; and

(7) Sections 205.2 and 205.3 of Title 68.

(c) **Applicability.** The Child Support Enforcement Division (CSED) uses federal or state statutes, as appropriate, in specific situations to establish and enforce child support orders. CSED follows applicable state and federal laws to which it is subject in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.

340:25-1-2.1. Location for information

(a) **Mailing address.** The mailing address of the state office of Child Support Enforcement Division (CSED) is: Child Support Enforcement Division, Capitol Station Box 53552, Oklahoma City, OK 73152-3552.

(b) **CSED telephone information.** Addresses of district child support offices throughout Oklahoma and other information may be requested by telephoning 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922. The Teletypewriter (TTY) number for the hearing impaired is 405-522-3792 in the Oklahoma City calling area, or 1-866-264-4767 toll-free.

(c) **Tribal telephone information.** Inquiries regarding child support cases with the:

(1) Chickasaw Nation Tribal Child Support Services may be made by telephoning toll-free at 1-866-431-3419.

(2) Cherokee Nation Child Support office may be made by telephoning 918-453-5444.

(3) Osage Nation Child Support office may be made by telephoning 918-287-5458.

(d) **Internet access.** Information about the Child Support Enforcement Program is available from the CSED Internet at http://www.okdhs.org.

(1) A customer who has an active child support case(s) and an Oklahoma Department of Human Services (OKDHS) customer identification number may use the Internet to access information about the customer's case(s).

(2) A customer may contact CSED as described in this Section to request a child support customer personal identification number (PIN) and instructions for accessing case information on the Internet.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 11. CSED SYSTEM SECURITY

340:25-5-75. Authority and responsibility

The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) operates a single statewide automated data processing and information retrieval system that meets the requirements of:

(1) Sections 652, 654, 654a, and 655 of Title 42 of the United States Code; and

(2) Section 302.85 and Part 307 of Title 45 of the Code of Federal Regulations~~; and~~

~~(3) Sections OAC 340:2-21-20 through 340:2-21-35~~.

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-110.1. Applications

(a) To apply for child support enforcement services, a person must submit a completed and signed application form to the address on the form. A one cent application fee is paid by the Child Support Enforcement Division (CSED) for each application received. Form 03EN001E, Application for Child Support Services, is submitted in every circumstance, including applications received by:

(1) former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF Medicaid recipients with the Oklahoma Department of Human Services (OKDHS);

(2) former participants in IV-D cases;

(3) noncustodial parents listed on an existing medical enforcement only case, if the noncustodial parent is requesting a review and adjustment or to open a new case per OAC 340:25-5-198.1; or

(4) persons receiving child support payments from the Centralized Support Registry and not currently receiving child support services through CSED.

(b) Application forms are obtained at any child support or other OKDHS office or by writing or telephoning the Child Support Enforcement Division at the address and telephone numbers provided in OAC 340:25-1-2.1.

~~(1) The mailing address to obtain an application form is P.O. Box 53552, Oklahoma City, Oklahoma, 73152-3552.~~

~~(2) The customer service toll-free telephone number is 1-800-522-2922.~~

~~(3)~~ Printable application forms are available from the CSED Internet at http://www.okdhs.org/childsupport/.

(c) CSED sends outreach letters to noncustodial parents who have filed Form 03PA209E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records. Outreach letters provide information about OKDHS services and invite noncustodial parents to participate in these services. These noncustodial parents may apply for child support services through this outreach process.

(d) An applicant who is a custodial person must give OKDHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the custodial person and child(ren).

(e) CSED accepts an application and opens a case when:

(1) the child is a minor or the application is to enforce a child support order for an adult with disabilities under Section 112.1A of Title 43 of the Oklahoma Statutes;

(2) paternity must be established for a minor child against a deceased noncustodial parent consistent with OAC 340:25-5-176; and

(3) the former custodial person's parental rights have been terminated, then the child was adopted, and the application to collect past-due support owed to the former custodial person was received before the adoption.

(f) CSED does not accept applications for collection of past-due support when:

(1) all children on the application have reached the age of majority and none is an adult with disabilities with an established child support order;

(2) the child is deceased; or

(3) the child is a minor but no longer resides with the custodial person.

340:25-5-114. Procedures for determining and processing noncooperation on TANF and non-TANF Medicaid cases

(a) **Cooperation of custodial persons.** The custodial person must cooperate with the Child Support Enforcement Division (CSED) in establishing paternity or in establishing, modifying, or enforcing a support order under Section 654 of Title 42 of the United States Code and Section 264.30 of Title 45 of the Code of Federal Regulations. A custodial person receiving:

(1) Temporary Assistance for Needy Families (TANF) must assign any rights to support to the Oklahoma Department of Human Services (OKDHS) under Section 608 of Title 42 of the United States Code; and

(2) non-TANF Medicaid must assign to OKDHS any rights to medical support under Section 433.146 of Title 42 of the Code of Federal Regulations.

(b) **Noncooperation of custodial persons.** When a custodial person fails to cooperate, CSED reviews the case to determine noncooperation. If CSED determines noncooperation, CSED notifies OKDHS Family Support Services (FSS) staff in the county office. OKDHS FSS staff in the ~~county office~~ local human services center (HSC) update the computer document for noncooperation with CSED and a computer-generated notice under OAC 340:65-5-1 is sent to advise the recipient of any decrease in benefits due to noncooperation.

(1) For CSED to make a noncooperation determination, the cooperation must be essential for the next step in providing child support enforcement services, per OAC 340:10-10-5 and 340:10-10-7.

(2) Noncooperation is indicated when the custodial person:

(A) fails to appear at a district office to provide information or evidence relevant to the case;

(B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) when requested to do so by the district office;

(C) fails to comply with an order to submit oneself and the child(ren) to genetic testing to determine paternity;

(D) fails to appear as a witness at an administrative or district court hearing or other proceeding;

(E) fails to provide information, or attest to lack of information, under penalty of perjury;

(F) fails to forward to CSED all child support payments received from the noncustodial parent(s), or those received from entities other than the Centralized Support Registry;

(G) refuses to make a repayment agreement or to comply with a repayment plan when child support receipts are retained; or

(H) pursues private legal action affecting paternity, child support, medical support, or child care, or authorizes payments made other than through the Centralized Support Registry without giving CSED notice and fails to keep CSED informed of the status of the case.

(3) OKDHS FSS staff in the ~~county office~~ local HSC determine whether good cause for noncooperation with CSED exists based on OAC 340:10-10-6.

340:25-5-117. Initiation of IV-D cases

(a) **IV-A, IV-E foster care, non-TANF Medicaid, and child care subsidy referrals.**

(1) The Child Support Enforcement Division (CSED) automatically initiates child support enforcement cases without additional application for certified IV-A, IV-E foster care, non-TANF (Temporary Assistance for Needy Families) Medicaid, and child care subsidy referrals.

(2) Custodial persons who apply for non-TANF Medicaid on behalf of themselves and their child(ren) must assign medical support rights to the state under Section 1396k of Title 42 of the United States Code.

(A) These custodial persons must cooperate in establishing paternity and obtaining medical support unless an exception exists under Sections 1396a(l)(1)(A), 1396k, or 1396r-6 of Title 42 of the United States Code.

(B) CSED must open a IV-D medical enforcement only case as described in OAC 340:25-5-169. CSED may open a full-service case to provide all appropriate IV-D services as described in OAC 340:25-1-1.2 at the custodial person's request.

(3) When CSED receives a referral from the Family Support Services (FSS) worker, CSED must open a full-service case if any child in the household is certified for a child care subsidy under OAC 340:40-7-9.

(4) When CSED receives a non-TANF Medicaid referral from the FSS worker in which assigned court-ordered child support is owed, CSED must open a full-service case under OAC 340:25-5-169.

(5) Custodial persons who apply for non-TANF Medicaid on behalf of their child(ren) only are not required to ~~assign medical support rights or~~ cooperate in establishing paternity and obtaining medical support. Therefore, except when (a)(3) of this Section applies, CSED does not provide child support services unless ~~the custodial person requests services for the child(ren). The~~ the FSS referral is coded to indicate that the custodial person ~~may~~ has made a request for a full-service case or ~~a~~ the case is for medical enforcement only ~~case~~.

(b) **Termination of IV-A, IV-E foster care, and non-TANF Medicaid benefits.** When a family is no longer eligible for assistance under IV-A, IV-E foster care, or Medicaid programs, all appropriate IV-D services continue without application under Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF Medicaid cases previously limited to medical support continue as full-service cases. If a custodial person refuses continued IV-D services and subsequently requests services, the person must submit a completed and signed Form 03EN001E, Application for Child Support Services, even if CSED has an active case because of unreimbursed assistance owed to the state.

(c) **Referrals from other jurisdictions.** CSED accepts cases referred:

(1) by any state or tribal IV-D agency and from other countries when the noncustodial parent resides in Oklahoma. CSED does not require an application for cases referred from another IV-D agency;

(2) by interstate referrals for judgment only collections if the case was opened in the initiating state during the minority of any child on the case; and

(3) when Oklahoma is an appropriate jurisdiction to establish, enforce, modify, or determine the controlling order under the Uniform Interstate Family Support Act in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes, whether or not the noncustodial parent resides in Oklahoma.

(d) **Responses from noncustodial parents who sign an acknowledgment of paternity.** CSED opens full-service cases for noncustodial parents who have filed Form 03PA209E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records, and requested child support services in response to outreach letters sent to them as described in OAC 340:25-5-110.1.

(e) **Other IV-D cases.** Except as provided in (a), (c), and (d) of this Section, an applicant must submit a completed and signed Form 03EN001E to receive all appropriate child support enforcement services or to receive locate only services.

340:25-5-123. Case closure system

(a) Except as provided in (b) and (c) of this Section, the Child Support Enforcement Division (CSED) closes cases eligible for closure under Section 303.11 of Title 45 of the Code of Federal Regulations.

(b) A child support case may not be closed when:

(1) court-ordered support is owed to the state; and

(2) current child support is being collected by income assignment.

(c) A child support case may be closed when any of the criteria in (1) through ~~(4)~~(5) of this subsection applies.

(1) Less than $500 in court-ordered support is owed to the state, unless there has been:

(A) a collection during the past six months; or

(B) a federal or state income tax refund intercept in the past 18 months.

(2) The custodial person is participating in the Oklahoma Department of Human Services (OKDHS) child

care subsidy program, is not receiving Temporary Assistance for Needy Families (TANF) or non-TANF Medicaid, requests closure, and (A) and (B) of this paragraph apply.

(A) There is a child support order.

(B) The custodial person is receiving the full amount of the current monthly child support obligation and has reported to Family Support Services receipt of this child support income.

(3) The custodial person is receiving non-TANF Medicaid benefits for a child(ren) only, requests closure, and (A) and (B) of this paragraph apply.

(A) The custodial person later contacts CSED to decline child support services.

(B) No court hearing has been held to enforce the child support order.

(4) The custodial person is participating in the OKDHS child care subsidy program, is receiving non-TANF Medicaid benefits for a child(ren) only, requests closure, and all the criteria in paragraphs (2) and (3) of this subsection apply.

(5) The noncustodial parent is receiving Supplemental Security Income, has no income or assets to pay arrears, and the child support order is set at or modified to $0.00 per month due to the parent's disability and lack of income.

(d) When CSED closes a non-public assistance child support case because the parties to a case reunite or the child(ren) is adopted, CSED terminates the Order/Notice to Withhold Income for Child Support with the employer.

(e) When CSED closes a non-public assistance child support case for reasons other than reunification, CSED keeps the Order/Notice to Withhold Income for Child Support with the employer in effect unless ordered by district or administrative court to terminate the notice with the employer.

(1) The income assignment order remains in effect as long as support is owed under 12 O.S. § 1171.3(B)(14). If the district or administrative court orders that the Order/Notice to Withhold Income for Child Support be terminated, CSED sends a termination notice to the employer.

(2) Income assignment child support payments continue to be processed in a non-IV-D child support case through the Centralized Support Registry under 43 O.S. § 413(A)(2) and OAC 340:25-5-350.3.

(f) Under Section 302.33 of Title 45 of the Code of Federal Regulations, when IV-A TANF, IV-E foster care, and non-TANF Medicaid services are discontinued, CSED notifies the recipient that CSED maintains a full-service child support case unless the custodial person affirmatively declines services in writing. If the custodial person declines services in writing, CSED closes the case. If the custodial person fails to respond, CSED maintains a full-service child support case.

340:25-5-124. Assignment and transfer of cases to child support offices

In assigning cases to child support offices, the Child Support Enforcement Division (CSED) considers whether the case is eligible for assignment to one of the tribal ~~office~~ programs under OAC 340:25-5-124.2. CSED treats an order registered in Oklahoma under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes as an Oklahoma order for purposes of OAC 340:25-5-124(1) and (2). If the case is not ~~a~~ assigned to one of the tribal ~~office case~~ programs, CSED assigns cases under this Section.

(1) Oklahoma child support cases are assigned to a district office serving the county where ~~the Oklahoma order for current child support was entered or docketed in district court~~ a prior Family and Domestic district court case exists involving the parents and child(ren), regardless of whether or not a child support order was entered as to either parent. If there is a guardianship order in effect, the case is assigned to the district office serving the county in which the guardianship action was filed. The district office proceeds to:

(A) petition the guardianship court to defer jurisdiction of child support to CSED. The case then follows regular case assignment rules;

(B) petition the guardianship court to defer jurisdiction of child support to a pre-existing Family and Domestic court case involving the parents and child(ren) to enforce an existing child support order or establish a child support order. The case is assigned to the district office serving the county with the existing Family and Domestic court order; or

(C) petition the guardianship court to establish a child support order. The case is assigned to the district office serving the county of the guardianship.

(2) Child support orders from another state, or federal or tribal child support orders are assigned to a district office serving the county in which the order is registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes. If there are multiple Oklahoma support orders, cases are assigned to a district office serving the county where the presumed controlling order for current child support was entered or docketed in district court.

(~~2~~3) Cases are assigned to a district office serving the county where the custodian of the child(ren) resides when there is:

(A) no Oklahoma child support order and there is no prior Family and Domestic district court case on file;

(B) a federal or tribal child support order; or

(C) a child support order from another state.

(~~3~~4) Except in cases where a child support order is registered in Oklahoma, if the custodian of the child(ren) does not reside in Oklahoma, cases are assigned to the district office serving the county where the noncustodial parent or alleged father resides.

(~~4~~5) When there is no Oklahoma order and no party resides in Oklahoma, cases are assigned to the district office serving the county with significant contacts with the case. When more than one county has significant contacts with the case, the case is assigned to the district office having the most recent significant contact.

(~~5~~6) CSED does not transfer cases docketed or registered under Sections 601-601 through 601-614 of Title

43 of the Oklahoma Statutes in district court because the custodial person or noncustodial parent moves to a county outside of the original district office's service area.

(~~6~~7) CSED reassigns a case to another district office to avoid a conflict of interest under OAC 340:2-1-8.

340:25-5-124.2. Tribal case assignments and transfer of cases to ~~the~~ an Oklahoma tribal child support office

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meanings:

(1) **"Native American"** means a person who is an enrolled member of a federally recognized Indian tribe.

(2) **"Tribal child support office"** means a federally recognized comprehensive

IV-D child support program in Oklahoma.

(~~a~~b) ~~**Jurisdictional requirements**~~ **Legal base and scope.** ~~Chickasaw Nation Tribal Child Support Services (tribal office):~~ The tribal child support offices:

(1) ~~provides~~ provide child support services in tribal and federal courts within their service area under the Court of Indian Offenses civil jurisdiction requirements in Section 11.103 of Title 25 of the Code of Federal Regulations, the Full Faith and Credit for Child Support Orders Act (FFCCSOA) in Section 1738B of Title 28 of the United States Code, and the jurisdictional requirements ~~in Sections 101.2 and 101.3 of Title 6 of the Chickasaw Nation Code~~ outlined in their tribal codes;

(2) ~~does~~ do not provide child support services when the child(ren) is in a deprived or delinquent state juvenile court action; and

(3) may be contacted by telephone as described in OAC 340:25-1-2.1 to obtain information about child support cases ~~with the tribal office~~.

(~~b~~c) **New tribal case assignments and transfers from ~~CSED~~ the Child Support Enforcement Division (CSED).**

(1) Under the requirements of OAC 340:25-5-124, Oklahoma's Interstate Central Registry and Oklahoma's Centralized Support Registry, also known as the State Disbursement Unit, assign to a district child support office incoming interstate referrals and Form 03EN001E, Application for Child Support Services, with a:

(A) Native American noncustodial parent;

(B) tribal child support order; or

(C) tribal employer.

(2) ~~The assigned district child support office processes the case and transfers to the tribal office cases that meet the requirements under subsection (d) of this Section.~~

~~(3) The Child Support Enforcement Division (CSED)~~ CSED retains cases with ~~noncustodial parent~~ tribal members and tribal child support orders unless:

(A) the ~~custodial person or noncustodial parent~~ applicant of the CSED case applies for child support services with a tribal child support office and requests a transfer of the ~~tribal~~ CSED case to ~~the~~ a tribal child support office, and the ~~tribal~~ CSED case meets the eligibility requirements ~~of~~ as determined by the tribal child support office ~~under subsection (d) of this Section~~; or

(B) ~~the tribal or federal courts within the tribal office service area have exclusive jurisdiction over the tribal case~~ the noncustodial parent is a tribal employee.

(3) Upon confirmation from a tribal child support office that the CSED case applicant has applied for tribal child support services, the district office provides relevant documents from the district office case file to that tribal child support office and retains a case file.

(~~c~~d) **Transfers from ~~the~~ tribal ~~office~~ child support offices and CSED registration of tribal child support orders.** CSED accepts cases returned to CSED from ~~the~~ tribal ~~office~~ child support offices due to the lack of jurisdiction to proceed in the tribal court system, if a customer applies for services with CSED or a noncustodial parent leaves tribal employment and the applicant does not apply for tribal child support office services. CSED registers tribal child support orders in state courts under FFCCSOA in Section 1738B of Title 28 of the United States Code and may establish and enforce a child support order in tribal or federal courts that are outside the tribal office's service area.

~~(d) **Tribal office case eligibility requirements.**~~

~~(1) **Establishment.** A person may receive services from the tribal office for paternity establishment and establishment of a child support order when the noncustodial parent or alleged father is an enrolled member of one of the tribes in the tribal office's service area and resides within the boundaries of that tribe.~~

~~(2) **Enforcement.** A person may receive services from the tribal office for enforcement of a child support order when any one of (A) through (C) of this paragraph applies.~~

~~(A) The order is a tribal order from one of the tribes in the tribal office's service area.~~

~~(B) The order is issued by a state court, either district or administrative, and the noncustodial parent is an enrolled member of one of the tribes in the tribal office's service area and resides within the boundaries of that tribe. The tribal office staff notifies the state district court, the Office of Administrative Hearings: Child Support, or, if necessary, both courts of the intention of the tribal office to proceed with the case in tribal court.~~

~~(C) The order is issued by a state court, either district or administrative, and the noncustodial parent is a non-Native American tribal employee of one of the tribes in the tribal office's service area. Within 30 days of case assignment to the tribal office, the tribal office registers the state order in tribal court only for enforcement of the child support order. If the noncustodial parent leaves tribal employment, the tribal office transfers the case to CSED.~~

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

~~(1) **"Native American"** means a person who is an enrolled member of a federally recognized Indian tribe.~~

~~(2) **"Tribal case"** means a child support case with a Native American noncustodial parent, tribal child support order, tribal employer, or any combination.~~

340:25-5-124.3. Assignment and management of deprived cases

When a case includes a child(ren) in a deprived court action, the Child Support Enforcement Division (CSED) assigns cases under this Section.

(1) **No existing child support order.** When there is no existing child support order, the case is assigned to a district office serving the county in which the district court has jurisdiction over the deprived action.

(2) **Existing ~~child support order~~ case.** When there is ~~an existing child support order~~ a prior Family and Domestic district court case involving the parent(s) and child(ren), the case is assigned to a district office serving the county in which the order was entered or docketed, regardless of whether a child support order was entered as to either parent.

(3) **Split jurisdiction.** When the case involves split jurisdiction, the district offices coordinate paternity and child support order establishment and child support order enforcement procedures with the district courts.

(4) **No prior child support order.** When no ~~prior~~ child support order was entered prior to the filing of the juvenile petition ~~exists~~, there is no existing Family and Domestic district court case, the parental rights of the noncustodial parent are terminated, and the child is not placed with that noncustodial parent, ~~the deprived action closes, and the child(ren) is in a permanent placement,~~ the child support case is assigned and transferred according to (A) through ~~(C)~~(E), as applicable.

(A) When a child(ren) is permanently placed within ~~the state of~~ Oklahoma, the child support case is assigned to the district office serving the county where the minor child(ren) resides.

(B) When a child(ren) is permanently placed outside ~~the state of~~ Oklahoma, the child support case is assigned to the district office serving the county where the noncustodial parent resides.

(C) When there are multiple noncustodial parents residing in different areas, the district offices within whose jurisdiction the noncustodial parents reside reach an agreement regarding district office assignment.

(D) When parental rights have been terminated, CSED requests the court refer all child support issues regarding the parent whose rights have been terminated to CSED for filing in the appropriate court.

(E) When the juvenile court has entered a child support order but no longer desires to exercise jurisdiction to enforce the order, no prior Family and Domestic district court case exists, and the child(ren) is not placed with the noncustodial parent, CSED dockets the juvenile child support or paternity order in a new district court case according to (i) through (iii), as applicable:

(i) in the county in which the noncustodial parent resides;

(ii) if both parents are noncustodial parents, (C) of this paragraph applies; or

(iii) in the county where the child(ren) resides if parental rights have been terminated.

(5) **Prior child support order.** When a prior child support order exists and after final adjudication and dismissal of the deprived action from the juvenile court, or when child support issues have been deferred by the juvenile court, the office with the existing child support order dockets any juvenile child support or paternity order in its district court and proceeds with both judicial and non-judicial enforcement of the child support order.

(6) **Adoption.** When the child(ren) is adopted and the deprived action terminates, the child support case is assigned as described in (A) and (B).

(A) When there is an existing child support order prior to the child(ren) entering foster care, the case is assigned to the district office serving the county where the order was established.

(B) When there is no existing child support order prior to the child(ren) entering foster care, and a child support order is established during the deprived action, the case is assigned to the district office serving the county where the noncustodial parent resides.

PART 17. PAST SUPPORT

340:25-5-140. Past support

(a) **Authority.** The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order, and on the first day of each month thereafter except when another state's law governs the due date.

(2) CSED bases its determination of past-due support and support for a prior period on information in available records from courts, IV-D and other public and private agencies, custodial persons, noncustodial parents, and others.

(3) CSED may require sworn written statements and supporting documents from custodial persons, noncustodial parents, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

(A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;

(B) Section 1738B of Title 28 of the United States Code;

(C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and

(D) Sections 83, 84, and 7700-636 of Title 10, Chapters 3 and 21 of Title 12, Title 43, and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) **Enforcement.**

(1) CSED takes action to enforce past-due support and support for a prior period under OAC 340:25-5, Part 23.

(2) When a case new to CSED under OAC 340:25-5-117 has an existing order, CSED does not calculate a past-due support balance or take action to enforce past-due support until 30 days from the date of mailing of the notice of case letter and affidavit of payments document to the noncustodial parent. This does not preclude the initiation of an income assignment to collect current support.

(3) Past-due child support remains due to the custodial person with whom a child resided during the month the past support was due.

(~~3~~4) When CSED takes action to enforce past-due support and support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(c) **Settlement of past support.**

(1) Settlements of past support may include:

(A) a noncustodial parent's lump sum partial payment or a series of payments made toward the total amount of past support;

(B) an agreement for the noncustodial parent to pay a specified number of current child support payments in the future; and

(C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.

(2) Settlements of past support must be memorialized in a court order and the custodial person must sign the court order when the past support is owed to the custodial person.

(3) In accordance with Section 112 of Title 43 of the Oklahoma Statutes, CSED:

(A) acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the past child support due to the custodial person; or

(B) may negotiate the right to collect all or part of past support owed to the State of Oklahoma.

(d) **Annual notice.** CSED uses the annual notice to the noncustodial parent under Section 237A of Title 56 of the Oklahoma Statutes to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions as provided in OAC 340:25-5, Part 23.

(e) **Death of custodial person.** If the custodial person dies and no past support is owed to any state, CSED refunds child support payments to the decedent's estate when notified in writing by the administrator of the estate. CSED does not file a forced probate court action to determine heirs and distribute past support to heirs. When:

(1) CSED does not receive notice from the administrator of the estate within six months of the custodial person's death, CSED refunds child support payments to the payor.

(2) the payor's address is unknown, or payments are returned due to the inability to distribute, support payments are returned to the noncustodial parent.

(3) past support is owed to any state, CSED distributes the payments according to OAC 340:25-5-351.

(f) **Jurisdiction.** When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, CSED uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce the child support orders.

PART 20. MEDICAL SUPPORT

340:25-5-168. Establishment of medical support

(a) **Scope and applicability.** The Child Support Enforcement Division (CSED) establishes medical support under:

(1) Section 666 of Title 42 of the United States Code;

(2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and

(3) Section 6058A of Title 36, Sections 112, 118, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Medical support provision of child support order.** A child support order established by CSED must contain a provision for medical support. The medical support provision must include one of the provisions in (1) ~~or (2)~~ through (4) of this subsection.

(1) Either or both parents must secure health insurance for the minor child(ren) when it is available through an employer or other group health insurance plan.

(2) Neither parent is required to secure health insurance for the minor child(ren) because alternative health coverage is ~~available~~ in effect. Alternative health coverage includes, but is not limited to, an individual policy for the child(ren), Indian Health Services, and military dependent benefits.

(3) Either or both parents are required to secure health insurance for the minor child(ren) in addition to Indian Health Services (IHS).

(4) Either or both parents are required to seek alternative health coverage other than Medicaid if an employer or other group plan is not available at reasonable cost and/or is not accessible. Any alternative health coverage must comply with (1) and (2) of subsection (c) of this Section.

(c) **Standards for health coverage.** When CSED seeks an order for health coverage, CSED applies the standards in (1) and (2) of this subsection:

(1) Health insurance is reasonable in cost, which means that the actual out-of-pocket premium cost paid by the insured does not exceed five percent of the gross income of

the parent who is ordered to provide health insurance. To calculate the actual premium cost of the health insurance, CSED:

(A) deducts from the total insurance premium the cost of coverage for the parent;

(B) deducts from the total insurance premium the cost of coverage for any other adults in the household, when that cost information is available;

(C) divides the remainder by the number of dependent children covered; and

(D) multiplies the amount per child by the number of children in the child support case under consideration.

(2) Health insurance is accessible, which means that there are available providers appropriate to meet the child(ren)'s individual health care needs no more than 60 miles one-way from the primary residence of the child(ren).

(d) **Exceptions to standards.** If the parents agree or the court otherwise orders, the cost of health insurance may exceed five percent of the gross income of the parent ordered to provide health insurance and/or accessibility may exceed 60 miles one-way from the primary residence of the child(ren).

(~~c~~e) **Indian Health Services (IHS).** A child support order that provides for the enrollment of a child(ren) in Indian Health Services may be considered sufficient to satisfy the requirement of subsection (b) of this Section. CSED seeks an order for either or both parents to secure health insurance for the minor child(ren) when it is available through an employer or other group plan, in addition to ~~Indian Health Services~~ IHS, upon request of the custodial person or noncustodial parent.

(~~d~~f) **Notification requirements.** The noncustodial parent and the custodial person must notify CSED in writing within 30 days after:

(1) health insurance becomes available;

(2) the cost of existing health insurance changes; or

(3) other provisions of existing health insurance change.

(~~e~~g) **Modification request.** When a child support order exists, CSED considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

340:25-5-171. ~~National Medical Support Notice~~ Enforcement of a medical support order

(a) When the noncustodial parent has been ordered to provide health insurance for the child(ren) and has failed to voluntarily enroll the child(ren), the Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) uses the National Medical Support Notice (NMSN) to aid in enrolling the child(ren) in the group health plans for which the noncustodial parent is eligible. CSED sends the NMSN to the noncustodial parent's employer as required by Section 666 of Title 42 of the United States Code, Section 609 of the Employee Retirement Income Security Act of 1974, Section 303.32 of Title 45 of the Code of Federal Regulations, and Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(b) When a child is eligible for enrollment in the United States Department of Defense's managed health care program, TRICARE, (a) of this Section does not apply. CSED notifies the custodial person to contact the Defense Manpower Data Center Support Office at 1-800-538-9552 to enroll the child, using the Defense Enrollment Eligibility Reporting System registration process.

(c) If the employer response to the NMSN indicates that enrollment cannot be completed because of the cost of coverage, CSED applies OAC 340:25-5-168 to determine if coverage is available at reasonable cost. CSED conducts a review of the order under OAC 340:25-5-198.1 and seeks a modified order if the review indicates that modification would result in an enforceable medical support order or that the child support order should be adjusted.

(~~c~~d) CSED issues a non-compliance letter to the employer when the employer:

(1) has not returned the NMSN within 20 business days after the date of the NMSN notifying CSED that:

(A) the employer does not offer group dependent health coverage;

(B) the employee is among a class of employees that is not eligible for family coverage under the employer's plans;

(C) the employee is not employed by the employer; or

(D) state or federal withholding limitations or prioritization of withholding prevent the required employee contribution to obtain coverage;

(2) has not forwarded the NMSN to the insurer within 20 business days after the date of the NMSN; or

(3) is the insurer and has not returned the NMSN within 20 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(~~d~~e) CSED issues a non-compliance letter to the insurer when the insurer has not returned the NMSN within 40 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(~~e~~f) CSED may initiate legal proceedings to request the court to fine employers and insurers when there is no response indicating full compliance with the requirements of the NMSN within ten business days after the date of the non-compliance letter. Fines may be imposed by the court for up to $200 a month per child for each failure to comply with the requirements of the NMSN under Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(~~f~~g) If the employer or insurer complies with the requirements of the NMSN, CSED may dismiss the case against the employer or insurer.

(~~g~~h) Employers and insurers must send any fine(s) imposed by the court, under Section 225 of Title 56 of the Oklahoma

Statutes, by check or money order to CSED, Attn: Finance, P.O. Box 53552, Oklahoma City, Oklahoma 73125-3552.

(i) If the custodial person is ordered to provide medical support for the minor child(ren) and is not complying with the order, CSED either:

(1) enforces the medical support order under Section 139.1 of Title 43, or Section 566 of Title 21 of the Oklahoma Statutes; or

(2) seeks a modification of the order under 340:25-5-198.2.

PART 21. ESTABLISHMENT

340:25-5-176. Establishment of paternity

(a) In cases where paternity has not been legally established, the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) establishes paternity and recovers costs advanced for genetic testing under:

(1) Sections 653, 654, and 666 of Title 42 of the United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Sections 83, 84, 90.4, and 7700-101 through 7700-902 of Title 10, Sections 601-201, 601-401, and 601-701 of Title 43, Sections 230.60 and 231 through 240.23 of Title 56, and Sections 1-311 and 1-321 of Title 63 of the Oklahoma Statutes.

(b) CSED does not initiate a paternity action if:

(1) paternity has been voluntarily acknowledged in Oklahoma or another state and not rescinded within 60 days; [10 O.S. §§ 7700-301 through 7700-314]

(2) the child has a presumed father and a party initiates a challenge more than two years after the child's birth; or [10 O.S. §§ 7700-204 and 7700-607]

(3) paternity has been established by a district or administrative court order. [10 O.S. § 7700-636]

(c) If no other conclusive presumption of paternity or court determination of paternity exists for a child, the parents may complete and sign Form 03PA209E, Acknowledgment of Paternity. CSED provides Form 03PA209E for voluntary acknowledgment of paternity under Section 7700-312 of Title 10 and Sections 1-311 and 1-311.3 of Title 63 of the Oklahoma Statutes. CSED also provides several companion forms described in (1) through (4) of this subsection. The forms include instructions for completion. Signed and witnessed forms must be filed with the Oklahoma State Department of Health (OSDH), Division of Vital Records.

(1) When parents of an adult child, age 18 years or older, complete Form 03PA209E, the adult child must give consent to add the natural father's name to the birth certificate. The child indicates consent by signing Form 03PA212E, Adult Child's (18 Years or Older) Consent.

(2) Form 03PA210E, Denial of Paternity, must accompany Form 03PA209E if the mother of a child is married to someone other than the natural father and the child is born within 300 days after the marriage is terminated under Section 7700-204 of Title 10 of the Oklahoma Statutes. The mother and the natural father may complete and sign Form 03PA209E if:

(A) there is a presumed father;

(B) the mother and the presumed father agree he is not the natural father of the child; and

(C) the child is under two years of age.

(3) Under Sections 7700-307 and 7700-312 of Title 10 of the Oklahoma Statutes, CSED provides Form 03PA211E, Rescission of Acknowledgment of Paternity, for a person to use to cancel the legal finding of paternity created by having previously signed Form 03PA209E. This form must be completed, signed, and filed with the OSDH Division of Vital Records within 60 days after the date of the last signature on Form 03PA209E.

(A) When a person submits Form 03PA211E within 60 days after the date of the last signature on Form 03PA209E, CSED sends notice of the rescission to all other signatories on Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last-known address of the signatories, if different.

(B) When rescissions are submitted to CSED past the 60-day time period, CSED sends a letter to the person who submitted Form 03PA211E informing the person that the rescission is invalid because it was not timely submitted.

(4) Under Sections 7700-307 and 7700-312 of Title 10 of the Oklahoma Statutes, CSED provides Form 03PA213E, Rescission of Denial of Paternity, for a person to use to cancel the legal finding of paternity created by having previously signed Form 03PA210E. Form 03PA213E must be completed, signed, and filed with the OSDH Division of Vital Records within 60 days after the date of the last signature on Forms 03PA209E and 03PA210E.

(A) When a person submits Form 03PA213E to CSED within 60 days after the date of the last signatures on Forms 03PA209E and 03PA210E, CSED sends notice of the rescission to all other signatories of Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last known addresses of the signatories, if different.

(B) When a rescission of denial is submitted to CSED past the 60-day time period, CSED sends a letter to the person who submitted Form 03PA213E informing the person that the rescission of denial is invalid because it was not timely submitted.

(d) When CSED establishes paternity against an alleged father or with a custodial person, either of whom is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(e) When CSED has the cooperation of a deceased alleged father's relatives, CSED establishes paternity of the child(ren) through genetic testing of the relatives as necessary according

to the standards and provisions of the Uniform Parentage Act, Sections 7700-501 through 7700-511 of Title 10 of the Oklahoma Statutes.

(f) CSED establishes paternity against an alleged father who is disabled and receiving monthly Supplemental Security Income before reviewing the case for possible closure under OAC 340:25-5-123.

(g) When a default paternity order has been entered, CSED requests the court vacate the order if the noncustodial parent contacts CSED within 30 days of entry of the default order. When the order is vacated, CSED pursues genetic testing and enters a child support order based on findings.

340:25-5-178. Establishment of current child support

(a) The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) establishes current child support under:

(1) Sections 654, 656 and 666 of Title 42 of the United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Section 83 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) CSED uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:

(1) establish the amount of current support; and

(2) prepare a child support computation form prescribed by OKDHS CSED and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site under Section 120 of Title 43 of the Oklahoma Statutes.

(c) Under Section 118 of Title 43 of the Oklahoma Statutes, CSED uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training.

(~~c~~d) To establish the amount of current support, CSED considers "actual" child care expenses to be the amount paid to the child care provider by the custodial person except when subsection (~~d~~e) applies. CSED determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the noncustodial parent becomes part of the fixed monthly child support obligation.

(~~d~~e) When the custodial person is participating in the OKDHS child care subsidy program under Section 230.50 of Title 56 of the Oklahoma Statutes, CSED uses OKDHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule to determine the family share co-payment amount to be considered as actual child care costs on the child support computation form. [43 O.S. § 118]

(1) CSED considers the noncustodial parent's share of the base monthly obligation for child support and the custodial person's gross monthly income as the custodial person's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, CSED uses the corresponding family share co-payment amount based on the number of children in OKDHS subsidized child care. CSED allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. Child support staff perform a separate child support guidelines calculation for each noncustodial parent.

(2) If the custodial person has a child(ren) in OKDHS subsidized child care other than a child(ren) included in the child support case being established, CSED uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(~~e~~f) CSED establishes child support orders in deprived court actions under Section 7003-8.8 of Title 10 of the Oklahoma Statutes and prepares the child support order on the standard child support order form prescribed by CSED and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site.

(~~f~~g) CSED establishes child support orders for a child(ren) for whom child support is imposable under applicable law.

(~~g~~h) When the noncustodial parent is a minor, CSED establishes paternity under OAC 340:25-5-176 if necessary and establishes a child support order. If a minor noncustodial parent or a custodial person is under 16 years of age, CSED does not impute gross income for the minor parent in the child support computation ~~unless there is evidence of~~ and only uses actual income. If a minor noncustodial parent or custodial person is between 16 and 18 years of age and regularly and continuously attending high school, CSED does impute gross income for the minor parent(s) based on minimum wage at 20 hours per week, unless:

(1) there is evidence of actual income; or

(2) it is otherwise inappropriate.

(~~h~~i) CSED enforces child support orders for adults with disabilities under Section 112.1A of Title 43 of the Oklahoma Statutes.

(~~i~~j) CSED establishes or modifies child support orders to continue after the child reaches the age of majority under Section 112.1A of Title 43 of the Oklahoma Statutes if the application or referral for IV-D services is received during the period when child support is due under Section 112 of Title 43 of the Oklahoma Statutes.

(~~j~~k) CSED establishes a child support order on an incarcerated noncustodial parent and requests the court to enter the effective date of the child support obligation as the first day of the second month following release from incarceration.

(~~k~~l) When CSED establishes a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(~~l~~m) CSED does not impute gross income to a person who has been determined disabled by the Social Security Administration.

(n) When a default order for child support has been ordered and the noncustodial parent contacts CSED within 30 days of entry of the default order and provides information to calculate an accurate child support obligation, CSED requests the court enter a new order consistent with the evidence presented.

340:25-5-179.1. Establishment of support for a prior period

(a) The Child Support Enforcement Division (CSED) establishes support for a prior period.

(1) When paternity is being established by court order or when paternity has been previously established by a signed Form 03PA209E, Acknowledgment of Paternity, CSED establishes current support and support for a prior period at the same time under Sections 83 and 7700-636 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, CSED establishes support for a prior period under Sections 118 and 119 of Title 43 and Section 238.1 of Title 56 of the Oklahoma Statutes.

(A) CSED establishes support for a prior period under this subsection only when:

(i) current child support is sought; and

(ii) Temporary Assistance for Needy Families (TANF) has been expended in any month during the past five years.

(B) CSED may issue a Notice of Support Debt or file a district court action to establish support for a prior period. CSED limits this prior period to the number of months on TANF during the five years immediately before the date CSED issues the Notice of Support Debt, or files the district court action.

(b) When a child support order is entered against a minor noncustodial parent, CSED establishes support for a prior period under the criteria for establishing current child support described in OAC 340:25-5-178. CSED establishes a monthly payment plan amount of at least $1 a month.

(c) CSED does not establish an order for support for a prior period on an incarcerated noncustodial parent. ~~Adjudication for support for a prior period is reserved until release from incarceration.~~ CSED requests the court reserve the issue of child support for a prior period.

(d) When CSED establishes an order for support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(e) When the noncustodial parent is a current TANF or Supplemental Security Income (SSI) recipient and:

(1) CSED has information that the noncustodial parent had no obligation based on the child support guidelines for the prior time period, CSED requests the court set the judgment at $0.00; or

(2) CSED determines that a debt may be owed for a prior period, CSED requests the court reserve the issue of support for a prior period until the noncustodial parent is no longer receiving TANF or SSI.

PART 22. REVIEW AND MODIFICATION

340:25-5-198.2. Modification

(a) The Child Support Enforcement Division (CSED) may initiate modification of a child support order under Sections 112, 118, 118.1, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.

(1) If there is no existing order for either parent to provide dependent health care coverage, CSED initiates a modification of a support order to require either or both parents to provide dependent health care coverage when CSED obtains information that the child(ren) is not covered under an existing health care plan other than Medicaid, regardless of whether the coverage is currently available to either parent.

(2) When CSED participates in the modification of a child support order, CSED requests that the court order contain a provision for medical support consistent with OAC 340:25-5-168.

(3) OAC 340:25-5-201.1 describes when modification of a child support order is appropriate after a noncustodial parent obtains physical or legal custody of the child(ren).

(4) CSED initiates a modification of the child support order when there is:

(A) no existing order for either parent to provide a portion of child care expenses;

(B) a change in how child care is being provided; ~~or~~

(C) a change in whether the Oklahoma Department of Human Services provides child care subsidy to a child(ren) in the order~~.~~; or

(D) an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate pursuant to Section 139.1 of Title 43 or Section 566 of Title 21 of the Oklahoma Statutes.

(b) When a child support order exists, CSED considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED seeks a medical support order in a tribunal that has jurisdiction to modify the child support order and follows procedures in OAC 340:25-5-198.1.

PART 23. ENFORCEMENT

340:25-5-200. Scope and applicability

(a) **Enforcement.** The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) follows Part D of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the United States Code, Section 303.6 of Title 45 of the Code of Federal Regulations, and Section 240.1 of Title 56 of the Oklahoma Statutes in initiating enforcement proceedings.

(1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.

(2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment. [43 O.S. § 137]

(3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.

(4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the real and personal property of the noncustodial parent.

(b) **Non-Oklahoma support order.** CSED registers a support order from another state, Native American tribe, territory, or foreign country, as defined by subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in Section 1738B(b) of Title 28 of the United States Code and Section 601-101(21) of Title 43 of the Oklahoma Statutes when enforcement of the order is sought.

(c) **Multiple support orders.** When multiple child support orders have been entered in the same or different tribunals involving the same noncustodial parent and child, CSED seeks a determination of controlling order under Sections 601-207, 601-307, and 601-601 through 601-603 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-270.

(d) **Legal remedies.** CSED determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. Remedies CSED may use include but are not limited to:

(1) annual notice to noncustodial parents as provided in Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213;

(2) income assignment, garnishment, and levy as provided in Chapter 21 of Title 12, Sections 115 and 601-501 through 601-507 of Title 43, Sections 237, 240.2, and 240.23 of Title 56 of the Oklahoma Statutes, and Section 666 of Title 42 of the United States Code;

(3) hearing on assets as provided in Section 842 of Title 12 of the Oklahoma Statutes;

(4) intercept of federal tax refunds as provided in Section 664 of Title 42 of the United States Code, Sections 285.3 of Title 31 and 303.72 of Title 45 of the Code of Federal Regulations, and OAC 340:25-5, Part 25, and intercept of state tax refunds as provided in Section 303.102 of Title 45 of the Code of Federal Regulations, Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes, and OAC 340:25-5, Part 27;

(5) administrative offsets as provided in Section 3716 of Title 31 of the United States Code, Section 285.1 of Title 31 of the Code of Federal Regulations, and Executive Order 13019;

(6) denial, revocation, or suspension of United States passports as provided in Section 240.1 of Title 56 of the Oklahoma Statutes and Sections 652 and 654 of Title 42 of the United States Code;

(7) revocation, suspension, non-renewal, and non-issuance of various licenses including, but not limited to, revocations of certificates of motor vehicle titles as provided in Sections 139 and 139.1 of Title 43, Sections 1-153, 6-201, 6-201.1, and 6-211 of Title 47, and Sections 237.1 and 240.15 through 240.21A of Title 56 of the Oklahoma Statutes;

(8) imposing liens and executing and levying on personal and real property, including, but not limited to, ~~Workers' Compensation~~ workers' compensation benefits, personal injury, wrongful death, and probate actions as provided in Section 135 of Title 43, Section 240.23 of Title 56, and Titles 12 and 58 of the Oklahoma Statutes;

(9) registration of foreign support orders under the Uniform Interstate Family Support Act as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;

(10) credit bureau referrals as provided in Sections 666 of Title 42 and 1681b of Title 15 of the United States Code, Section 240.7 of Title 56 of the Oklahoma Statutes, and OAC 340:25-5, Part 31;

(11) financial institution data match as provided in Sections 666 and 669A of Title 42 of the United States Code, Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes, and OAC 340:25-5-212;

(12) seek work orders as provided in Section 240.10 of Title 56 of the Oklahoma Statutes;

(13) contempt as provided in Sections 566 and 567 of Title 21, Section 137 of Title 43, and Section 234 of Title 56 of the Oklahoma Statutes;

(14) action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor under the Uniform Fraudulent Transfer Act, Sections 112 through 123 of Title 24 of the Oklahoma Statutes and Section 666 of Title 42 of the United States Code;

(15) registration of foreign judgments under the Uniform Enforcement of Foreign Judgments Act, Sections 719 through 726 of Title 12 of the Oklahoma Statutes;

(16) criminal actions brought under Section 852 of Title 21 of the Oklahoma Statutes;

(17) civil actions brought under Section 660 of Title 42 of the United States Code;

(18) transfer of child support obligation to another custodian under Section 237 of Title 56 of the Oklahoma Statutes;

(19) referral to the United States Attorney for federal prosecution under Section 228 of Title 18 of the United States Code;

(20) full collection services by the Secretary of the Treasury under Section 6305 of the Internal Revenue Code of 1954; and

(21) attachment of lottery prize winnings from the Oklahoma Lottery Commission under Section 724.1 of Title 3A of the Oklahoma Statutes.

(e) **Servicemember.** When CSED initiates proceedings to enforce a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, CSED applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

340:25-5-212. Financial institution data match reporting system

(a) **Legal basis.** The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) maintains a financial institution data match reporting system to identify noncustodial parents' assets and issue levies on accounts of noncustodial parents who are in noncompliance with an order for support. In maintaining the system, CSED follows Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, associated federal regulations, and state statutes. This Section establishes provisions necessary to implement Sections 666(a)(17) and 669A of Title 42 of the United States Code and Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes. The definitions in Section 240.22A of Title 56 of the Oklahoma Statutes apply to the terms used in this Section.

(b) **Financial institutions.**

(1) All data supplied to CSED by financial institutions doing business in Oklahoma must be in accordance with the Financial Institution Data Match Specifications Handbook published by the federal Office of Child Support Enforcement.

(2) A financial institution may charge an account levied on by CSED a fee of $20, under Section 240.22E(E) of Title 56 of the Oklahoma Statutes, which is deducted from the account before the financial institution remits funds to CSED. If the levied funds are subsequently refunded by CSED because of a CSED error described in (d)(4)(A) or (d)(4)(B) of this Section, CSED refunds any fee charged to the appropriate account holder.

(c) **Levies.** Levies are for the total amount of past-due support as defined in Section 237.7 of Title 56 of the Oklahoma Statutes. Under Section 240.22G of Title 56 of the Oklahoma Statutes, CSED automatically issues a levy for each matched account unless the noncustodial parent is in full and timely compliance with a court-ordered payment plan. CSED considers a noncustodial parent in full and timely compliance with a court-ordered payment plan when the noncustodial parent has made voluntary payments of at least 92% of the court-ordered payment plan payments due over the last six full calendar months prior to the date of the levy. CSED considers a manual levy appropriate if there is evidence that the noncustodial parent has funds subject to levy not previously considered by CSED in establishing the monthly court-ordered payment plan.

(d) **Notice of levy and administrative review.**

(1) CSED sends a notice of levy to a noncustodial parent within three days after sending the levy to the financial institution. [56 O.S. § 240.22G] The notice of levy includes:

(A) instructions for the noncustodial parent or a non-obligated joint account holder to request an administrative review in writing;

(B) a description of the grounds for requesting an administrative review;

(C) a description of the review process; and

(D) notice that failure to submit a timely request for review in writing means the levy is final.

(2) It is the responsibility of the noncustodial parent to notify any joint account holder(s) of the levy.

(3) Either the noncustodial parent or a non-obligated joint account holder may request an administrative review of the levy in writing after the date on the notice of levy under Section 240.22G of Title 56 of the Oklahoma Statutes.

(4) The noncustodial parent may request an administrative review in writing when:

(A) there is a mistake of identity;

(B) the noncustodial parent did not owe three months of child support at the time of the levy;

(C) the amount taken by the levy is more than the noncustodial parent owes; or

(D) the levied funds are owned by a non-obligated joint account holder.

(5) A non-obligated joint account holder may request an administrative review in writing when the levied funds are not owned by the noncustodial parent.

(6) The purpose of the administrative review is to quickly resolve any obvious factual errors.

(7) After the administrative review, CSED issues a notice of administrative review decision and information about requesting an administrative hearing.

(e) **Administrative hearing.** Either the noncustodial parent or a non-obligated joint account holder may request a hearing before the OKDHS Office of Administrative Hearings: Child Support (OAH), by the date specified in the notice of administrative review decision. A request for an OAH hearing must be submitted in writing to the district office.

(f) **Release of funds from levy.**

(1) CSED releases funds from levy when the noncustodial parent submits sufficient and credible evidence at the administrative review that the source of the funds is:

(~~1~~A) Supplemental Security Income (SSI) benefits;

(~~2~~B) State Supplemental Payments (SSP) for Aged, Blind and the Disabled;

(~~3~~C) Temporary Assistance for Needy Families (TANF) benefits; or

(~~4~~D) child support payments, if the obligor is the custodial person of a minor child(ren) and is receiving the payments as required by a court order.

(2) Funds from a levy may be released, in full or in part, at the discretion of the state's attorney when it is determined the levy negatively impacts a reliable source of child support, or is not in the best interest of the child(ren). When the funds are not assigned to the state, CSED considers the input of the custodial person in reviewing the case for release.

PART 25. FEDERAL OFFSET PROGRAMS

340:25-5-215. Collection of past-due support from federal tax offset

(a) The Oklahoma Department of Human Services, through its Child Support Enforcement Division (CSED), requests collection of child support debts from federal income tax refunds. This program is governed by:

(1) Section 664 of Title 42 of the United States Code; and

(2) Section 285.3 of Title 31, and Sections 302.60 and 303.72 of Title 45 of the Code of Federal Regulations.

(b) A custodial person receiving a payment under this program must return the payment if the Internal Revenue Service (IRS) makes an adjustment within six years following the end of the tax year for which the refund was paid. Any adjusted amount not returned by the custodial person is an overpayment and subject to recovery under Part 37 of this Subchapter.

(c) If an offset is made to satisfy non-TANF past-due support from a refund based on a joint return, CSED delays ~~distribution until notified that the non-obligated spouse's proper share of the refund has been paid or~~ issuance of the funds for a period of time not to exceed six months from the notice of ~~offset, whichever is shorter~~ deposit.

(d) Collections received by a IV-D agency as a result of a federal income tax refund intercept must be distributed as past-due support as required by Section 657 of Title 42 of the United States Code.

PART 27. STATE TAX REFUND OFFSET PROGRAM

340:25-5-235. Collection of past support and overpayments from state tax refund offset

The Oklahoma Department of Human Services through its Child Support Enforcement Division requests collection of overpayments and past child support, including interest, and spousal support from state tax refund offset ~~that are due non-custodial parent(s)~~. The state tax offset program is governed by:

(1) Section 303.102 of Title 45 of the Code of Federal Regulations;

(2) Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes; and

(3) Sections 11-6 through 11-11 of Chapter 50 of Title 710 of the Oklahoma Administrative Code.

340:25-5-244. Review procedures for state tax refund offset program

(a) The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) follows the provisions of this Section ~~in conducting administrative hearings of~~ when reviewing state tax offsets ~~if the initial annual notice process under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213 has not been completed~~.

~~(1) If the initial annual notice process has been completed, CSED requests collection through state tax offset without additional notice.~~

~~(2) The noncustodial parent, non-obligated spouse, or debtor whose state tax refund was offset may request a hearing as instructed in the notice of offset. The review must be requested in writing within the time specified in the notice of offset.~~

(b) CSED may release or refund the offset in whole or in part to the noncustodial parent or debtor if CSED finds there has been a mistake of fact or identity.

(c) A non-obligated spouse may request a refund of the offset within the time specified in the notice of offset. The non-obligated spouse requesting a refund must submit copies of federal and state tax forms and all attachments to CSED. If the non-obligated spouse reports income on the tax return, CSED may release or refund the offset in whole or in part to the non-obligated spouse, prorated based on the income of the noncustodial parent and the non-obligated spouse.

(d) CSED sends a notice to the noncustodial parent whenever a state tax refund is offset. Upon receipt of a written request for hearing within ~~60~~ 30 days ~~after the receipt of the debtor's~~ from the date of mailing of the notice of tax offset, CSED schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

(e) The administrative order may be appealed to the district court within 30 days by any aggrieved party.

PART 33. INTERSTATE AND INTERNATIONAL CASES

340:25-5-270. Interstate cases

(a) **Legal base.** When referring and processing interstate IV-D cases, the Oklahoma Department of Human Services Child Support Enforcement Division (CSED) is governed by:

(1) the Uniform Interstate Family Support Act as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;

(2) Section 240.9 of Title 56 of the Oklahoma Statutes;

(3) Sections 1738B of Title 28 and 549A, 654, 659A, and 666 of Title 42 of the United States Code; and

(4) Sections 302.36 and 303.7 of Title 45 of the Code of Federal Regulations.

(b) **Interstate central registry.** CSED operates an interstate central registry in accordance with Section 303.7 of Title 45 of the Code of Federal Regulations.

(c) **Forms.** CSED uses forms issued by the Secretary of the United States Department of Health and Human Services under Section 652 of Title 42 of the United States Code as applicable for processing interstate cases.

(d) **Communication.**

(1) When Oklahoma is the initiating state, CSED obtains information and communicates with the custodial person.

(2) When Oklahoma is the responding state, CSED communicates to the initiating state with which CSED has established a case.

(3) When CSED receives a written communication from a party or his or her attorney, CSED sends copies to the appropriate agency or person within two business days of receipt, as required by Section 601-307 of Title 43 of the Oklahoma Statutes.

(e) **Family violence and nondisclosure.** When Oklahoma is the initiating state and a party claims family violence, CSED does not release the physical address of the party without a court order. CSED:

(1) enters the address of record, if designated, or the district office's address instead of the physical address of the party requesting nondisclosure on the Child Support Enforcement Transmittal # 1, Initial Request, and on the General Testimony, if applicable;

(2) does not file the interstate transmittal forms with the tribunal~~.~~;

(3) does not release a copy of the interstate transmittal form to the other party under OAC 340:25-5-67; and

(4) seeks an order from the appropriate tribunal regarding release of the information when the responding state or a party requests release of specific identifying information under Section 601-312 of Title 43 of the Oklahoma Statutes.

(f) **Services provided.** Except as provided in paragraphs (1) through (4), CSED processes interstate cases in the same manner as intrastate cases. CSED processes intrastate cases as described in OAC 340:25-1-1.2.

(1) **Evidence.** If one of the parties is a nonresident of the forum state, CSED arranges for telephonic testimony at the request of the nonresident party or a IV-D agency and requests the court to admit evidence under Section 601-316 of Title 43 of the Oklahoma Statutes.

(2) **One-state processing.** In the absence of an order to establish paternity or support, CSED uses a one-state process to establish an order if personal and subject matter jurisdiction can be exercised over a nonresident party under Section 303.7 of Title 45 of the Code of Federal Regulations and Section 601-201 of Title 43 of the Oklahoma Statutes.

(3) **Determination of controlling order.** When there are multiple orders for current support for the same child, CSED seeks a determination of controlling order (DCO) or a new order from the appropriate tribunal under Sections 601-207 and 601-602 through 601-615 of Title 43 of the Oklahoma Statutes.

(A) When making the arrears calculation for the DCO proceeding, CSED applies the law of the respective issuing states in determining the arrears under each order.

(B) Once the court issues a DCO, CSED applies the law of the controlling order state to the consolidated arrears, even if the support orders of other states contributed a portion to those arrears.

(4) **Redirection of payments.** In accordance with Sections 601-307 and 601-319 of Title 43 of the Oklahoma Statutes:

(A) CSED issues a notice to redirect payments to the IV-D agency in the state in which the custodial person resides and issues an Order/Notice to Withhold Income for Child Support to implement the order when:

(i) Oklahoma is the state that issued the child support or income assignment order;

(ii) neither the noncustodial parent, custodial person, or any child lives in Oklahoma; and

(iii) Oklahoma CSED or another IV-D agency makes the request.

(B) CSED issues a notice to redirect payments to the IV-D agency in the state of residence of the custodial person when:

(i) a child support or income assignment order has been issued;

(ii) neither the noncustodial parent, custodial person, or any child lives in the issuing state; and

(iii) Oklahoma provides child support services.

(C) CSED furnishes a certified record of payments to a requesting party or tribunal when CSED receives redirected payments under Section 601-319 of Title 43 of the Oklahoma Statutes.

(g) **Determination of arrears.** When Oklahoma has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, CSED uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce.

(h) **Choice of law.** The applicable law for determination of duration of support and other choice of law issues is controlled by subsection (h) of the Full Faith and Credit for Child Support Orders Act, codified in Section 1738B(h) of Title 28 of the United States Code and Sections 601-604 and 601-611 of Title 43 of the Oklahoma Statutes. The law of the initial controlling order state governs the duration of support even after the order is modified by another state.

(i) **Definition.** For purposes of this Section, forum state means the state in which the hearing is held or the responding court proceeding is filed to establish or enforce a support order.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-350.3. Payment of support through Centralized Support Registry

(a) **Centralized Support Registry.** The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) operates a Centralized Support Registry (Registry), also known as the State Disbursement Unit, for the receipt, recording, allocation, distribution, and disbursement of support payments. CSED operates the Registry under Sections 410 and 413 of Title 43 of the Oklahoma Statutes, Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations, and Sections 654b and 657 of Title 42 of the United States Code.

(1) This Section applies to both IV-D and non-IV-D cases unless the context clearly indicates otherwise.

(2) When a non-IV-D child support case has an income assignment in place, the Registry processes child support payments received from unemployment compensation benefits as income assignments per federal and state law.

(b) **Support payments.** Support payments must be paid as instructed in writing by CSED to the Registry. CSED may require payors and persons to provide information needed to

identify and properly allocate and distribute payments and to submit payments to the Registry in accordance with Section 413 of Title 43 of the Oklahoma Statutes.

(1) Support payment amounts are converted from a foreign country's order amount to a United States (U.S.) dollar amount at the time the order is registered and that exchange rate remains in place until the child support order is modified or the arrears are confirmed.

(2) CSED:

(A) allocates and distributes support payments under OAC 340:25-5-351;

(B) modifies or enforces international orders under OAC 340:25-5-285;

(C) safeguards case information and records received from payors and persons. Information and records concerning IV-D and non-IV-D recipients of services through the Registry are confidential under Section 183 of Title 56 of the Oklahoma Statutes except as provided in OAC 340:25-5-67;

(D) sends custodial persons a quarterly written notice of the amount of current support, arrears, and interest collected, and the amount of collections paid to the custodian. Custodial persons may also obtain this information over the Internet or by telephoning CSED as described in OAC 340:25-1-2.1;

(E) reserves the right to refuse to accept a ~~personal~~ check or direct debit after receiving a ~~non-sufficient funds~~ dishonored check, direct debit, or other payment instrument from the same payor; and

(F) considers the date of collection the date that payments are received by the Registry.

(3) When CSED refuses to accept a personal check or direct debit from a payor under (2)(E) of this subsection, the payor must submit the payment by cashier's check or money order.

(c) **EFT support payments.** CSED may receive support payments through electronic funds transfer (EFT). Noncustodial parents, employers, and other payors may register to make electronic payments through CSED's online child support payment system (WebPay) at https://www.okdhs-paycs.com/Login.aspx.

(1) To transfer child support payments electronically, noncustodial parents, employers, and other payors must:

(A) first call CSED at the telephone numbers as provided in OAC 340:25-1-2.1 to set up the EFT process;

(B) have a valid e-mail account;

(C) have access to the Internet;

(D) be a legal owner of:

(i) a bank account held at a financial institution within the U.S.; or

(ii) a VISA or MasterCard credit or debit card held at a financial institution within the U.S.; and

(E) register to use WebPay.

(2) WebPay payments do not replace federally mandated income withholding and will not stop or cancel income withholding orders for noncustodial parents.

(3) CSED may adjust and release payroll deductions that have been electronically transferred from a noncustodial parent's wages. When an adjustment cannot be processed in time to effect the change on the next scheduled electronic funds transfer, employers do not refund money to the employee, make adjustments to subsequent EFT payments, or take any other action to correct the amount deducted.

(4) CSED reserves the right to:

(A) limit use of WebPay by imposing limits, hold times, or other measures if CSED believes that suspicious activity has occurred or may occur on a payor's account; and

(B) close a WebPay account and impose fees and charges if a scheduled payment transaction is returned for any reason.

(d) **Payment issuance.** Under Section 654 of Title 42 of the United States Code and Section 302.38 of Title 45 of the Code of Federal Regulations, CSED issues payments to the custodial person only by transferring funds electronically, also known as direct deposit, or through child support debit cards. In interstate cases, CSED issues payments to the initiating state IV-D agency by electronic funds transfer and only issues payments by paper warrant to initiating states that do not have an electronic funds transfer system.

(1) To receive child support payments, a custodial person is initially issued a child support debit card.

(A) The custodial person may then enroll in direct deposit by calling the toll-free customer service telephone number located on the back of the debit card. There are no charges or fees for receiving child support payments by direct deposit. However, a custodial person must have a bank account held at a financial institution within the U.S. to receive direct deposit child support payments and normal banking charges may apply.

(B) Some automated teller machine (ATM) withdrawals are provided free with the debit card, but some ATMs charge transaction fees.

(~~1~~2) For purposes of this Section:

(A) warrant, also known as a check or bank draft, means an unconditional written order by which one person authorizes another person to pay a certain sum of money to a third person; and

(B) payee means the person or entity to whom the check is written.

(~~2~~e) **Forged endorsement on warrants.**

(1) When a custodial person reports that a warrant has been fraudulently cashed, CSED compares the payee's signature against the endorsement on the warrant and verifies that the signatures do not match.

(2) CSED sends the following documentation that has been completed and signed by the payee to the OST:

(A) Form 10AD044E, Affidavit of Lost or Destroyed Warrant;

(B) Form 10AD045E, Affidavit of Forged Endorsement; and

(C) Form 10AD046E, Investigation Questionnaire.

(3) CSED issues a replacement payment for a fraudulently endorsed and subsequently cashed warrant to the payee after CSED receives the return of funds from the Oklahoma State Treasurer's Office (OST) and the mandatory 60-day holding period imposed by the OST has lapsed.

~~(2) CSED reissues a fraudulently endorsed and subsequently cashed warrant to the payee upon CSED's confirmation of a forged signature.~~

~~(3) CSED confirms a check as forged when:~~

~~(A) the payee completes Form 10AD045E, Affidavit of Forged Endorsement;~~

~~(B) the payee completes Form 10AD046E, Investigation Questionnaire; and~~

~~(C) CSED compares the payee's signature against the endorsement on the check and verifies that the signatures do not match.~~

(~~e~~f) **Overcollected support amounts.** CSED returns overcollected support amounts as described in OAC 340:25-5-350.1.

(~~f~~g) **Distribution errors.** CSED manages distribution errors as described in this subsection.

(1) CSED is not responsible for overpayment, underpayment, nonpayment, misdirection of payment, or other distribution error caused by either incorrect payments or information submitted to CSED, or CSED receiving no information or payment. CSED does not attempt to recover, redirect, forward, repay, or otherwise correct this type of error.

(2) When CSED errs, CSED recovers overpayments to parties or custodial persons in IV-D and non-IV-D cases as described in OAC 340:25-5, Part 37.

(3) CSED sends refunds to noncustodial parents by mailing a paper warrant.

340:25-5-351. Allocation and distribution of collections

(a) **Basis for allocation and distribution of collections.** The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized Support Registry for IV-D and non-IV-D cases. The collections are allocated and distributed according to Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high-level distribution policies. Actual distribution of money occurs under Section 657 of Title 42 of the United States Code after collections are allocated according to this Section.

(b) **Overall priority of allocation and distribution.** This subsection has priority over (c) through (~~f~~h) of this Section.

(1) The OKDHS Child Support Enforcement Division (CSED) allocates payments from a collection action to satisfy amounts due under obligations included in the action. Income assignment orders, liens, administrative offsets, contempt actions, and license revocations are examples of collection actions. If CSED receives a voluntary payment, CSED honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, CSED allocates voluntary payments to cases with court-ordered obligations before cases without court-ordered obligations.

(2) In a non-IV-D case, CSED allocates and distributes payments through the Centralized Support Registry directly to the obligee, without otherwise allocating or distributing payments under this Section, unless money was previously assigned to the State of Oklahoma.

(3) ~~In allocating collections owed to a state, CSED gives priority to cases in which unreimbursed assistance is owed to the State of Oklahoma.~~ Except as provided for in (e) of this Section, CSED applies arrearages collections owed to the custodial parent before paying temporarily or permanently assigned arrears owed to a state.

(4) Temporarily assigned arrears are paid before permanently assigned arrears. If the support amount ordered for a prior period is less than the cumulative amount of cash assistance from the IV-A and IV-E programs, the support is permanently assigned. In cases involving unreimbursed assistance, CSED retains current monthly support collections in excess of the current assistance payment under Temporary Assistance for Needy Families (TANF) to reimburse the State of Oklahoma for past assistance.

(5) CSED applies payments to interest owed to a particular custodial person after current child support and the principal arrears ~~are~~ balance is paid in full. All interest debt is referred and distributed for IRS offset as arrears owed to the custodial person and not as a state debt. CSED does not apply interest collections from an IRS offset to state debt unless CSED has been unable to locate the custodial person after reasonable efforts.

(c) **Initial allocation to monthly current support obligations.** Except as provided in (e) of this Section, CSED initially allocates collections to current support obligations due each month.

(1) If collections are less than the amount of all current support due, CSED allocates collections to current child support due.

(2) After the current child support obligation is met, CSED allocates collections to current spousal support due.

(d) **Allocation to monthly past-due support obligations under payment plans.** Except as provided in (e) of this Section, after all current support obligations are met, CSED allocates collections under payment plans to fixed monthly past-due support obligations. Payment plans are defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(1) If collections are less than the amount due under the payment plan, CSED first allocates collections to past-due monthly child support.

(2) After the past-due monthly child support obligation is met, CSED allocates collections to monthly past-due spousal support.

(3) CSED allocates collections to the total amount in arrears after fixed monthly past-due support obligations in the payment plan are met.

(e) **Allocation and distribution to total amount in arrears.**

(1) CSED allocates federal income tax refund offset collections to the total amount in arrears.

(2) Except for collections under a payment plan, CSED allocates collections above the current support obligation to total arrears.

(3) After all child support arrearages are satisfied, CSED allocates remaining collections to spousal support arrearages.

(f) **Multiple family support orders.** This subsection explains the allocation of collections when a noncustodial parent has multiple family obligations. For purposes of this Section, a family is a mother and a father and the child(ren) of that relationship, and any custodial person(s) of the child(ren) who is not the mother or the father.

(1) **Current support.** CSED prorates and applies support collections to each family based on the fixed current monthly support obligation due each family.

(A) If collections for current support are less than the amount of current child support due for all families, CSED prorates and allocates collections to each family based on each family's total current child support due.

(B) After current child support obligations are met, CSED prorates and allocates collections to current spousal support obligations based on the amount of current spousal support due each family.

(2) **Past-due support under a payment plan.**

~~(A)~~ CSED prorates and allocates collections to payment plans for multiple families ~~in the order described in (i) through (iii) of this subparagraph. If there are multiple families within a category described in (i) through (iii) of this subparagraph, CSED allocates collections among the families according to (B) of this paragraph. The collections allocated to a family's payment plan are then allocated to monthly past-due support obligations according to (d) of this Section. Allocations are:~~

~~(i) first, to in-state cases. In-state cases are cases under Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code that involve either assignment to the State of Oklahoma or current receipt of child support services under an application for services in Oklahoma;~~

~~(ii) second, to incoming interstate cases; and~~

~~(iii) third, to incoming high volume administrative enforcement cases in interstate actions.~~

~~(B) If there are multiple families within a category described in (2)(A)(i) through (iii) of this subsection, CSED prorates and allocates payment plan collections among families in that category~~ based on each family's fixed monthly payment plan obligations due. ~~If the payment plan obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied past-due payment plans based on each family's fixed monthly payment plan obligations due. If the past-due payment plans for all families in a category are satisfied, remaining collections are allocated to families in the next category.~~

(3) **Total arrears, including principal and interest balances.**

~~(A)~~ CSED prorates and allocates collections to arrears, including principal and interest balances, for multiple families ~~in the order described in (i) through (iii) of this subparagraph. If there are multiple families within a category described in (i) through (iii) of this subparagraph, CSED allocates collections among the families according to (B) of this paragraph. Allocations are:~~

~~(i) first, to in-state cases as described in (2)(A)(i) of this subsection;~~

~~(ii) second, to incoming interstate cases; and~~

~~(iii) third, to incoming high volume administrative enforcement cases in interstate actions.~~

~~(B) If there are multiple families within a category described in (3)(A)(i) through (iii) of this subsection, CSED prorates and allocates total arrears collections among families in that category~~ based on each family's total arrears due. ~~If the total arrears obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied total arrears based on each family's total arrears due. If the total arrears for all families in a category are satisfied, remaining collections are allocated to families in the next category.~~

~~(4) **Interest.**~~

~~(A) CSED allocates collections to interest for multiple families in the order described in (i) through (iii) of this subparagraph. If there are multiple families within a category described in (i) through (iii) of this subparagraph, CSED allocates collections among the families according to (B) of this paragraph. Allocations are:~~

~~(i) first, to in-state cases as described in (2)(A)(i) of this subsection;~~

~~(ii) second, to incoming interstate cases; and~~

~~(iii) third, to incoming high volume administrative enforcement cases in interstate actions.~~

~~(B) If there are multiple families within a category described in (4)(A)(i) through (iii) of this subsection, CSED prorates and allocates interest collections among families in that category based on each family's total interest due. If the interest obligation for a family is satisfied, the remaining collections are prorated and allocated among the other families within the category still having unsatisfied interest based on each family's interest due. If the interest for all families in a category is satisfied, remaining collections are allocated to families in the next category.~~

(g) **Past-due support in interstate cases.** In cases where CSED is collecting support for a custodial person who is receiving services from another state's child support agency, CSED allocates arrearages payments based on information

provided by the initiating state. After all current support obligations are met, CSED allocates collections to past-due support for payment plans, total arrears and interest as follows:

(1) **Non-public assistance balance.** If any portion of the past-due balance is owed to the custodial person or will be passed through to the custodial person under federal distribution regulations, CSED allocates collections to that portion of the past-due balance and pays that amount to the other state's State Disbursement Unit.

(2) **Public assistance balances.** If no portion of the past-due balance is owed to the custodial person, CSED allocates collections first to balances owed to Oklahoma and then pro rates between balances owed to the other state(s).

(h) **Interest.** CSED distributes interest last in single family, multiple family and interstate cases.

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

[OAR Docket #08-704]

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ANALYSIS:
Chapter 50 permanent rule amendments provide clarifying and updated information regarding overpayment procedures to: (1) include current responsibilities for who writes and establishes overpayments; (2) revise the name of the Family Support Services Division (FSSD) Section that receives overpayments; (3) remove information about overpayment claims not being required in certain instances for categorically eligible households as this language was removed from federal regulations; (4) show current form names and numbers; (5) correct a state statute reference; (6) use current terminology; and (7) clarify language.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2008:

SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

PART 1. OVERPAYMENTS

340:50-15-1. Scope and applicability

An overissuance or overpayment of food ~~stamp~~ benefits occurs when a household receives more food ~~stamp~~ benefits than it is entitled to receive. When the worker determines a household may have received more food ~~stamp~~ benefits than it is entitled to receive, the worker ~~makes a referral to Family Support Services Division (FSSD) Overpayment Section within 30 days of the date of discovery for determination of an~~ documents the circumstances leading to the overpayment and computes the amount of the overpayment.

(1) Instances which may result in ~~referral for~~ establishment of an overpayment ~~determination~~ claim include, but are not limited to:

(A) the household:

(i) failing to provide the Oklahoma Department of Human Services with correct or complete information;

(ii) failing to report changes in household circumstances;

(iii) electing to receive benefits pending a fair hearing decision which subsequently found the household ineligible or eligible for fewer benefits; or

(iv) trafficking benefits;

(B) the worker:

(i) assigning an incorrect allotment;

(ii) failing to take prompt action on a change reported by the household;

(iii) incorrectly computing the household's income, deductions, or both; or

(iv) incorrectly authorizing issuance to a household; or

(C) any overissuance discovered as a result of ~~a Quality Control~~ an Office of Inspector General Administrative Review Unit review.

(2) Persons responsible for paying a claim are:

(A) each person who was an adult member of the household when the overpayment or trafficking benefits occurred and which resulted in an established overpayment claim; or

(B) a person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(3) The Family Support Services Division (FSSD) ~~Overpayment~~ Benefit Integrity and Recovery Section classifies overpayments as inadvertent ~~client~~ household error, intentional program violation also known as fraud, or agency error. ~~The FSSD Overpayment Section treats all overpayments~~ All food benefit overpayment claims are considered as inadvertent ~~client~~ household error or agency error until Form ~~H-S-13A~~ 08OP016E, Administrative Disqualification Hearing Waiver, is signed or a court of law finds a household guilty of fraud.

(4) The ~~FSSD Overpayment Section sends~~ worker and supervisor calculate all overpayment claims and establish any overpayments under $500 due to inadvertent household error and all agency error overpayments, regardless of the amount. Once an overpayment is established, notices sent to the client include:

(A) Form ~~FSP-S-18~~ 08OP009E, Notification of Food Stamp Overpayment~~, to the client along with~~;

(B) page 1 of Form ~~FSP-10~~ 08OP005E, Report of Food Stamp Overissuance; and

(C) Form 08OP118E, Food Stamp Repayment Agreement.

(5) When the overpayment is $500 or more and due to inadvertent client error, it is sent to the FSSD Benefit Integrity and Recovery Section. FSSD Benefit Integrity and Recovery Section staff either establishes the overpayment claim and notifies the household of the overpayment with appropriate notices or refers the case to OIG for a possible judicial determination.

(A) When the case is transferred to OIG, the overpayment claim is not established and notices are not sent to clients until after OIG completes its determination.

(B) After OIG acquires a judicial determination and the claim is either determined to be an intentional program violation or fraud or remains an inadvertent household error, the claim is released back to the FSSD Benefit Integrity and Recovery Section to establish the overpayment claim.

(C) After the overpayment claim is established, the client is sent Form 080P009E, page 1 of Form 080P005E, and Form 080P118E.

~~(5) The FSSD Overpayment Section postpones notification on cases being referred for judicial court decision until a court decision has been made.~~

(6) Food ~~stamp overpayments~~ benefit overpayment claims classified as inadvertent ~~client~~ household error or agency error do not cover more than 12 months prior to the month in which the overpayment was discovered. Food ~~stamp~~ benefit overpayments classified as fraud or intentional program violation may cover the entire time the overpayment occurred. However, the time covered cannot include periods more than six years prior to the date the overpayment was discovered.

(7) Food ~~stamp~~ benefit overpayments arising from trafficking related offenses are the value of the trafficked benefits as determined by the ~~individual's~~ person's admission, adjudication, or documentation that forms the basis for the trafficking determination. OIG refers these cases directly to the FSSD Benefit Integrity and Recovery Section for establishment of the claim and/or disqualification.

~~(8) When the worker and the Overpayment Section suspect an intentional program violation, the Overpayment Section makes a referral to the Office of Inspector General or to the Appeals Unit for a determination of fraud.~~

340:50-15-2. Instances when overpayment ~~referral~~ claim is not required

~~(a) Categorically eligible households are defined as households in which all household members are included in a State Supplemental Payment or Temporary Assistance for Needy Families (TANF) money payment or grant. *For categorically eligible households, a claim* or overpayment *will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim* or overpayment *shall not be established if there was not a change in net income and/or household size.* [7 CFR 273.18(c)(1)(ii)]~~

~~(b) The social services specialist~~ Per Section 273.18(e)(2)(ii) of Title 7 of the Code of Federal Regulations, the worker does not ~~make~~ establish an overpayment ~~referral~~ claim when the error causing the overpayment is classified as inadvertent client error or agency error and all of ~~these~~ the conditions included in (1) through (3) exist~~:~~.

(1) ~~the~~ The overpayment is less than $250~~;~~.

(2) ~~the~~ The household is not participating in the Food Stamp Program at the time of discovery of the overpayment~~; and~~.

(3) ~~the~~ The overpayment was not discovered in ~~a Quality Control~~ an Office of Inspector General Administrative Review Unit review.

340:50-15-3. ~~Procedures for referring overpayments~~ Overpayment claim procedures

(a) The earned income deduction is not allowed in determining the overpayment amount when a recipient fails to report earned income in a timely manner.

(b) ~~The social~~ When the worker ~~makes referrals for determination of an overpayment if the social worker~~ believes a household received an overissuance of food ~~stamp~~ benefits~~.~~. ~~The social~~ the worker ~~makes the referral, regardless of whether suspected intentional program violation, agency error, or inadvertent error on the part of the household caused the~~

~~overissuance~~ documents the circumstances causing the overpayment and calculates the overpayment claim. The food benefit claim is considered established when the overpayment notice is dated and mailed to the client. ~~The FSSD Overpayment Section sends the client Form FSP-S-18, Notification of Food Stamp Overpayment, and advises the client of the amount, type of overpayment and follow-up requirements by sending the client computer generated Form:~~

~~(1) FSP-18-B, Food Stamp Repayment Agreement; or~~

~~(2) FSP-18-D, Food Stamp Repayment Agreement - Fraud Debt.~~

(c) The worker and supervisor establish overpayment claims classified as inadvertent household error and less than $500, and all agency error claims regardless of the amount. Notices sent to the client include:

(1) Form 080P009, Notification of Food Stamp Overpayment;

(2) page 1 of Form 080P005E; and

(3) Form 080P118E, Food Stamp Repayment Agreement.

(d) Calculated overpayments that are $500 and over that are not due to agency error are not established until reviewed by staff in the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section staff. In most instances after calculation, FSSD staff sends these overpayments to the Office of the Inspector General (OIG) to determine fraudulent intent prior to establishing the overpayment.

340:50-15-4. Overpayments by classification

(a) **~~Overpayments~~ Overpayment claim classified as inadvertent ~~client~~ household error.** An overpayment claim is classified as an inadvertent ~~client~~ household error if the overissuance was caused by a misunderstanding or unintended error on the part of the household. Instances of inadvertent ~~client~~ household error which may result in an overpayment claim include, but are not limited to, when the household ~~unintentionally~~ inadvertently:

(1) failed to provide the ~~Agency~~ Oklahoma Department of Human Services (OKDHS) with correct or complete information;

(2) failed to report changes in household circumstances; or

(3) received benefits or more benefits than it was entitled to receive pending a fair hearing decision.

(b) **~~Overpayments~~ Overpayment claim classified as agency error.** An overpayment claim is classified as an agency error if the overissuance was caused by ~~Agency~~ OKDHS action or failure to take action. Instances of agency error which may result in an overpayment include, but are not limited to, ~~the Agency~~ when OKDHS:

(1) failed to take prompt action on a change reported by the household;

(2) incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(3) incorrectly issued benefits to a household;

(4) incorrectly applied policy or procedure; or

(5) failed to ~~provide a household a reduced level of~~ reduce food ~~stamp~~ benefits because ~~it's~~ the household's public assistance ~~grant~~ benefits changed.

(c) **~~Overpayments~~ Overpayment claim classified as intentional program violation.** An overpayment claim is classified as an intentional program violation when it is determined that a person has intentionally given false information or withheld facts in order to receive food ~~stamp~~ benefits or trafficked benefits for cash or non-food items. This determination is made through an administrative disqualification hearing, signing Form ~~H-S-13A~~ 08OP016E, Administrative Disqualification Hearing Waiver, or by a ~~judicial~~ court decision. Instances of intentional program violation which may result in an overpayment claim include, but are not limited to, ~~an individual~~ when a person in the household:

(1) made a false or misleading statement, or misrepresented, concealed, or withheld facts; or

(2) committed an act that constitutes a violation of the Food Stamp Program relative to the use, presentation, transfer, acquisition, receipt, or possession of food ~~stamp~~ benefits.

340:50-15-5. Right to appeal

If there is a disagreement with the overpayment decision, the household may request a hearing within 90 calendar days of the date on Form ~~FSP-S-18~~ 08OP009E, Notification of Food Stamp Overpayment. Upon notification from the Appeals Unit of receipt of Form ~~H-1~~ 13MP001E, Request for ~~A~~ a Fair Hearing, the Family Support Services Division (FSSD) ~~Overpayment~~ Benefit Integrity and Recovery Section postpones reduction in food ~~stamp~~ benefits pending the hearing decision.

340:50-15-6. Development of repayment

(a) **Repayment of established ~~overpayments~~ overpayment claims.** Households must make repayment on all established overpayment claims regardless of the reason for the overpayment. Family Support Services Division (FSSD) ~~Overpayment~~ Benefit Integrity and Recovery Section initiates collection efforts against all adult household members except those who are deceased. Collection may be received from two separate households for the same claim. Any ~~other collection method~~ repayment option shown at (d) of this Section may be used ~~against~~ to collect the overpayment claim from any adult ~~individual~~ who was in the household at the time of the overpayment and who is not ~~a current~~ currently a member of the household undergoing allotment reduction.

(b) **Repayment plan time frames.** ~~The~~ After the overpayment is established, the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section sends the client Form ~~FSP-18-B~~ 08OP118E, Food Stamp Repayment Agreement, that explains the acceptable methods of repayment for the debt classification. The client is responsible for completing and returning Form ~~FSP-18-B~~ 08OP118E within the appropriate time frame. The food ~~stamp~~ benefit overpayment claim is considered delinquent if the overpayment claim is not paid within 30 calendar days of the date of the ~~FSP-S-18~~ Form 08OP009E, Notification

of Food Stamp Overpayment, or a monthly payment, as designated on the repayment agreement, has not been made by the due date. An overpayment claim is not considered delinquent if another food ~~stamp~~ benefit overpayment claim for the same household is currently being paid either through a previous repayment agreement or allotment reduction.

(c) **Consequences of non-return of repayment agreement.** Paragraphs (1) ~~through~~ and (2) of this subsection describe the ~~basis for acceptable methods of~~ consequences of non-return of the repayment ~~and~~ agreement within appropriate time frames ~~for client responses~~.

(1) **Agency error or inadvertent ~~client~~ household error.** To make a voluntary plan of repayment of an agency error or inadvertent ~~client~~ household error ~~debt~~ claim, the client must complete and return Form ~~FSP-18-B~~ 08OP118E within 30 days of the date on the form. If the client fails to return Form ~~FSP-18-B~~ 08OP118E, FSSD begins recoupment from the client's food ~~stamp~~ benefits or other collection methods.

(2) **Intentional program violation.** To make a voluntary plan of repayment of an intentional program violation debt, the client must complete and return Form ~~FSP-18-D, Repayment Agreement Fraud Debt~~ 08OP118E, within 30 calendar days of the date on the form. If the client fails to return Form ~~FSP-18-D~~ 08OP118E, FSSD begins recoupment from the client's food ~~stamp~~ benefits or other collection methods.

(~~b~~d) **Repayment options.**

(1) **Payment in full.** The client may repay an overpayment claim in one lump sum by personal check, money order, cashier's check, or Electronic Benefit Transfer (EBT) debit with a signed statement.

(2) **Monthly payments.** The client may repay an overpayment claim in regular monthly installments by personal check, money order, cashier's check, or approved EBT debits. The amount to be repaid in monthly installments cannot be less than the amount that could be recovered through allotment reduction.

~~(3) **Food stamp allotment reduction.**~~

(A) **Agency error or inadvertent ~~client~~ household error.** The FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section processes the reduction in the amount of 10% of the client's monthly allotment or $10, whichever is greater. The client may request a reduction up to the client's maximum monthly allotment.

(B) **Intentional program violation.** The FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section processes the reduction in the amount of 20% of the client's monthly allotment or $20, whichever is greater. The client may request a reduction up to the client's maximum monthly allotment.

(~~4~~3) **Lost benefit reductions.** Any lost benefit due the household is used as payment on a food ~~stamp~~ benefit overpayment claim.

(~~5~~4) **Client authorized EBT debits.** A household may make a voluntary payment through a debit from the EBT Access account. In order to debit the EBT account, a signed statement must be received from the client or the household's authorized~~,~~ representative giving permission for the debit. This statement is faxed to the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section for immediate processing.

~~(6) **Expunged benefits.** Expunged food stamp benefits are those where the account has not been accessed for one year. These expunged benefits, when known and identified with an overpayment account are used to adjust the overpayment balance by the amount of the expunged benefit.~~

(~~7~~5) **Stale benefits.** Stale food ~~stamp~~ benefits are those where the account has not been accessed for three months. These benefits, when known and identified with an overpayment account, ~~are~~ may be used as payment on a food ~~stamp~~ benefit overpayment claim. This is done only after the client is notified of this intent on ~~the~~ Form 08OP014E, Important! EBT Inactivity and Collection of Debt Notice, and given 30 calendar days from the date of the notice to request these benefits be left in the account for client use.

(~~c~~e) **Reconsideration of repayment plan.** The client may request reconsideration of the repayment plan, with the exception of those payments set by the court judiciary system, by submitting information regarding changes in family and financial circumstances directly to the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section. The FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section reconsiders any repayment plan, except those set by the judiciary system, if circumstances warrant. Payments set by the court are legally binding and FSSD Benefit Integrity and Recovery Section does not have the authority to reset those payments.

(~~d~~f) **Referrals for Treasury Offset Program (TOP).** If the client fails to pay the overpayment claims or payments have become delinquent, the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section ~~will make referrals~~ makes a referral to TOP.

(1) **Criteria for TOP.** The criteria for state and federal tax offsets are the:

(A) amount owed must be at least $25;

(B) claim is under ten years delinquent except for judgment claims;

(C) claim is delinquent by 180 days;

(D) overpayment claim is not part of a bankruptcy stay or under litigation or review;

(E) client received the original notification of the debt; and

(F) overpayment claim is not being collected through allotment reduction, also known as recoupment, or under an approved repayment plan.

(2) **Notification of TOP.** The FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section notifies ~~individuals~~ a person of any intended referral to TOP ~~and mails the notices as the overpayment claim meets the criteria in paragraph (1) of this subsection and~~ 60 calendar days prior to referring the overpayment claim to TOP. The ~~Overpayment Section mails TOP notices to individuals~~ notice is mailed to the household at the address provided by United States Department of Agriculture (USDA),

Food and Nutrition Service. Information contained in the notice includes:

(A) the ~~individual's~~ person's Social Security number;

(B) the citation of the statutory authority for the offset;

(C) the instructions on how to pay the claim;

(D) the ~~individual's~~ person's right to request a review;

(E) all TOP exemptions and restrictions;

(F) information regarding spousal protection from offset;

(G) a statement that all adult household members who were members when the overpayment occurred are liable for repayment of the food ~~stamp~~ benefit overpayment claim; and

(H) the ~~individual's~~ person's right to review applicable records.

(3) **Request for review of intended action.** ~~Individuals~~ A person whose food ~~stamp~~ benefit overpayment ~~claim(s) are being~~ claim is referred to TOP may ask for a review of the intended action. The ~~individual's~~ person's contention that the claim is not past due or legally enforceable is the basis for the review.

(A) A claim is not past due and legally enforceable if the person:

(i) ~~claim has been paid and the individual~~ proves ~~it~~ the claim has been paid;

(ii) ~~individual~~ cited for offset is not the person who owes the claim;

(iii) ~~individual~~ substantiates bankruptcy action; or

(iv) ~~individual~~ denies he or she was informed of the overpayment claim and a review of Oklahoma Department of Human Services files substantiates the denial.

(B) The client must request the review within 60 calendar days of the TOP notice date. FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section sends written notification of the review decision to ~~individuals~~ persons requesting reviews. The notice informs ~~ndividuals~~ the person requesting a review why the overpayment is or is not being referred to TOP and further review rights to which ~~they are~~ he or she is entitled.

(C) The ~~individual~~ person can avoid referral to TOP if the ~~individual~~ person pays the overpayment claim in full or a payment specified by the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section along with an acceptable repayment agreement ~~by~~ is received within 60 calendar days from the date of the TOP notice.

340:50-15-7. Suspension of collection efforts

(a) The Family Support Services Division (FSSD) ~~Overpayment~~ Benefit Integrity and Recovery Section suspends collection action on cases no longer receiving food ~~stamp~~ benefits when the:

(1) head of household is deceased and there are no remaining adult household members responsible for the overpayment;

(2) household cannot be located; or

(3) cost of further collection action is likely to exceed the amount that can be recovered.

(b) FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section may:

(1) reopen debts held in suspension based on changes in household circumstances~~. FSSD Overpayment Section~~; or

(2) ~~initiates~~ initiate reduction in the food ~~stamp allotment~~ benefit if the client reapplies and becomes eligible in the future.

340:50-15-9. Termination of collection of food ~~stamp~~ benefit debt

In the case of repayment in full, the household and the ~~county~~ human services center are notified that the debt has been satisfied.

PART 3. FRAUD

340:50-15-25. Cases referred for intentional program violation determination

(a) **Cases determined by administrative disqualification hearing (ADH).** For a determination of intentional program violation, Family Support Services Division (FSSD) ~~Overpayment~~ Benefit Integrity and Recovery Section and ~~DHS~~ Oklahoma Department of Human Services (OKDHS) Office of Inspector General (OIG) staff make referrals for an ADH to the ~~DHS~~ OKDHS Appeals Unit. The cases referred contain documentary evidence of intentional program violation, but do not warrant civil or criminal prosecution.

(1) **Waiving of ADH.** ~~Clients~~ A client suspected of intentional program violation may choose to waive ~~their~~ his or her rights to an ADH. The client must complete and sign Form ~~H-S-13A~~ 080P016E, Administrative Disqualification Hearing Waiver, if the client requests a waiver. A waiver of the hearing subjects the client to the same penalties as if the hearing process determined intentional program violation.

(2) **Penalties for intentional program violation.** When the ADH results in an intentional program violation determination or the client waives his or her right to the hearing process, the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section imposes the penalties in (A) - (B) of this paragraph.

(A) **Disqualification.**

(i) **Notification.** FSSD ~~Overpayments~~ Benefit Integrity and Recovery Section sends Form ~~ADM-S-15~~ 08AD019E, Program ~~Disqualification~~ Penalty/Disqualification Notice, to the disqualified member. Form ~~ADM-S-15~~ 08AD019E includes information regarding the remaining household members' eligibility.

(ii) **Period of disqualification.** The period of disqualification for an individual is one year for the first violation, two years for the second violation, and permanently for the third violation. Any person disqualified for intentional program violation prior to April 1, 1983, is considered to have one violation regardless of the number of prosecutions. ~~An individual~~ A person is disqualified for a period of ten years if the ~~individual~~ person is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under the Food Stamp Program.

(iii) **Disqualification effective date.** Disqualification begins the first possible effective month following the date of Form ~~ADM-S-15~~ 08AD019E, or the date specified on the ADH decision letter. Once the disqualification begins, it runs continuously until the end of the period imposed.

(iv) **Disqualification computation.** Either the ~~social services specialist~~ worker or FSSD ~~overpayment~~ Benefit Integrity and Recovery staff ~~remove~~ removes the disqualified person from the household size. The ~~social services specialist~~ worker counts the resources and gross income of the disqualified person in their entirety as available to the remaining household members and allows all applicable deductions for remaining household members. ~~The computation used in this unit ensures that the household is prohibited from receiving an increase in benefits due to disqualification of a household member for an intentional program violation.~~

(B) **Repayment.** ~~Clients~~ A client must repay food ~~stamp~~ benefit overpayments regardless of any disqualification penalty. FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section notifies the client of the necessity for making a repayment plan by Form ~~FSP-18-B~~ 080P118E, Food Stamp Repayment Agreement. The options for the repayment plan are the same as those listed in OAC 340:50-15-6.

(b) **Cases determined by a ~~judicial~~ court.** The FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section refers all cases suspected of intentional program violation ~~not referred for administrative disqualification hearings~~ to OIG~~. The Overpayment Section makes referrals to OIG for~~ to make a determination of whether ~~judicial~~ court action is feasible.

(1) ~~DHS~~ OKDHS staff must not discuss the overpayment claim with the client until court action is completed or the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section notifies the ~~county office~~ human services center (HSC) of any action to be taken. Local staff forwards further information or directs client inquiries to the FSSD ~~Overpayment~~ Benefit Integrity and Recovery Section~~, State Office~~.

(2) A court of appropriate jurisdiction may find one or more ~~individuals of a~~ persons in the household guilty of obtaining food ~~stamp~~ benefits by fraudulent means. The court may charge the ~~individual~~ person with either a misdemeanor or felony depending on the amount of food ~~stamp~~ benefits obtained fraudulently.

(3) Procedures for disqualification penalties are the same as in cases determined by administrative disqualification hearings at (a)(2) of this Section with ~~four~~ the exceptions included in (A) through (D).

(A) The court may specify the length of the disqualification. These court specified periods of disqualification override ~~OAC 340:50-15-25~~ (a)(2)(ii) of this Section.

(B) ~~An individual~~ A person determined by a court to have committed intentional program violations of trading benefits for firearms, ammunition, explosives, or controlled substances is subject to disqualification:

(i) for two years for the first offense and permanently for the second offense involving the sale of a controlled substance for food ~~stamp~~ benefits; and

(ii) permanently for the first offense involving the sale of firearms, ammunition, or explosives for food ~~stamp~~ benefits.

(C) ~~An individual~~ A person convicted of trafficking food ~~stamp~~ benefits of $500 or more is permanently disqualified from participation in the Food Stamp Program. Trafficking includes:

(i) fraudulently using, transferring, altering, acquiring, or possessing Electronic Benefit Transfer (EBT) cards or access devices; or

(ii) presenting food ~~stamp~~ benefits for payment or redemption knowing the same to have been fraudulently obtained or transferred.

(D) ~~An individual~~ A person is disqualified from participation in the Food Stamp Program for a 10-year period if the ~~individual~~ person is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under the Food Stamp Program.

(4) The court may also stipulate a repayment plan. The repayment plan cannot be renegotiated. The ~~Overpayment~~ Benefit Integrity and Recovery Section may refer the case back to the district attorney's office if the client fails to comply with the repayment plan.

340:50-15-27. Other penalties for misuse of benefits

Section ~~43~~ 243 of Title 56 of the Oklahoma Statutes provides for ~~state~~ penalties due to misuse of food ~~stamps~~ benefits for those recipients who receive ~~them~~ benefits fraudulently. Federal penalties for misuse of food ~~stamp~~ benefits are found in Section 15 (b) and (c) of the Food Stamp Act [7 U.S.C. § 2024].

[OAR Docket #08-704; filed 4-23-08]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 70. SOCIAL SERVICES

[OAR Docket #08-703]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Health Related Services
340:70-9-3 through 340:70-9-4 [REVOKED]
(Reference APA WF 07-36)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section 501 of Title V and Sections 1902 and 1905 of Title XIX of the Social Security Act.
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 70 permanent rule amendments revoke rules as information is either outdated or included in another Section of Subchapter 9.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2008:

SUBCHAPTER 9. HEALTH RELATED SERVICES

340:70-9-3. Providers of services [REVOKED]

~~Medical providers of EPSDT services may include physicians, dentists, optometrists, psychologists, clinics, hospitals, child health centers and school districts.~~

~~(1) **Child health centers.** Through a contractual agreement with the Oklahoma State Department of Health (OSHD) certain child health centers are certified to be providers of EPSDT services. Services may include health services, dental screenings and child guidance services.~~

~~(2) **School districts.** Through a contractual agreement individual school districts can be EPSDT medical providers.~~

340:70-9-4. Eligibility for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services [REVOKED]

~~Each individual under 21 years of age who receives Temporary Assistance for Needy Families (TANF) or State Supplemental Payment for the Blind or Disabled benefits is eligible to receive Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. Also eligible are individuals under 21 years of age who are determined eligible for Title XIX but are not receiving cash assistance, including those children who are in the custody of the Department.~~

[OAR Docket #08-703; filed 4-23-08]

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

[OAR Docket #08-743]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1.General Provisions of Child Welfare Services
Part 7. Interstate Compact on the Placement of Children
340:75-1-86 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-5 [AMENDED]
340:75-3-6.1 [AMENDED]
340:75-3-7.1 [AMENDED]
340:75-3-7.3 [AMENDED]
340:75-3-8 [AMENDED]
340:75-3-8.2 [AMENDED]
340:75-3-8.6 [AMENDED]
340:75-3-9.1 [AMENDED]
340:75-3-12 [AMENDED]
340:75-3-13 [AMENDED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]
Part 2. Development of Resources
340:75-7-12 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-38 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-51 through 340:75-7-53 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Part 25. Emergency Foster Care Program
340:75-7-262 [AMENDED]
Subchapter 10. Emergency Shelter Care
340:75-10-9 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-home Care
Part 7. Medical Services

340:75-13-79 [AMENDED]
Subchapter 15. Adoptions
Part 10. Adoptive Family Assessment and Preparation Process
340:75-15-88 [AMENDED]
(Reference APA WF 07-12, 07-22, 07-24, and 07-37)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Title 10 of the Oklahoma Statutes; SB 553; and the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006.

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Part 1. Scope and Applicability
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N/A

ANALYSIS:
Children and Family Services Division rules are revised to: (1) delete exception of determination of a report made in bad faith, to making a home visit as part of the investigation; (2) re-position information from Instructions to Staff, to rule, to clarify definitions and types of placements, and exceptions to the ICPC; (3) detail ICPC home study time frames; (4) update the protocol for investigating reports of abuse in child care centers or homes by repositioning and updating language; (5) update time frames for completion of investigations or assessments; (6) provide a definition of a Bridge resource family; (7) add a procedure for determination of other services; (8) require a search of all applicable out-of-state child abuse and neglect registries for any foster parent applicant or adult household member who has not lived continuously in Oklahoma for the past five years; (9) require OKDHS to request a name based National Crime Information Center (NCIC) criminal history search by local law enforcement after normal business hours or on a holiday for kinship applicants; (10) require a resource family assessment completed if a foster home has been closed two or more years; (11) require that reference information for alternate caregiver is documented on specific form; (12) require the resource specialist during the re-assessment to ensure the home is clean, safe, and in good repair; (13) remove length of stay time frame in shelter care prior to admission to emergency foster care; (14) authorize an exception to fingerprinting in limited, case-specific circumstances and authorize an alternate procedure for obtaining a national criminal records check for any applicant or adult residing in the home who has a severe condition that precludes such person from being fingerprinted; (15) direct that any available information be obtained from the applicable state if no child abuse and neglect registry exists in the applicable state; (16) repeal time frame for kinship applicant's equivalent records check to be received; (17) repeal Court's authority to approve a prospective adoptive parent or long-term placement provider who has convictions for specified felonies and further amend to require a committee review of any criminal history of foster parent applicants and other household members; (18) include an assessment of the condition of the interior and exterior of a home when doing a house assessment; (19) include reasons for denying an assessment as the applicant has applied for a child that OKDHS reasonably believes may not be available for placement or one or more factors concerning the applicant, a family or household member or conditions in the home as described renders the applicant or home environment inappropriate as a resource home; (20) ensure that other specified safety guidelines are followed when the home being assessed has a pool; (21) provide that upon application, the foster parent with whom the child has been placed at least nine months may be the payee to receive the child's Social Security benefits; (22) correct Department of Pubic Services to Department of Pubic Safety (DPS); (23) update capacity and position titles; (24) clarify that the prospective resource parent is not approved without the results of the state-maintained child abuse and neglect registry checks if a registry is maintained in the applicable state; (25) clarify that when an equivalent records check from another state is required, it must be received prior to placement of the child; (26) clarify that when a baby is born to a person responsible for the child (PRFC) or to a minor child in OKDHS custody, the information is documented on Form 04KI001E; (27) clarify that an accepted report is responded to according to priority guidelines; (28) clarify requirement to become a foster parent to provide a home that is clean and safe; and be willing to actively mentor the parent to help them improve their ability to safely care for their child; (29) clarify the purpose of the Interstate Compact on the Placement of Children (ICPC); (30) during the emergency rulemaking process language was deleted to allow the court to conditionally approve the home of an adoptive applicant or adult household member with certain criminal convictions, and was further amended to require a committee review of any criminal history of foster parent applicants and other household members; (31) clarify that kinship foster homes are entitled to receive a training stipend at enrollment and completion of the pre-service training when a child has been placed in the home; (32) clarify that foster parent responsibilities include helping the child maintain a connection to the child's kin, culture, and community; cooperating and assisting the CW worker in the placement of siblings together; and attending school conferences and Individualized Education Plan (IEP) meetings; (33) clarify physical restraint may only be used when the foster parent has been properly trained and practiced in the restraint technique demonstrated in Behavior Crisis Management Training (BCMT); (34) clarify the foster parent is sent a notice of overpayment by the county of service; (35) clarify that reimbursement is paid the month after the service rendered; (36) clarify that when a child is out of the foster home for family reunification purposes, pre-placement visits, or is absent without leave for up to seven consecutive days, the foster parent receives reimbursement if the child is expected to return to the foster home at the end of the seven days;

(37) clarify that liability insurance questions are referred to the designated insurance company; (38) set out difficulty of care (DOC) reimbursement rates as shown in Appendix C-20 as guidelines for increase recommendations; (39) limit each DOC authorization to six months; (40) update agency division name, section taglines and references; (41) restructure current information; and (42) update form numbers and terminology.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS OF CHILD WELFARE SERVICES

PART 7. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

340:75-1-86. ~~Scope and applicability~~ Interstate Compact on the Placement of Children

(a) **Purpose.** The Interstate Compact on the Placement of Children (ICPC) is a means to ensure protection and services to children who are placed across state lines. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child.

(b) **Legal base.** The Interstate Compact on the Placement of Children (ICPC) is an agreement that has been adopted by all state legislatures and is consistent with constitutional law. The legal basis for the compact is found in Article I, Section 10, Clause 3 of the United States Constitution and Section 571 of Title 10 of the Oklahoma Statutes. Oklahoma is one of 50 states, the District of Columbia, and U.S. Virgin Islands that has adopted the ICPC and has agreed to follow the Articles and Regulations of the ICPC when placing children out-of-state and when children are placed in Oklahoma from another state.

(c) **Sending or requesting agency.** The sending or requesting agency is:

(1) a party state, officer, or employee thereof;

(2) a subdivision of a party state, or officer or employee thereof;

(3) a court of a party state;

(4) a person, corporation, association, or charitable agency; or

(5) an entity that sends, brings or causes to be sent or brought any child to another party state.

(d) **Receiving state.** The receiving state is the state to which a child is sent or brought or caused to be sent or brought, whether:

(1) by public authorities or private persons or agencies; and

(2) for placement with state or local public authorities, private agencies, or persons.

(e) **Types of Placements.** ICPC applies to placement of a child:

(1) preliminary to adoption;

(2) into foster care, including foster homes, group homes, residential treatment facilities, and child caring institutions for treatment of chronic or long-term conditions;

(3) with the parent(s), stepparent, grandparent, adult brother or sister, or adult aunt or uncle when any such relative is not making the placement; and

(4) adjudicated delinquent and placed in institutions in other states.

(f) **Exceptions to ICPC.** ICPC does not apply to:

(1) placement of a child in a hospital, medical facility, or mental health facility for the primary purpose of treating an acute or short-term medical or emotional problem;

(2) placement of a child in any institution primarily educational in character;

(3) placement of a child by the parent(s), stepparent, grandparent, adult brother or sister, adult uncle or aunt, or child's non-state agency guardian with any such relative or non-state agency guardian in the receiving state;

(4) visits in another state;

(5) placement of a child with a non-offending, noncustodial biological parent when the court does not:

(A) have evidence that such parent is unfit;

(B) seek such evidence; and

(C) retain jurisdiction over the child after the court transfers custody;

(6) placement of a child in or from another country; and

(7) interstate supervision of a parent's treatment and service plan.

(g) **Oklahoma as the sending agency or state.** For an out-of-state placement request, the child must be under Oklahoma court jurisdiction. The child is not required to be in Oklahoma Department of Human Services (OKDHS) custody.

(h) **Home study time frames.** Home studies requested by other states to assess the safety and suitability of placement are to be conducted, and a report which addresses the extent to which the proposed placement meets the needs of the child completed, and provided to the requesting state within 60 calendar days after receipt of the request. If the home study is not completed and provided to the requesting state within 60 calendar days, the specific reasons it is not completed must be documented in an e-mail to the Oklahoma ICPC Compact Administrator. The requesting state must accept the receiving state's home study as meeting the requirements of the receiving state unless, within 14 days of receiving the study, the requesting state determines that making a decision in reliance on the study would be contrary to the welfare of the child. A completed home study does not require the requesting state to place the child.

SUBCHAPTER 3. CHILD PROTECTIVE SERVICES

340:75-3-5. Relationship of Child Protective Services and other entities in child abuse and neglect investigations

(a) **Responsibility of other entities in child abuse or neglect investigations.**

(1) **OCA.** The Oklahoma Department of Human Services (OKDHS), Office of Client Advocacy (OCA) is responsible for the investigation of any allegation of abuse or neglect of a child in any OKDHS facility, or in a public or private residential facility, including, but not limited to, jails or detention centers, hospitals, psychiatric facilities and treatment programs, day treatment programs, and licensed or unlicensed residential child care facilities. OCA is responsible for the investigation of alleged child abuse, neglect, sexual abuse, and sexual exploitation by a community services worker as defined by Section 1025.1 of Title 56 of the Oklahoma Statutes. Reports of suspected abuse or neglect of a child are made to OCA as prescribed in OAC 340:2-3-33. OCA does not investigate allegations of abuse or neglect of a child in a foster home, including specialized community homes, therapeutic foster homes, or kinship home placements.

(2) ~~**DCC**~~ **OCCS.** OKDHS ~~Division of Child Care (DCC)~~ Oklahoma Child Care Services (OCCS) is responsible for implementing the Oklahoma Child Care Facilities Licensing Act [10 O.S. § 401 et seq.] through standards designed to ensure the safety of children. ~~DCC~~ OCCS has concurrent responsibilities with Child Protective Services (CPS) in investigations of alleged physical abuse, sexual abuse, or serious neglect in child care centers and homes. Whenever possible, investigations are conducted jointly by ~~DCC~~ OCCS and CPS. This does not include violations of licensing standards, which are handled by ~~DCC~~ OCCS.

(b) **CPS protocol for inter-agency relationships.** CPS functions as a component of the multi-faceted system established to protect children from abuse and neglect, which includes law enforcement, the court system, other social services agencies, and other organizations. CPS is a component of the Child Welfare (CW) services continuum that includes preventive and protective services and family-centered services, foster care and placement services, and adoption services.

(c) **Role of CPS.** CPS evaluates reports of abuse or neglect, assesses risk of harm and the need for protective services, and provides and coordinates services.

(d) **Role of law enforcement.** Law enforcement investigates a report of child abuse or neglect as a crime. Reports that require joint involvement of CPS and law enforcement are handled as investigations rather than assessments. Law enforcement identifies and arrests the offender(s), gathers court-admissible evidence, and protects the integrity of the evidence so the offender(s) can be prosecuted in criminal court. Law enforcement may:

(1) provide protection to the child, other family members, and the CW worker during crisis intervention; and

(2) take the child who is in danger into protective custody and authorize immediate medical treatment, if necessary to protect the child's health. [10 O.S. § 7003-2.1]

(e) **OKDHS relationship with law enforcement and OSBI.**

(1) OKDHS staff is responsible for coordinating with law enforcement. If law enforcement asks OKDHS not to interview certain persons or to delay its investigation, OKDHS may not relinquish its responsibility. OKDHS works with law enforcement to develop a plan that allows OKDHS to fulfill its responsibilities without interfering with the criminal investigation.

(2) The OKDHS Director or designee has the authority to request a criminal investigation by the Oklahoma State Bureau of Investigation (OSBI), per Section 7106(K) of Title 10 of the Oklahoma Statutes.

(f) **Role of the district attorney in deprived matters.** The district attorney has the responsibility to determine whether filing a petition is warranted based on information obtained during the CPS investigation. OKDHS has the responsibility to make a written recommendation, regardless whether the district attorney verbally indicates he or she may not file a deprived petition. Consultation, coordination, and a good working relationship between the CW worker and the district attorney is essential to ensure court protection of the child.

(g) **Role of the district attorney in criminal prosecutions.** CW staff makes recommendations to the district attorney regarding deprived actions, but not for criminal prosecution. The district attorney has the responsibility to decide whether criminal charges are filed against the alleged perpetrator(s). The CPS investigation is limited to what is necessary to protect the child.

(h) **Role of the attorney for the child.** In deprived actions, a separate attorney is appointed for the child. [10 O.S. § 7003-3.7] In criminal actions brought under Section 7115 of Title 10 of the Oklahoma Statutes, the child victim may be appointed an attorney. The child's attorney represents the child and any expressed interests of the child. The attorney for the child meets with the child as soon as possible after appointment and, except for good cause, not less than 24 hours prior to any proceeding. OKDHS provides the child's attorney access to all reports, records, information relevant to the case, and any reports of examination of the child's parent(s), legal guardian, or custodian. The attorney is advised of the child's location and how best to contact the child, according to OAC 340:75-6-48.1. The CW worker, as an advocate for the child, coordinates and consults with the child's attorney to ensure the protection and well-being of the child.

(i) **Role of the child's guardian ad litem.** The court appoints a guardian ad litem or court-appointed special advocate (CASA) to advocate for and monitor the child's best interests. The guardian ad litem or CASA makes reports and recommendations to the court and conducts interviews with parents, foster parents, providers, CW workers, and others with knowledge of the case. OKDHS coordinates and cooperates with the guardian ad litem or CASA to ensure the best services are provided for the child. [10 O.S. §§ 7003-3.7 and 7112]

(j) **Role of the judge in deprived matters.** The judge may, upon application by the district attorney, issue a court order to place the child in emergency custody when the child is in need of immediate protection. [10 O.S. § 7003-2.1(A)(2)]

The judge hears the evidence presented during the hearing and decides whether the child is adjudicated. The judge decides whether the child is placed in the custody of the person(s) responsible for the child (PRFC(s)), a relative, OKDHS, or another agency, and may order the PRFC(s) and child to participate in a court-ordered treatment plan.

(k) **Role of the judge in matrimonial or child custody actions.** If a judge, during an action for divorce, annulment, custody of a child, appointment of a guardian for a child, or in subsequent proceedings, determines there is evidence of abuse or neglect of the child, Section 7002-1.2 of Title 10 of the Oklahoma Statutes requires the referring court to notify the OKDHS county office. The referring court may also enter an order to have the child taken into emergency custody when evidence indicates the child is in surroundings that endanger the health, safety, or welfare of the child.

340:75-3-6.1. Exceptional reports of child abuse and neglect

(a) **Reports resulting from divorce or child custody actions.** If a report of abuse, neglect, or both, is made by a referring court resulting from a divorce, child custody, or juvenile action, an investigation or assessment is initiated, per OAC 340:75-3-5, 340:75-3-7.1, and 340:75-3-8.

(1) Findings of the investigation or the conclusions of the assessment resulting from child custody actions are submitted to the referring court, using Form 04KI003E, Report to District Attorney, within 30 days of receipt of the referral.

(2) Form 04KI003E is submitted to the district attorney, per OAC 340:75-3-11.

(3) The Child Welfare (CW) worker notifies the parties to the proceeding when Form 04KI003E is submitted to the court.

(b) **Anonymous reports.** Anonymous reports that meet the definition of abuse or neglect are assigned for investigation or assessment. When a person reporting suspected child abuse, neglect, or both, is reluctant to identify himself or herself, the Child Welfare (CW) worker:

(1) uses good interview skills to obtain the reporter's identity; and

(2) attempts to determine the reporter's relationship to the child and family in question and any other relevant information.

(c) **Child Protective Services (CPS) reports on an OKDHS employee.** Specific procedures are followed when a report of neglect, abuse, or both, is received that involves an Oklahoma Department of Human Services (OKDHS) employee or a member of the employee's immediate or extended family, with the exception of alleged abuse in an institution.

(d) **CPS reports to other counties.** A referral is made to CW in the family's county of residence when a referral is received regarding a child and family who are in another county.

(e) **Reports of abuse or neglect in an active permanency planning or voluntary FCS case.** Information regarding the injury is documented on Form 04KI001E, Referral Information Report, if a child, who is part of an ongoing permanency planning or voluntary Family-Centered Services (FCS) case, is reported or observed by the CW worker to have any injury to the face, head, neck, stomach, or genitals, even an allegedly accidental injury, or to have evidence of any abuse, neglect, or both, per OAC 340:75-3-6, 340:75-4-13, and 340:75-6-85.1.

(f) **Newborns in an active permanency planning or voluntary FCS case.** When a baby is born to a person responsible for the child (PRFC) or to a minor child in OKDHS custody with an open permanency planning or voluntary FCS case, the information is documented on Form 04KI001E, per OAC 340:75-3-6.

(g) **Address Confidentiality Program (ACP).** Reports regarding child abuse and neglect that fall within the scope of CPS are accepted for investigation or assessment even though the actual finding address of the child is confidential, per Section 60.14 of Title 22 of the Oklahoma Statutes.

(h) **CPS reports on Indian children.** In order to ensure compliance with the Indian Child Welfare Act (ICWA), procedures per OAC 340:75-19-9 and 340:75-19-10 are followed for all children reported or determined Indian.

(i) **Abandoned newborn.** When a parent(s) is reported to have abandoned a newborn, the report is documented on Form 04KI001E, per OAC 340:75-3-6 and assigned for investigation, per OAC 340:75-3-7.1 and 340:75-3-8.

340:75-3-7.1. Priority guidelines

(a) **Use of priority guidelines.** Priority guidelines are used by Child Welfare (CW) staff to determine how quickly an initial response must be made to ~~a~~ an accepted report of child abuse or neglect. The priority guidelines are used in conjunction with good judgment based on all available information.

(b) **Factors to consider in conjunction with priority guidelines.** The factors considered along with the priority guidelines in establishing investigation or assessment time frames are:

(1) the child's age;

(2) the child's physical and mental abilities;

(3) the perpetrator's access to and attitude toward the child; and

(4) any allegations of bruising or injury to the child.

(c) **Urgency.** Urgency means making a determination regarding how quickly the initial response must be made to the report. A decision about the urgency is made after all available information relative to risk is collected, recorded, and analyzed.

(d) **Priority I reports.** A Priority I report indicates the child is in imminent danger of serious physical injury. Allegations of abuse and neglect may be severe and conditions extreme. The situation is responded to immediately, the same day of receipt of the report. If a complete investigation or assessment is not possible, a safety measure is put in place to ensure the child's protection. A safety measure is an action taken that protects the child, such as protective child care, perpetrator leaves the home, or other similar protective actions.

(e) **Priority II reports.** Priority II reports indicate there is no imminent danger of severe injury, but without intervention and safety measures it is likely the child will not be safe. Priority II investigations or assessments are initiated within two

to 15 calendar days from the date the report is accepted for investigation or assessment.

340:75-3-7.3. ~~Assessment and investigation~~ Child Protective Services investigation and assessment decision guidelines

An ~~assessment~~ investigation is conducted ~~when~~ on a report ~~of abuse or neglect does not constitute~~ that constitutes a serious and immediate threat to the child's health or safety. An ~~investigation~~ assessment is conducted ~~on~~ when a report ~~that constitutes~~ of abuse or neglect does not constitute a serious and immediate threat to the child's health and safety. [10 O.S. § 7102]

340:75-3-8. ~~Investigation~~ Child Protective Services investigation protocol

(a) **Purpose of investigation.** The purpose of Child Protective Services (CPS) is to protect children and provide treatment to the family, not criminal prosecution. The CPS investigation sets the stage for direct involvement with the family, problem identification, service provision, and the development of a helping relationship. The CPS investigation process includes gathering information:

(1) about the reported allegations and any family dynamics that jeopardize the child's safety; and

(2) to assess the protective capacity of the family.

(b) **Gathering information.** The interview is a face-to-face contact between the Child Welfare (CW) worker and a person who has or may have information pertinent to assessing risk.

(c) **Investigation protocol.**

(1) The investigation protocol is followed for all investigations, unless a modification for good cause is approved and documented by the CW supervisor.

(2) Investigations regarding physical abuse, serious neglect, and sexual abuse are conducted utilizing a multidisciplinary approach when possible, per OAC 340:75-3-8.4.

(3) The investigation protocol is followed closely and sequentially.

(A) Persons interviewed, in order, are the:

(i) alleged victim(s);

(ii) sibling(s);

(iii) person(s) responsible for the child (PRFC(s)), including the custodial and noncustodial parent(s);

(iv) collateral(s); and

(v) if appropriate, professional consultant(s).

(B) Every attempt is made to first conduct interviews privately and separately.

(C) Family members are observed interacting together.

(D) When additional information is needed, key people, such as victims, siblings, and PRFCs, may be re-interviewed.

(d) **Interviewing the alleged victim.** An attempt is made to interview every verbal child victim, and all child victims are observed. The interview with and examination of the alleged child victim may be conducted at any reasonable time and at any place including, but not limited to, the child's school, per Section 7106 of Title 10 of the Oklahoma Statutes (10 O.S. § 7106).

(e) **Interviewing the siblings.** If one child in the family is at risk, the other children may also be at risk. When not at risk of physical harm, the sibling remains adversely affected by family conditions. The sibling often has important information regarding the reported allegations and the dynamics of the family. The protocol and principles per OAC 340:75-3-8 are utilized.

(f) **Home visit or initial contact with the family.** A home visit must be made as part of the investigation, unless there is reason to believe there is an extreme safety risk to the child or CW worker ~~or the report is determined a report that was made in bad faith,~~ per 10 O.S. § 7106.

(1) The initial contact with the family is an unannounced visit to the home. The CW worker does not enter the home unless an adult member of the household is present.

(2) If the child victim or siblings are interviewed by the CW worker in a setting other than the home, a home visit with the PRFC(s) is initiated the same day the child is interviewed.

(3) If the child is found home alone, the CW worker leaves to immediately contact law enforcement, per OAC 340:75-3-8.6.

(4) When the CW worker is admitted to the home, the specific reported allegations are explained to the PRFC(s).

(5) The PRFC(s) is given Oklahoma Department of Human Services (OKDHS) Publication No. 87-02, Questions and Answers for Parents about Child Protective Services.

(6) If the family is not home, the CW worker may leave Form ~~DCFS-80~~ 04CP001E, Contact Letter, in a sealed envelope at the home. Federal law prohibits the use of a mailbox for letters that have not been mailed. When the child victim:

(A) or siblings have been interviewed, Form ~~DCFS-80~~ 04CP001E must be left to notify the PRFC(s) that the CW worker attempted contact with the family; and

(B) has not been interviewed, Form ~~DCFS-80~~ 04CP001E may be omitted when there is reason to believe such notice to the family may place the child in danger or prevent the CW worker from obtaining unrehearsed information.

(g) **Interviewing the PRFC(s).** The nature of the report and the concern for the child are discussed with all PRFCs. The noncustodial parent is entitled to the same information as the custodial parent and reasonable efforts are made to locate the noncustodial parent during the initial stages of the investigation.

(h) **Interviewing the perpetrator who is responsible for the child.** The alleged perpetrator is interviewed last, as this allows the CW worker to question the perpetrator with the facts and information that have been obtained.

(i) **Interviewing collaterals.** Collaterals are interviewed to ensure thorough investigation and assessment of risk to the child.

(1) A collateral:

(A) is a person who has or is likely to have pertinent information about the child and the family; and

(B) may include relatives, neighbors, law enforcement, teachers, physicians, nurses, or other informed persons.

(2) Collaterals who are minors are not interviewed without first obtaining permission from their parent(s).

(3) Confidential information regarding the family's situation may be released only to other public officials involved in an official capacity in the investigation or appropriate professionals providing medical or treatment services to the family, per OAC 340:75-1-44.

(j) **Professional consultation.** The CW worker consults, as needed, with those who have additional expertise in areas related to child abuse or neglect.

340:75-3-8.2. Protocol for investigating reports of abuse in child care centers or homes

(a) Reports of physical abuse, sexual abuse, and serious neglect in child care centers or homes, licensed or unlicensed, are investigated by Child Protective Services (CPS) staff.

(b) ~~CPS staff notifies and coordinates with Division of Oklahoma Child Care staff when a child abuse or neglect report is received and, when possible, the Division of Child Care licensing specialist accompanies the CPS worker and assists in conducting the investigation.~~ Allegations of general neglect and violations of licensing laws and regulations, such as dirty facility, children unsupervised, or other similar situations, are referred to and addressed by Oklahoma Child Care Services (OCCS).

(c) ~~Allegations of general neglect and violations of licensing laws and regulations, such as dirty facility, children unsupervised, or other similar situations, are referred to and addressed by Division of Child Care.~~ CPS staff notifies and coordinates with OCCS staff when a child abuse or neglect report is assigned and, when possible, the OCCS licensing specialist accompanies the CPS worker and assists in conducting the investigation.

(d) Children and Family Services Division CPS Section programs staff is available for consultation as needed. As with other reports of child abuse, CPS staff coordinates with the district attorney and law enforcement officials when appropriate.

340:75-3-8.6. General protocols for Child Protective Services investigations and assessments

(a) **Purpose for protocols.** Protocol requirements common to the investigation and assessment processes ensure continuity in addressing safety and risk factors and issues related to the Child Welfare (CW) worker's contact with families.

(b) **Time frame for initiation.** Investigations and assessments are prioritized using the priority guidelines in OAC 340:75-3-7.1. The priority guidelines are used to determine the response time required to ensure safety for the alleged child victim. Generally, the reported allegations that necessitate an investigation require a higher priority than an assessment.

(c) **Contact requirements.** Prior to interviewing each person involved in an investigation or assessment, the CW worker:

(1) presents his or her Oklahoma Department of Human Services (OKDHS) employee identification badge as notification that OKDHS is the agency represented;

(2) describes the lawful purpose of the investigation or assessment;

(3) discusses the reported child abuse or neglect allegations;

(4) answers questions; and

(5) explains that, in accordance with state and federal law, the identity of the reporter is not revealed unless ordered by the court.

(d) **Worker safety.** The CW worker follows procedures to ensure his or her own safety, per OAC 340:75-1-26.1.

(e) **Contact with the family in the home.** An unannounced home visit is made to initiate contact with the family, per Section 7106 of Title 10 of the Oklahoma Statutes (10 O.S. § 7106).

(f) **Contact with children.** Protocols described in (1) through (6) are followed when there are physical injuries or there is a need for a medical, psychological, or psychiatric examination for a child of any age.

(1) The CW worker inspects the child victim younger than 12 months of age regardless of the allegation.

(2) When the report alleges physical injury due to abuse or neglect or injuries are found during the investigation or assessment, an inspection is required by the CW worker, examination by a medical professional, or both, of the:

(A) child victim; and

(B) sibling, if applicable.

(3) Information gathered, the CW worker's observation of the child, or both, may indicate a need for medical, psychological, or psychiatric examination or treatment of any child in the home of the person responsible for the child (PRFC). It may also include an inquiry into the possibility that the child or PRFC has a history of mental illness, per 10 O.S. § 7106.

(4) As necessary in conducting an investigation or assessment, the CW worker requests and obtains, without a court order, copies of prior medical records of the child, including, but not limited to, hospital, medical, and dental records, per 10 O.S. § 7107.

(5) Medical examination or consultation with a physician or appropriate licensed medical professional is required for:

(A) all burns or fractures in a child three years of age or younger;

(B) all bruises or marks on a child younger than two years of age;

(C) unexplained or implausibly explained bruises, burns, or fractures in a child of any age;

(D) all bruises, burns, or fractures in a non-ambulatory child;

(E) all referrals of sexual abuse in non-verbal children whose behavior mimics adult sexual behavior, for example, simulated intercourse or oral stimulation of another's genitals;

(F) all sexual abuse cases in which oral or genital skin-to-skin contact is alleged or suspected;

(G) all cases of:

(i) sexually transmitted disease in a pre-pubescent child;

(ii) reported malnutrition and failure-to-thrive; or

(iii) serious medical neglect. If the family claims to provide medical care, consultation with their doctor is sufficient;

(H) reports in which the child has an observable injury, the caregiver admits responsibility for the injury, and medical documentation is necessary to determine whether there are internal or old injuries; or

(I) a child who exhibits a need for immediate psychological or psychiatric evaluation.

(6) If the PRFC refuses to cooperate in arranging for an examination, the CW worker may request the intervention of law enforcement or request the district attorney to make application for a court order.

(g) **Unable to locate protocol.** When the CW worker is unable to locate the child and family, every effort is made to seek additional sources of information regarding their whereabouts.

(h) **False reports made knowingly and willfully.** When, in the course of the investigation or assessment, the CW worker determines that a false report concerning child abuse or neglect was made knowingly and willfully, the CW worker discusses this information with the CW supervisor. With supervisory approval, information regarding the false report may be forwarded to local law enforcement for a criminal investigation, using Form 04CP002E, Notification to Law Enforcement Agency of Child Abuse or Neglect Report, per 10 O.S. § 7103.

(i) **Failure to report child abuse or neglect.** If, in the course of the investigation or assessment, the CW worker determines that there is a person who clearly knowingly and willfully failed to make a report of child abuse or neglect, the CW worker discusses this information with the CW supervisor. This information may be forwarded to local law enforcement for the purpose of providing information for a criminal investigation, using Form 04CP002E, per 10 O.S. § 7103.

(j) **Modification of protocols.** If, upon contact with the child victim and PRFC, it appears that full application of the protocol for an investigation or an assessment is not necessary, the CW supervisor may determine that a modification to the protocol is appropriate.

340:75-3-9.1. ~~Critical incidents and child~~ Child death or near death and critical incidents review procedure

(a) **Child death or near death reporting.** When county staff receives a report concerning the death or near death of a child that is suspected to be the result of abuse or neglect, phone contact is made with Children and Family Services Division (CFSD) Child Protective Services (CPS) Section programs staff. Requests for the release of information concerning child fatalities are handled according to OAC 340:75-1-44.

(b) **Critical incidents review.** A review by the Critical Incidents Review Committee is scheduled for child deaths, near deaths, or any other critical incidents in which a review is requested by Child Welfare staff or appears indicated due to special circumstances of the incident.

(c) **Death or near death of a child known to Child Welfare.** Upon receipt of a notice of the death or near death of a child known to Child Welfare, CPS Section programs staff reviews and notifies the Human Services Centers chief operating officer and CFSD director who determine whether an administrative investigation occurs per OKDHS:2-3-2.

340:75-3-12. Child Abuse and Neglect Information System

(a) **Legal Base.** The Child Abuse and Neglect Information System (information system) is a permanent, computerized record-keeping system maintained by Child Welfare (CW), pursuant to Section 7111 of Title 10 of the Oklahoma Statutes, that requires *the maintenance of all reports of child abuse, sexual abuse, and neglect made pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act.*

(~~1~~b) **Purpose.** The purpose of the information system is to:

(~~A~~1) provide central storage of information pertaining to reports of child abuse and neglect in Oklahoma;

(~~B~~2) serve as a tracking system for reports of child abuse and neglect; and

(~~C~~3) provide raw data for statistical analysis of child abuse and neglect reports.

(~~2~~c) **Staff authorized to inquire and report ~~to the Child Abuse and Neglect Information System~~.** Only authorized Oklahoma Department of Human Services (OKDHS) staff may inquire and report to the information system. Authorized staff and functions are listed in (~~A~~1) through (~~D~~4).

(~~A~~1) CW staff, investigating or assessing reports of suspected child abuse and neglect, must inquire and make reports to the information system.

(~~B~~2) OKDHS foster and adoptive home staff must inquire into the information system to determine if any persons in the household, applying to become a foster or adoptive home, were involved in any child abuse or neglect situations investigated or assessed by OKDHS.

(~~C~~3) Reasons CW staff may inquire into the information system are:

(~~i~~A) for internal administrative purposes;

(~~ii~~B) to respond to inquiries from persons who, as a part of their official duties, have responsibilities directly connected with child abuse laws, prosecution, or delivery of services, such as the district attorney, law enforcement, or another state's child protective services (CPS) agency; or

(~~iii~~C) to respond to an absent parent's inquiry about a child abuse investigation or assessment involving his or her child. The inquiring parent must provide verification of his or her identity and that he or she is the child's parent. Verification is in the form of a written, notarized statement or other proof, including the child's birth certificate, court order, or other such document.

(~~I~~i) When there is a pending investigation or other current CW involvement with the parent's

child, the parent is referred to the assigned CW worker and supervisor.

(~~II~~ii) When the parent is aware that he or she was the subject of a previous investigation or assessment for which the parent did not receive notification of the investigative findings or assessment conclusions, the appropriate letter of findings or conclusions, per OAC 340:75-3-13(a), is sent to the parent.

(~~III~~iii) The parent is advised that a court order is required to release any other confidential CW information except in the circumstances in OAC 340:75-3-12~~(2)(C)(iii)(I) and (II)~~ (c)(3)(C)(i)(ii).

(~~D~~4) ~~Division of Child Care (DCC)~~ Oklahoma Child Care Services (OCCS) licensing staff may inquire into the information system to determine if any person who signs the application for family child care home license or the owner of a child care facility has had a previous report of child abuse, neglect, or both. ~~DCC~~ OCCS staff may inquire only when the applicant submits a signed:

(~~i~~A) Form ~~OCC 42~~ 07LC042E, ~~Application~~ Request for License - Family Child Care Home and Large Child Care Home; or

(~~ii~~B) Form ~~OCC 41~~ 07LC041E, Child Care Staff Information.

340:75-3-13. Completion of the Child Protective Services investigation or assessment process

(a) **Determination of other services.** Prior to completing a CPS investigation or assessment, the CW worker determines the safety and service needs have been identified for the child and family as per levels of services protocol in OAC 340:75-4-12.1 Instructions to Staff.

(~~a~~b) **Closure with the PRFC or family.**

(1) Following completion of the investigation, the Child Welfare (CW) worker notifies each person responsible for the child (PRFC) of any findings pertaining to the PRFC. The CW worker:

(A) mails Form 04KI019E, Notification Concerning Finding(s) of Child Abuse/Neglect, to each PRFC. When the finding is confirmed - services recommended or confirmed - court intervention requested, OAC 340:75-1-12.2 applies;

(B) verbally notifies the PRFC when there are findings; and

(C) for in-home investigations, mails each PRFC Form 04KI019E pertaining to the other PRFC(s). Refer to OAC 340:75-3-8.1 and 340:75-3-8.2 for out-of-home investigative findings and notification to other PRFCs.

(2) Following completion of the assessment, the CW worker notifies each PRFC of the conclusion. The CW worker:

(A) mails each PRFC Form 04KI021E or 04KI022E, Notification Regarding Assessment; and

(B) verbally notifies each PRFC of the conclusion.

(3) The CW worker assists with any needed referrals for continued services from Oklahoma Department of Human Services (OKDHS) or another agency.

(4) Closure with the PRFC(s) or family may be circumvented when there is reason to believe that it may place the child or CW worker in danger or when the PRFC(s) cannot be located.

(~~b~~c) **Disclosure of the investigative findings or assessment conclusion to a reporting party.** Per Section 7109 of Title 10 of the Oklahoma Statutes, certain information may be provided to reporting parties within the guidelines described in (1) through (3) of this subsection.

(1) Hospital medical staff or physicians, including medical doctors, dentists, osteopathic physicians, residents, and interns, who report physical or sexual abuse may be provided information regarding the findings and any other information that may be necessary for the child's medical treatment.

(2) When school personnel report serious physical abuse or sexual abuse that is later confirmed, a summary of the circumstances of the incident may be sent to the school principal using Form 04CP005E, Notification to School Concerning Child Abuse Report. Form 04CP005E includes a brief description of the circumstances of the sexual abuse or serious physical abuse, the names of the parent(s) or PRFC(s), and the OKDHS employee who serves as contact person for the case. School personnel have the right to review other applicable CW case record information, per OAC 340:75-1-44.

(3) All other reporters who inquire may be told the finding of the investigation or that the assessment has been concluded. The reporter is told that:

(A) investigation or assessment specifics are not disclosed;

(B) the investigation or assessment has been completed;

(C) a report of any investigative findings has been forwarded to the district attorney's office in accordance with Oklahoma Statutes; and

(D) a completed investigation or assessment does not preclude future investigations or assessments if new allegations of child abuse or neglect are reported.

(~~c~~d) **Time frames for completion of investigations or assessments.**

(1) All investigative or assessment interviews or observations with the child ~~victim~~ victim(s) is accomplished through actual contact within the specified initiation time frame as per OAC 340:75-3-7.1 and the resulting documentation is entered in the appropriate KIDS system screens within five working days or less~~, siblings, PRFC(s), and collaterals are accomplished through actual contact within 30 calendar days from the date the report is received~~.

(2) All investigative or assessment interviews or observations with ~~the child victim and~~ siblings, PRFC(s), and collaterals are ~~documented in the appropriate KIDS system screens~~ accomplished through actual contact within

30 calendar days ~~of~~ or less from the date the report is received and the resulting documentation is also entered in the appropriate KIDS system screens within 30 calendar days or less.

(3) All remaining interviews that have not been documented and any other pertinent information or paperwork is documented in the appropriate KIDS screens within 60 calendar days of the date the report is received.

SUBCHAPTER 7. FOSTER HOME CARE

PART 1. GENERAL PROVISIONS

340:75-7-2. Purpose, legal base, and definitions

(a) **Purpose.** Foster family care is a planned, goal directed service that provides 24-hour a day substitute temporary care and supportive services in a home environment for any child, birth to 18 years of age, residing in Oklahoma and in the custody of Oklahoma Department of Human Services (OKDHS). Voluntary foster care is available for any child, birth to 21 years of age, per OAC 340:75-4-12.1 and 340:75-6-115.9.

(b) **Legal base.**

(1) The Oklahoma Foster Care and Out-of-Home Placement Act acknowledges that foster parents have a recognizable interest in the familial relationship they establish with a child who is placed in their care. The law recognizes that foster parents are essential participants in decision-making related to the child in their home.

(2) Sections 7203 and 7204.4 of Title 10 of the Oklahoma Statutes define and authorize foster family care.

(3) Titles IV-B and IV-E of the Social Security Act mandate and provide funding for certain child welfare services, including foster care.

(4) OKDHS implements recruitment and retention activities that support the:

(A) Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 (MEPA/IEP), per OAC 340:75-1-9;

(B) Federal Indian Child Welfare Act (FICWA), per Section 1901 et seq. of Title 21 of the United States Code, and Oklahoma Indian Child Welfare Act (OICWA), per Section 40 et seq. of Title 10 of the Oklahoma Statutes;

(C) Adoption and Safe Families Act of 1997 (ASFA) that amended Titles IV-B and IV-E of the Social Security Act, per Sections 620 through 679 of Title 42 of the United States Code; and

(D) regulations promulgated to implement each Act.

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

(1) **"Bridge resource family"** is a family who may be asked to:

(A) provide temporary care, love, and nurturance to the child and serve as a mentor actively helping the parent improve their ability to safely care for their children while staying connected and assisting in the transition to reunification, legal guardianship, or adoption to another family; and/or

(B) serve as the legal guardian for the child while maintaining a child's connection to kin, culture, and community; and/or

(C) adopt the child while maintaining a child's connection to kin, culture, and community.

(~~1~~2) **"Emergency foster care (EFC)"** means short-term substitute care for children in the custody of OKDHS from birth through five years of age. Care is provided by a contracted agency to meet the child's needs through service coordination and delivery in conjunction with OKDHS.

(~~2~~3) **"Foster family care"** means an essential temporary Child Welfare (CW) service for a child and parent(s), legal guardian, or custodian when the child's safety cannot be ensured in his or her own home due to the risk of child abuse, neglect, or special circumstances necessitating out-of-home care on a temporary basis in a home away from the child's parent(s), legal guardian, or custodian. A service of continuous care is provided for a child requiring out-of-home placement in a home environment, including, but not limited to, the care, supervision, guidance, and rearing of a child by a foster parent, who is approved by and under contract with OKDHS.

(~~3~~4) **"House assessment"** means the evaluation of the prospective foster or kinship family's place of residence to determine whether the residence meets OKDHS physical requirements for safety.

(~~4~~5) **"In-service training"** means instruction on a yearly basis that is required to maintain continued approval of a foster home.

(~~5~~6) **"Inquiry"** means the first contact a prospective resource parent has with OKDHS. The prospective resource parent may ask the local OKDHS office staff about foster parenting, through a phone call, e-mail, or personal contact.

(~~6~~7) **"Kinship foster family care"** means continuous care provided for a child requiring out-of-home placement by a relative, stepparent, or other responsible adult who has a bond or tie with the child or a family relationship role with the child's parent(s) or the child prior to the child's entry into foster care.

(~~7~~8) **"Mutual decision-making"** means the process by which the prospective resource family decides, given what they have learned about themselves and the children served by OKDHS, whether they want to become approved foster, kin, or adoptive parents. OKDHS, represented by the resource specialist, determines whether the family has the skills, willingness, and resources to foster or adopt an available child.

(~~8~~9) **"Parental substitute authority"** means the ability of the foster parent to integrate the child requiring out-of-home placement into the family setting and to care for the child as the foster parent would his or her child, by:

(A) meeting the child's physical and emotional needs;

(B) teaching the child problem-solving, self-control, and responsibility; and

(C) building the foster parent - child relationship. This does not include the authority to use corporal punishment on any child in OKDHS custody.

(~~9~~10) **"Pre-service training"** means instruction required of a foster parent applicant prior to approval.

PART 2. DEVELOPMENT OF RESOURCES

340:75-7-12. Initial screening and requirements

(a) **Inquiries.** Any person who is at least 21 years of age may apply to become a foster parent by contacting the local Oklahoma Department of Human Services (OKDHS) office.

(b) **Requirements.** Requirements described in OAC 340:110-5 serve as a framework for families and OKDHS in the mutual assessment process that assists in selecting the best home for children placed in foster family care. All applicants must:

(1) be at least 21 years of age and preferably no more than 55 years older than the child considered for placement;

(2) ~~if married, be married one year or more.~~ have healthy relationships whether ~~Applicants may be~~ married, single, ~~legally~~ separated, or divorced;

(3) have the ability to manage personal and household financial needs without relying on the foster care reimbursement;

(4) provide appropriate sleeping arrangements for each child placed;

(5) provide verification that all household members are in sufficiently good physical and mental health to provide for the individual needs of each child placed;

(6) submit to a search of all OKDHS records, including Child Welfare records;

(7) ensure that each household member, 18 years of age or older, submits fingerprints for a state and national criminal history records search;

(8) submit to a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the household;

(9) ensure that no household member has a prior conviction of any sexual offense;

(10) not smoke in the home when a child is placed in the home;

(11) not smoke in the automobile when transporting a child placed;

(12) provide references;

(13) complete 27 hours of pre-service training;

(14) complete 12 hours of in-service training each calendar year;

(15) demonstrate the basic competencies that are to:

(A) protect and nurture children who have been abused, emotionally maltreated, or neglected;

(B) meet the medical and developmental needs of these children;

(C) support relationships between children and their parents, siblings, and kin, as specified by OKDHS;

(D) connect children to safe, nurturing relationships; and

(E) collaborate with OKDHS as a team member;

(16) provide a home that is clean and safe;

(17) have a house assessment completed;

(~~17~~18) have extended family or friends to provide support and child care other than, or in addition to, licensed child care paid by OKDHS;

(~~18~~19) submit verification of employment when requesting OKDHS paid child care services for a child in foster care;

(~~19~~20) acknowledge and agree to abide by applicable Oklahoma statutes and OKDHS rules regarding the child in their care that include, but are not limited to:

(A) OKDHS, as the legal custodian of the child, has the right to move any child from any foster home at any time when in the child's best interests and in accordance with statutes governing movement of children;

(B) the necessity of maintaining and respecting the confidential nature of all information regarding a child placed in the foster home. A breach of confidentiality may be grounds for closure of the foster home and termination of the foster care contract; and

(C) the requirement that OKDHS investigate or assess allegations of abuse, neglect, or maltreatment of any child in OKDHS custody placed in an approved foster home in the same manner as any other abuse or neglect investigation or assessment conducted by OKDHS;

(~~20~~21) notify OKDHS whenever any member of the foster family is seriously ill or hospitalized;

(~~21~~22) provide a physician's statement, once approved as a foster parent:

(A) for any hospital stay;

(B) for ongoing outpatient medical or mental health care, including psychological counseling; or

(C) upon OKDHS request;

(~~22~~23) agree to provide foster care as a planned, temporary placement for the child whose permanency plan is family reunification or other permanency plan;

(~~23~~24) work as a member of a professional multidisciplinary team with OKDHS staff to develop a permanency plan for each child placed;

(~~24~~25) share parenting of the child in care with the parent(s), who may have different values and lifestyles;

(26) be willing to actively mentor the parent in helping them improve their ability to safely care for their child;

(~~25~~27) treat all information regarding the child and family as confidential, only sharing such information necessary to obtain services for the child or with persons who are directly involved with the case;

(~~26~~28) participate in the development of an effective parent and child visitation plan that may include contact with the parents and siblings, if siblings are separated;

(~~27~~29) comply with OKDHS rules on discipline;

(~~28~~30) maintain requirements necessary for continued approval as a foster home;

(~~29~~31) participate in the re-assessment of the foster home and the evaluation of the OKDHS Foster Care program and services;

(~~30~~32) utilize the foster care reimbursement for the care and maintenance of the child's basic needs, such as food, clothing, shelter, incidentals, non-prescription medications, including special activity fees, allowances, and recreational opportunities;

(~~31~~33) utilize the clothing allowance included in the foster care reimbursement to provide adequate clothing for the child placed; and

(~~32~~34) comply with all Oklahoma statutes relating to the care and support of minors including those that prohibit the use of tobacco, alcohol, or non-prescribed medications.

(c) **Specific inquiries.** Temporary Assistance for Needy Families (TANF) recipients and OKDHS employees may apply to be OKDHS foster families.

(d) **Requests from other states.** When former foster parents apply in another state to be a foster resource and that state requests information about the foster parents from OKDHS, Children and Family Services Division Foster Care Section responds to the request.

340:75-7-15. Background investigation and assessment of results

(a) **Requirements.** A background investigation is conducted on all adults in the foster applicant's home as a safeguard for children placed in Oklahoma Department of Human Services (OKDHS) custody. Background investigations are conducted at the time of application and include, but are not limited to:

(1) an Oklahoma State Bureau of Investigation (OSBI) name and records criminal history search, including the Department of Public Safety (DPS) and Sex Offenders Registry, of the applicant and any adult living in the applicant's household;

(2) a Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the applicant and any adult members of the household;

(3) a search of any court involvement;

(4) a search of all OKDHS records, including Child Welfare (CW) records, for past confirmation of child maltreatment involving the applicant and any adult living in the household;

(5) a search of all applicable out-of-state child abuse and neglect registries for any applicant or adult household member who has not lived continuously in Oklahoma for the past five years. The prospective resource home is not approved without the results of the state-maintained child abuse and neglect registry checks, if a registry is maintained in the applicable state, for all adult household members living in the home. If no child abuse and neglect registry is maintained in the applicable state, the resource specialist requests any information that can be provided; and

(~~5~~6) a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the applicant's household.

(b) **Criminal history search.** The applicant and adult household members provide consent for an OSBI and FBI criminal history search by signing Form 04AD003E, Request for Background Check.

(c) **Exception to fingerprinting.** The Director of OKDHS or designee may authorize an exception to the fingerprinting requirement, and authorize use of an alternative procedure for obtaining a national criminal records check for any person residing in the home who has a severe condition that precludes such person being fingerprinted. In limited, case specific circumstances, OKDHS may not be able to obtain:

(1) an individual's fingerprints as a result of the individual's disability; or

(2) legible fingerprints due to low quality fingerprints, as a result of age, occupation or otherwise, thereby making it impossible for the national crime information databases (NCID) to provide results.

(d) **Residence time frame.**

(1) If every person age 18 or older residing in the applicant's home has resided in Oklahoma for at least five consecutive years immediately preceding approval, the ~~initial~~ approval may occur upon completion of the entire home assessment process using results per OAC 340:75-7-15(a).

~~(2) Fingerprints are submitted to the FBI for a national criminal history records search before initial approval. Final approval, per OAC 340:75-7-18(b)(3), is contingent upon receipt of the results of the national criminal history records search.~~

(~~3~~2) Applicants or adult household members who have lived in Oklahoma for less than five years must also provide the equivalent background records check from previous state(s) of residence prior to placement.

~~(A)~~ Equivalent records check includes, but is not limited to, a state's criminal history search, including ~~Department of Public Services~~ DPS and Sex Offenders Registry.

~~(B) Kinship applicants must provide the records check within 30 days of placement.~~ OKDHS obtains the child abuse and neglect registry check from the previous state(s) of residence.

(e) **Occupancy of the household.** A criminal history search is completed for every adult who sleeps in the household more than 30 days per calendar year or engages in a pattern of overnight visitation that meets this test. Such persons are considered household members.

(f) **New occupants in the foster home.** The foster parent notifies OKDHS within 24 hours of any person taking up residence in the foster home. OKDHS completes a background investigation, per OAC 340:75-7-15, for persons age

18 years or older. The foster parent's child who reaches age 18 is considered in this category. Adults in this category have no provider responsibility until the background investigation is complete. A foster family's failure to notify OKDHS of a new household member or refusal of a household member to consent to a background check is grounds for cancellation of the foster care contract.

(g) **Kinship applicant criminal background records search after normal business hours or on a holiday.** When OKDHS considers placement of a child with a prospective kinship foster family in an emergency situation, after normal business hours or on a holiday, OKDHS requests that local law enforcement conduct a name based National Crime Information Center (NCIC) criminal history search. This is based upon submission of the name, race, gender, date of birth, and Social Security number of each person age 18 years or older living in the household. Each person completes and signs Form 04AD003E to initiate the search.

(h) **Assessment of background investigation results.**

(1) **History of felony convictions.** OKDHS denies a resource home application if the applicant, or any person residing in the home of the applicant, has a criminal conviction record for any of the felony offenses listed in (A) through (E). The criminal conviction of an approved foster parent or any person residing in the foster home of any of the felony offenses listed in (A) through (E) requires the closure of the foster home, cancellation of the foster care contract, and removal of each child in OKDHS custody. The felony offenses are:

(A) physical assault, battery, or a drug-related offense within the five year period preceding the application date;

(B) child abuse or neglect;

(C) domestic abuse;

(D) a crime against a child, including, but not limited to, child pornography; or

(E) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery. Homicide includes manslaughter. A crime involving violence means an offense that:

(i) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

(ii) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(2) **Exceptions to history of felony or relevant misdemeanor arrests or convictions.**

~~(A)~~ OKDHS does not grant exceptions regarding felony convictions, per OAC 340:75-7-15(h)(1), of a prospective or approved foster parent or of anyone residing in the foster home. ~~Approval may be granted by the county director on a case-by-case basis, per OAC 340:75-7-15(h)(4), for any~~ Any applicant who has, or is living with a person who has, ~~a prior conviction or charges pending for~~ any ~~other~~ felony, ~~or a~~ relevant misdemeanor, criminal arrest, or conviction history will be reviewed by a committee. A relevant misdemeanor may include, but is not limited to, assault and battery, alcohol or drug-related offenses, crimes involving domestic abuse, and other such offenses.

~~(B) A prospective adoptive parent or long-term placement provider for a specific child in OKDHS custody, who has not been approved as a placement provider due to a conviction of a felony offense specified in OAC 340:75-7-15(h)(1)(A) within five years preceding the application date, may be approved only by the court after:~~

~~(i) an evaluation is made and accepted by the court that considers the:~~

~~(I) nature and seriousness of the crime in relation to the long-term placement;~~

~~(II) time elapsed since the commission of the crime;~~

~~(III) circumstances under which the crime was committed;~~

~~(IV) degree of rehabilitation; and~~

~~(V) number of crimes committed by the person involved; and~~

~~(ii) a showing by clear and convincing evidence that the child will not be at risk by such placement.~~

(3) **Sex related crimes.** OKDHS denies the application of an applicant if the applicant, or any person residing in the applicant's home, has been convicted, whether upon a verdict or a plea of guilty or upon a plea of nolo contendere, for any crime specified per Section 582 of Title 57 of the Oklahoma Statutes. OKDHS denies the application of an applicant if the applicant is subject to, living with, or married to a person who is subject to the Oklahoma Sex Offenders Registration Act.

(4) **History of crimes, charges, or other convictions.** Approval of any applicant who has, or is living with a person who has, a history of arrests, charges, or convictions for any felony other than those listed in OAC 340:75-7-15(h)(1) or a relevant misdemeanor may be approved on a case-by-case basis. A relevant misdemeanor includes, but is not limited to, assault and battery, alcohol or drug related offenses, crimes involving domestic abuse, and other such offenses.

(5) **History of child abuse and neglect investigations.** OKDHS determines the approval of any applicant with a history of child abuse and neglect investigations on a case-by-case basis. The county director considers the:

(A) nature and seriousness of the CW history;

(B) time elapsed since the CW history;

(C) circumstances of the CW history;

(D) degree of rehabilitation;

(E) risk, if any, to the child by such placement; and

(F) results of appeals, if applicable.

(6) **History of child abuse and neglect investigations on closed foster homes.** OKDHS determines whether to pursue the approval of any applicant that was previously

a foster home with a history of child abuse and neglect investigations as a foster parent. The Children and Family Services Division Foster Care Section reviews investigations where there have been abuse or neglect allegations and confirmed findings.

(7) **JOLTS information.** The information obtained from a JOLTS search on the child older than 13 years of age living in the applicant's home is used to determine whether that child poses a risk to a child in OKDHS custody.

340:75-7-18. Resource family assessment

(a) **Resource family assessments.** The resource family assessment is completed by Oklahoma Department of Human Services (OKDHS) staff or by a contractor of OKDHS and consists of an evaluation of the items listed in (1) through (7). The written assessment depicts the family based on complete, consistent, and truthful information gathered by the resource specialist or contractor in conjunction with the family.

(1) **Background investigation.** Completed and signed Forms 04AF001E, Resource Family Assessment Application, and 04AD003E, Request for Background Check, authorize OKDHS to conduct an investigation into criminal and OKDHS records, including Child Welfare (CW) records, of the applicant and each adult household member, per OAC 340:75-7-15.

(2) **House assessment.** The resource specialist conducts an evaluation of the applicant's residence to assess the location, condition, and capacity to accommodate children in foster care. The resource specialist assesses:

(A) location. The home must be accessible to school, medical, and recreational resources;

(B) condition. The home must be clean and safe;

(~~B~~C) play space. Adequate and safe indoor and outdoor space for play activities must be available;

(~~C~~D) equipment. Age appropriate child care equipment, such as beds, high chairs, and toys must be available and in good repair;

(~~D~~E) communications. A working phone must be maintained in the home;

(~~E~~F) automobiles. The applicant must maintain an automobile in working order, carry the statutorily mandated automobile liability insurance, possess a valid Oklahoma driver license, and have a current, valid license tag. The resource specialist observes passenger restraints and advises the applicant that proper automobile restraints are used at all times when a child in OKDHS custody is riding in an automobile.

(i) Every driver must use a child passenger restraint system that meets federal standards when transporting a child who is younger than six years of age.

(ii) Every child age six to 18 years who is transported in an automobile must be protected by a passenger restraint system or seat belt.

(iii) The provisions in (i) and (ii) do not apply to the:

(I) driver of a school bus, taxicab, moped, motorcycle, or other vehicle not required by law to be equipped with safety belts;

(II) driver of a vehicle in which all seat belts are in use;

(III) transportation of a child for whom medical reasons prohibit the use of a passenger restraint system or seat belt; or

(IV) transportation of a child who weighs more than 40 pounds and is transported in the back seat using only a lap seat belt when the back seat of the vehicle is not equipped with combination lap and shoulder belts or when the combination lap and shoulder belts are used by other children weighing more than 40 pounds. The back seat includes all seats located behind the front seat of a vehicle;

(~~F~~G) sleeping arrangements and privacy.

(i) The applicant's home provides a separate bed for each child with the exception of siblings younger than six years of age who exhibit a need for mutual support. A separate bedroom is provided for a child who acts out sexually.

(ii) Preferably, no more than two children share a bedroom. Primary consideration is given to the child's safety according to age and emotional needs.

(iii) The applicant's home provides separate bedrooms for children older than six years of age who are of the opposite sex.

(iv) A child in OKDHS custody, with the exception of an infant who is younger than 12 months of age, does not share a bedroom with an adult in the household.

(v) The applicant's home provides space for the child's personal possessions and for a reasonable degree of privacy.

(vi) The applicant may not designate a room, such as the living room, utility room, den, dining room, pantry, or unconverted garage, as a bedroom unless the room is specifically designed as a bedroom;

(~~G~~H) sleeping arrangements for infants. A crib, port-a-crib, bassinet, or playpen with a firm waterproof mattress or pad is used for each child younger than one year of age.

(i) Bassinets are used for infants:

(I) weighing up to 15 pounds; or

(II) no more than three months of age.

(ii) Port-a-cribs or playpens are used for short-term sleeping arrangements, such as naps or respite and traveling for periods of no more than one week.

(iii) Cribs, port-a-cribs, bassinets, and playpens with more than two and 3/8 inches between slats or between the side and end panels are not allowed.

(iv) Cribs with decorative cutout areas in crib-end panels or tall decorative knobs on the

corner posts that may entrap a child's head or catch the child's clothing are not allowed.

(v) Mattresses must be tight fitting with no more than one inch between the mattress and crib, port-a-crib, bassinet, or playpen.

(vi) Mattress and crib sheets must fit snugly.

(vii) Drop-side latches must:

(I) hold sides securely; and

(II) not be accessible by the child in the crib, port-a-crib, bassinet, or playpen.

(viii) Pillows, quilts, comforters, sheepskins, stuffed toys, bumper pads, and other soft products are not permitted in the infant's crib, port-a-crib, bassinet, or playpen.

(ix) To reduce the risk of Sudden Infant Death Syndrome (SIDS), infants younger than 12 months of age are placed on their back for sleeping unless there is a medical reason the infant must not sleep in this position, as documented by a health professional. This documentation is maintained by the foster parent and filed in the child's CW case record.

(x) Infants who are able to turn themselves over are placed initially on their back for sleeping but allowed to sleep in a position they prefer;

(~~H~~I) water safety.

(i) Any activity that involves wading and swimming is supervised at all times.

(ii) Pools are fenced to prevent unsupervised access. Municipality and insurance requirements for pools are followed. All doors and gates leading to the pool are locked. There is:

(I) a sturdy fence at least four feet high that cannot be easily climbed; or

(II) a fence that connects to the top of an above-ground pool and extends two feet above the pool or follows other specified safety guidelines.

(iii) The hot tub must be equipped with a hard cover designed for a hot tub.

(iv) The use of portable wading pools is monitored at all times. The wading pool is emptied at the end of each use;

(~~I~~J) animal and household pet safety.

(i) Animals are in good health, do not show evidence of carrying disease, and do not present a threat to the health, safety, or well-being of children.

(ii) Documentation of current rabies vaccinations administered by a licensed veterinarian for dogs, cats, and other applicable pets is kept in the resource file.

(iii) If an animal bites a child, the child's CW worker is contacted immediately; and

(~~J~~K) weapon safety. Any activity that involves a weapon must have supervision at all times. The activity must be approved by the CW worker. Weapon includes, but is not limited to, gun, BB gun, bow and arrow, and knife, with the exception of cooking and eating utensils.

(3) **Total number of children in placement.** The total number of children in OKDHS custody placed in a kinship or foster home may not exceed five. The total number of all children in the home, which includes biological, adoptive, foster, and other children not in OKDHS custody, may not exceed six.

(4) **Children younger than two years of age.** No more than two children younger than two years of age, including the foster family's own children, are placed in the same home.

(5) **References.** The resource specialist solicits and reviews the comments of personal, employer, and school references identified by the applicant regarding the applicant's parenting strategies and skills. Information obtained through references is confidential.

(A) Three personal references are interviewed by phone or in person.

(B) The applicant's current or most recent employer is contacted by letter, phone, or in person. When the applicant is self-employed, a reference is obtained from a customer.

(C) School teachers, counselors, or administrators who have recently served the applicant's child are contacted by letter, phone, or in person to assess the applicant's involvement in educational concerns, if applicable.

(D) If the applicant home schools their own child, a person that has knowledge of the applicant's home schooling experience is contacted by letter, phone, or in person.

(~~D~~E) All adult children of the applicant are interviewed by letter, phone, or in person, if applicable.

(~~E~~F) The mental health professional is contacted by letter, when the applicant or applicant's child has received counseling, whether currently or in the past.

(~~F~~G) A minimum of six references is required.

(6) **Military discharge.** If an applicant has been discharged from the armed forces, a copy of DD Form 214, Certificate of Release of Discharge From Active Duty, is required to determine the type of discharge. Any discharge other than honorable must be specifically addressed in the assessment as a consideration in the applicant's ability to attend to the safety and well-being of a child requiring foster care services.

(7) **Previous foster care experience.** Applicants who have previously served as foster parents in another state or with a private agency provide or authorize release of all previous foster home assessments, reports, and training records from the state or agency.

(8) **Household income.** The applicant provides verification that he or she can manage personal and household financial needs without relying on the foster care reimbursement. The applicant must have sufficient income to meet the needs of an additional child placed in his or her home until receipt of foster care reimbursement for that child.

(b) **Disposition of foster home assessments.** Upon completion of the foster home assessment, a decision regarding disposition is made assessing all the information gathered. The assessment process is completed and the determination regarding disposition is made no later than 90 days after receipt of Form 04AF001E. The resource specialist confirms in writing all decisions made concerning the assessment and application with the applicant. The resource specialist shares with the applicant ~~Form 04AF002E, Guidelines for Resource Family Assessment, or Form 04AF003E, Resource Family Assessment, as applicable,~~ the resource family assessment for the applicant's input prior to deciding to select in or out of the Foster Care program. Disposition of the assessment may result in:

(1) postponement of the assessment. The applicant is advised of any condition that does not conform to Foster Care rules, per OAC 340:75-7, during the assessment. When determined appropriate, the resource specialist postpones the assessment to afford the applicant the opportunity to resolve issues of concern;

(2) voluntary withdrawal of the application. If the resource specialist determines the applicant does not meet the requirements for becoming a foster parent, the reasoning for the determination is explained, and the resource specialist gives the applicant the option to voluntarily withdraw the application;

(3) approval of the assessment.

(A) The resource specialist reviews and discusses the assessment with the applicant for clarification of content, except for the Juvenile Justice Information System (JOLTS) review, CW records search, and reference information.

(B) The resource specialist, CW supervisor, and applicant sign Form 04AF003E, Resource Family Assessment - Bridge Family Profile, and a copy is provided to the applicant. The home is not considered approved until the CW supervisor approves the family assessment in KIDS and signs Form 04AF003E, and the foster family has completed the pre-service training.

(C) Prior to initiation of reimbursement, the applicant signs the foster care contract with the exception of a kinship placement, per OAC 340:75-7-24.

(D) The ~~Children and Family Services Division (CFSD)~~ resource specialist provides the family OKDHS Publication No. 99-17, Foster Parent Handbook. Each foster parent signs Form 04AF021E, Verification of Receipt of OKDHS Rules.

(E) The foster parent signs Form 15GR008E, Notice of Grievance Rights - Foster Parents;

(4) exceptions to the assessment. OKDHS may, at its discretion, grant an exception of specific rules or standards upon request by the applicant.

(A) OKDHS may establish conditions that must be met by the applicant in order to operate under the exception granted.

(B) Exceptions may be granted upon a showing by the applicant that:

(i) the particular rule or standard that is the subject of the exception request may not be applied as written because strict application of the rule or standard would cause undue hardship; and

(ii) adequate standards affording protection for the health, safety, and care of the child exists and will be met in lieu of the exact requirements of the rule or standard in question; or

(5) denial of the assessment. The decision to deny requires an explanation to the applicant by the resource specialist regarding the reasons the assessment is denied. If a kinship home is denied, the child in OKDHS custody in the home is moved immediately. Reasons for denying an assessment may include, but are not limited to:

(A) a lack of stable, adequate income to meet the applicant's own or total family needs or poor management of available income;

(B) a physical facility that is inadequate to accommodate the addition of children to the home or presents health or safety concerns;

(C) the applicant or any person residing in the home has a history of alleged or confirmed child abuse, neglect, or both, per OAC 340:75-7-15;

(D) the applicant or any person residing in the home has a history of arrests or convictions per OAC 340:75-7-15;

(E) the age, health, or any other condition of the applicant impedes the applicant's ability to provide appropriate care for a child;

(F) relationships in the household are unstable and unsatisfactory;

(G) the mental health of the applicant or other family or household member impedes the applicant's ability to provide appropriate care for a child;

(H) references are guarded or have reservations in recommending the applicant;

(I) the applicant fails to complete the application, required training, or verifications in a timely manner as requested or provides information that is incomplete, inconsistent, or untruthful; ~~or~~

(J) the home is determined unsuitable for the child requiring placement;

(K) the applicant has applied for a child that OKDHS reasonably believes may not be available for placement; or

(L) one or more factors concerning the applicant, a family or household member, or conditions in the home as described in the denial letter, renders the applicant or home environment inappropriate as a resource home.

(c) **Re-application to provide foster care.** Persons who desire to re-open their foster home must re-apply. If the foster home has been closed two years or more, a resource family assessment is completed.

(d) **Dissolved marriage or other relationships.** If foster parents divorce or the relationship is dissolved, the person who continues to foster retains the existing resource number and information.

(e) **Contract foster home assessments.** Children and Family Services Division (CFSD) may contract with licensed child-placing agencies or a qualified person to provide a range of CW services that include conducting resource family assessments. OKDHS makes the final decision regarding the disposition of all resources assessed by contractors.

(f) **Changes in the household.** The foster parent must notify the resource specialist within 24 hours of any change in the household that precludes the foster parent from providing adequate care for the child, including, but not limited to:

(1) income;
(2) location;
(3) health; or
(4) relationship.

340:75-7-24. Kinship placements

(a) **Kinship care.** Kinship care is considered as the first option in providing care for the child requiring out-of-home placement, provided the child's needs are met and safety is reasonably ensured in the kinship placement. A kinship placement is assessed as a potential permanent placement for the child if reunification is not achieved. Kinship relationships do not require a blood relationship. The types of kinship relationships are identified in (1) through (6).

(1) **Related by blood.** Blood relatives considered as kinship, including half-blood, are:

(A) siblings;
(B) grandparents, including those denoted by prefixes of great and great-great;
(C) aunts and uncles, including those denoted by prefixes of great and great-great;
(D) nieces and nephews, including those denoted by prefixes of grand and great-grand; and
(E) cousins.

(2) **Related by marriage.** Per OAC 340:75-7-24(a)(1), relationships by marriage, whether common-law or ceremonial, including step-relations and even after the marriage is terminated by death or divorce, are considered kinship.

(3) **Related by adoption.** Relatives by adoption, per OAC 340:75-7-24(a)(1) and (2), are considered kinship.

(4) **Paternal relatives.** Paternal relatives, per OAC 340:75-7-24(a)(1) through (3), of children born out of wedlock, are considered kinship.

(5) **Related by emotional tie or bond.** An emotional tie or bond exists when a child or the child's parent acknowledges and accepts a person as part of the extended family or in the family's close network of friends and relationships. The family relationship role exists prior to the necessity for out-of-home placement of the child.

(6) **Noncustodial parent.** A child returned to or placed with a noncustodial parent or a parent whose rights were terminated is not a kinship placement. Biological parents are not kinship resources and are not eligible for foster care reimbursement.

(b) **Initial kinship placement.** A child may be placed in a kinship foster home prior to completion of the resource family assessment and pre-service training, provided:

(1) Form 04FC001E, Initial Kinship Placement Agreement, is completed and signed;
(2) Forms 04AF001E, Resource Family Assessment Application, and 04AD003E, Request for Background Check, are completed and signed, per OAC 340:75-7-15 and 340:75-7-18;
(3) an Oklahoma Department of Human Services (OKDHS) records search, including Child Welfare (CW) records, is completed and documented on Form 04AF007E, Records Check;
(4) Form 04AF004E, House Assessment, is completed and approved; and
(5) three personal references, only one of whom is a family member, are interviewed by phone.

(c) **Kinship reimbursement option.** The kinship applicant may opt for payment by OKDHS or a money payment for which the child is eligible instead of the foster home reimbursement.

(1) The foster home reimbursement is reduced by the amount of the money payment if the money payment is less than the foster home reimbursement. Refer to OAC 340:75-7-52.1 for Supplemental Security Income (SSI) or Social Security Administration (SSA) benefits received for a parent who is deceased or disabled.
(2) Payment may include:

(A) other financial resources, per OAC 340:75-13-28; or
(B) Temporary Assistance for Needy Families (TANF) benefits, per OAC 340:10-9.

(d) **Kinship requirement.** All kinship foster homes, paid or non-paid, must meet the same requirements as all other CW foster homes. Kinship foster homes are entitled to receive a training stipend as set in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, at enrollment and completion of the pre-service training when a child has been placed in the home. For paid kinship foster homes, reimbursements begin at the time requirements are met and are not retroactive.

PART 4. ROLES AND RESPONSIBILITIES

340:75-7-37. Responsibilities of foster parents

As members of a professional team with Oklahoma Department of Human Services (OKDHS) staff, foster parents assume responsibility both to OKDHS and to the children and families served. A clear understanding of the roles, abilities, and requirements of the foster parents is necessary for effective coordination with OKDHS staff and the children and families served.

(1) **Responsibilities of the foster parent to the child in OKDHS custody and the child's family.** Responsibilities of the foster parent include:

(A) integrating the child into the foster family setting and caring for the child as the foster parent would for the foster parent's own child;
(B) providing mentoring services to the child's parent(s) and coordinating visitation and contact

~~whenever possible~~ to facilitate timely reunification, including phone and mail contact when appropriate;

(C) working as a multidisciplinary team member with the Child Welfare (CW) worker and the child's parent(s) toward family reunification or other permanency plan;

(D) helping the child understand why he or she is in foster care and to deal with the grief caused by the separation;

(E) cooperating and assisting in sibling contact or visitation, including phone and mail contact, when siblings are separated;

(F) helping the child maintain a connection to the child's kin, culture and community;

(~~F~~G) cooperating and assisting the CW worker in the placement of siblings together;

(~~G~~H) helping the child develop a positive identity and self-esteem by feeling lovable, capable, worthwhile, and competent;

(~~H~~I) helping the child learn appropriate behavior without using physical punishment;

(~~I~~J) utilizing appropriate behavior management, parent-child conflict resolution, and stress management techniques in a manner appropriate to the age and development of the child in foster care;

(~~J~~K) enrolling the child in an accredited school, if applicable, and ensuring the child attends;

(~~K~~L) advocating for the child to obtain appropriate educational testing and placement in a timely manner ~~that may include becoming a surrogate parent volunteer for participation in the child's Individualized Education Plan (IEP). To serve as a surrogate parent volunteer, the foster parent must complete Oklahoma State Department of Education SoonerStart Form EI-12, Surrogate Parents Verification of Training~~;

(~~L~~M) attending school conferences and Individualized Education Plan (IEP) meetings;

(~~M~~N) ensuring the child participates in extracurricular and other recreational activities as appropriate;

(~~N~~O) ensuring the child's necessary medical, dental, and counseling needs are met by:

(i) making appointments;

(ii) providing transportation to appointments and sibling and parent visits; and

(iii) obtaining prescription medications or over-the-counter medications as necessary and administering the medication as directed;

(~~O~~P) maintaining records of all medical, dental, and counseling appointments and notifying the CW worker of the time and place of the appointments, all medications prescribed for the child, and over-the-counter medications given to the child;

(~~P~~Q) notifying the CW worker of all medical and educational problems and progress;

(~~Q~~R) ensuring the child's opportunity to participate in the religious practices of the child's family's choice, including the provision of transportation to worship services other than those of the foster parent, if necessary, and ensuring a child in foster care is not made to attend religious services against the child's wishes;

(~~R~~S) providing transportation for the child to meet with legal counsel upon reasonable request, attending court hearings as desired or required, submitting to the court written reports or presenting testimony concerning the strengths, needs, behavior, important experiences, and relationships of the child, in addition to other information the court requests;

(~~S~~T) providing from the foster care reimbursement:

(i) essentials such as food, shelter, non-prescription medical needs, clothing, shoes, and toiletries;

(ii) clothing and fees for special activities;

(iii) school pictures;

(iv) athletic and band instrument fees;

(v) cap and gown rental and prom clothing; and

(vi) birthday and holiday gifts;

(~~T~~U) providing federally mandated independent living services to youth who are at least 16 years of age and assisting other children in learning basic life skills that allow the opportunity to improve self-concept and strengthen identity in preparation for life after foster care;

(~~U~~V) allowing the child access to mail from family members and the child's attorney; and

(~~V~~W) allowing the child overnight stays with friends of the child whom the foster parent knows and approves while ensuring the safety of the child.

(2) **Responsibilities of the foster parent in the development and support of an appropriate permanency plan for each child.** Responsibilities of the foster parent include:

(A) informing the CW worker and other team members of each child's strengths, needs, progress, and development;

(B) participating in the development of an effective parent and child visitation plan approved by OKDHS that defines contact with the parent(s) and siblings, if siblings are separated;

(C) collaborating with the child's CW worker prior to visits with the birth parents unless part of a specific plan;

(D) advising the CW worker of all pertinent information about the child and family;

(E) participating in meetings and case staffings when appropriate;

(F) completing all required training hours each calendar year, including policy training when offered; and

(G) maintaining current medical and education records for each child in foster care. A Life Book is maintained for each child placed in the home to support the child's sense of family continuity. These records accompany the child when he or she leaves the foster home.

340:75-7-38. Discipline for children in foster family care

(a) **Primary responsibility.** A primary responsibility of foster families is to help children learn behaviors that promote their self-regard, personal ability, and socialization skills. The rules governing these efforts are outlined in OAC 340:75-7-38(b) through (d).

(b) **Positive interactions.** Foster family interactions with a child:

(1) protect and nurture the child's physical and psychological well-being;

(2) advance the child's development;

(3) meet the child's needs;

(4) teach the child ways to prevent and solve problems;

(5) maintain and build the parent and child relationship;

(6) build the child's self-control and responsibility; and

(7) comply with Oklahoma Department of Human Services (OKDHS) rules on discipline to provide a safe, nurturing environment that allows the child to experience security and positive self-esteem.

(c) **Teaching techniques.**

(1) **Positive behavior management.** Positive behavior management techniques include, but are not limited to:

(A) rewards. Rewards may be small gestures of approval, such as treats, toys, and symbols of recognition such as stickers, stars, happy faces, or money. Rewards are for the interest, desire, and effort the child displays, not for performance, talent, or ability. This technique must not be used all the time;

(B) privileges. Privileges allow the child to experience greater freedom or opportunity and an increased responsibility. Privileges are used to encourage the child's interest and talents by supporting the child's efforts in pursuing interests; and

(C) praise. Praise may be communicated with a smile or nod of approval, expressing to the child how pleased the person is with him or her.

(2) **Self-control.** To promote the child's self-control, foster parents clearly communicate expectations and provide structured, safe environments. The foster parent's use of planning and preparation prevents confrontation, acting-out, and negative behaviors by:

(A) establishing expectations. Children in out-of-home care experience varied expectations of foster parents in every placement setting. Since each placement setting is different, the foster parent must communicate expectations to the child. Expectations are communicated through setting rules, telling the child what to expect, and modeling. Clearly communicated expectations provide structure for the child and a structure for building and maintaining self-control; and

(B) modifying the environment. Structured, safe environments allow children to succeed at identified tasks. Foster parents structure environments by removing sources of stimulation for the child and establishing routines and consistency in day-to-day schedules.

(3) **Direct intervention.** When the child does not have sufficient self-control to ensure acceptable behavior, the foster parent uses direct intervention and techniques, per OAC 340:75-7-38(c)(1) and (2). Techniques used are dependent upon the child's developmental needs and anticipated outcomes. Techniques appropriate for responding to lack of self-control include:

(A) rules. Rules are established guidelines that:

(i) allow the child to know what can and cannot be done;

(ii) help the child know right from wrong;

(iii) communicate to the child how something is done and help prevent problems; or

(iv) provide a way to respond to a problem;

(B) time out. Time out provides space between the child and a situation where the child exhibits behavior that is not acceptable or where the situation is dangerous. Recommended time out is one minute per age of the child. Time out is typically used for the younger child;

(C) restricting privileges. Privileges are restricted when a child is not allowed to do something for a specified period of time, such as not playing with a particular toy, watching television, playing the stereo, playing computer games, having phone privileges, or engaging in some other pleasant activity. Talking to parents or siblings is not included in restricting phone privileges;

(D) grounding. Grounding involves imposing restriction on a child's interaction and involvement with friends or activities outside of the placement setting, such as restriction to the house or leaving the premises to attend parties, movies, or visit friends. Grounding is typically used for the older child;

(E) logical consequences. Logical consequences require the family to impose a response to the child's behavior consistent with and connected to the unacceptable behavior exhibited; and

(F) natural consequences. Natural consequences occur in response to the behavior. This technique is most appropriately used with adolescents and for those who tend to get in power struggles. Natural consequences are never allowed when a child's safety or well-being is in question.

(4) **Physical discipline.** OKDHS prohibits the use of any form of physical discipline for any child in OKDHS custody in an out-of-home placement or any act or omission that would emotionally, physically, or psychologically harm the child.

(A) The foster parent contacts the child's Child Welfare (CW) worker or the resource specialist if he or she cannot discipline the child through appropriate non-physical means.

(B) OKDHS does not authorize any school personnel to administer corporal punishment to any child in OKDHS custody. The foster parent does not sign such authorizations, but refers school personnel to the

child's CW worker to establish alternative discipline methods.

(C) The developmental needs of a child and the desired outcomes define the discipline techniques used to modify the behaviors of the child. Some of the circumstances that may affect the technique used include:

(i) the behavior the child is exhibiting;

(ii) the foster parent's feelings about the behavior;

(iii) the purpose assigned to the behavior;

(iv) where the behavior occurs; and

(v) who is present at the time of the behavior.

(5) **Punishment.** Unacceptable behavior management methods and techniques promote negative behavior, are punitive, and do not promote self-control. Unacceptable behavior management techniques for a child include, but are not limited to:

(A) the use of the hand or any object, such as a board, fly swatter, paddle, belt, switch, electrical cord, hair brush, or wooden spoon, to hit, strike, swat, or physically discipline;

(B) deprivation of food or sleep;

(C) deprivation of family visits;

(D) slapping, pinching, shaking, biting, pushing, shoving, thumping, or rough jerking;

(E) cursing or other verbal abuse;

(F) private or public humiliation or any act that degrades;

(G) derogatory remarks about the child, the child's biological family, race, religion, or cultural background;

(H) solitary confinement in areas such as closets, cellars, and rooms with locked doors;

(I) threatening to move the child from the foster home;

(J) use of any chemical agent, such as mace, sleeping pills, or alcohol;

(K) physical force or threat of physical force;

(L) assuming and maintaining an unnatural position, that may include holding arms out-stretched from the body, placing the nose against a wall, or forced squatting;

(M) tying with a rope, cord, or other object;

(N) ordering, allowing, or encouraging physical discipline or hitting by other children or anyone else in the home;

(O) washing the mouth out with soap, eating certain foods, that may include peppers or hot sauce for punishment; and

(P) forced physical exertion, such as running laps and push-ups.

(d) **Physical restraint.** The use of physical restraint is only justified as an emergency safety measure in response to imminent danger to the child or others and when no alternative means are sufficient to accomplish the purpose. Physical restraint may only be used when the foster parent has been properly trained and practiced in the restraint technique demonstrated in Behavior Crisis Management Training (BCMT). The foster parent completes and submits to the child's CW worker or resource specialist Form ~~DCFS-53~~ 04FC005E, Restraint Report for Foster Family Care, when restraint is used.

(e) **OKDHS rules.** The foster family must abide by OKDHS rules for discipline of a child in OKDHS custody even when there is a difference between OKDHS discipline rules and the methods used to discipline the family's own children.

PART 5. ELIGIBILITY AND PAYMENTS

340:75-7-51. Foster care claims

(a) Reimbursement for foster care claims requires the completion and approval of a foster home assessment, pre-service training, and a signed foster care contract. Reimbursement may not precede the date of the contract signatures.

(b) Foster parents are responsible for ensuring the accuracy of claims upon receipt. When errors occur, the procedures for adjustments listed in (1) through (4) must be completed.

(1) The foster parent immediately notifies the resource specialist upon discovery of an error in reimbursement.

(2) Oklahoma Department of Human Services (OKDHS) authorizes reimbursements upon discovery for previously unclaimed services, underpayments. When an overpayment coincides with the underpayment, the overpayment is recouped before payment of the underpayment.

(3) OKDHS authorizes repayment schedules when foster parents are paid for services not rendered or at an amount greater than authorized. The county office and foster family establish an agreed upon repayment plan.

(A) Foster parents are responsible for reimbursing OKDHS for any overpayment, regardless of the party responsible for the initial error, per OAC 340:75-1-27. Each monthly payment toward resolving the overpayment must equal at least ten percent of the overpayment.

(B) The resource specialist authorizes overpayment reimbursement schedules. The foster parent is sent a notice of overpayment ~~via Form DCFS-8, Notification of Overpayment in Foster Home~~ by the county of service.

~~(C) The Foster Care Section refers the overpayment to the Legal Division if the foster family does not respond to the letter from the county documenting overpayment or abide by the agreement.~~

(~~D~~C) Payments must be made by check or money order with payment assigned to OKDHS. Cash is not accepted from the foster family.

(~~E~~D) When the foster family chooses to reduce the foster family claim by an agreed upon amount until the overpayment no longer exists, a signed and notarized statement from the foster family authorizing the reduction of the claim in reimbursement is sent to OKDHS.

(i) Payments are made by the day fixed by the repayment schedule each month.

(ii) Payments may be deducted from claims for current services, or the foster parent may make payments to the Finance Division by check or money order. Reference to the payment purpose is listed in the memo section of the check or transmittal letter to ensure proper credit.

(4) OKDHS may authorize the issuance of a warrant when the foster care reimbursement is late or lost.

(A) The contract for services affords OKDHS 20 days to process each claim. Late claim adjustments are not made during this interval.

(B) OKDHS cancels the reimbursement warrant per Oklahoma statutes when a foster parent reports the warrant lost after 90 days.

340:75-7-52. Foster care contracts and rates of reimbursement

(a) **Foster care contracts.** The rules in OAC 340:75-7-52 and the provisions of a contract for services define the responsibilities of foster parents and Oklahoma Department of Human Services (OKDHS) regarding the care of children in a foster home. Foster care contracts are signed when all conditions for approval are met, per OAC 340:75-7-18, except for kinship, per OAC 340:75-7-24.

(1) Foster care contracts are perpetually renewed and considered in effect unless a specific action by one of the parties to the contract terminates the contract. Foster and kinship parents are eligible for foster care reimbursement effective the date the home is approved. Kinship parents are not paid retroactive to date of placement.

(2) Reimbursements are authorized for intervals of care provided to a child in foster care placed through OKDHS or a tribe with an approved Tribal/State Agreement with OKDHS.

(3) Kinship families may be approved for expedited reimbursements, per OAC 340:75-7-24.

(4) Kinship families who meet the degree of relationship, per OAC 340:10-9-1, may apply for assistance through Temporary Assistance for Needy Families (TANF) at the local OKDHS office pending foster home approval and entry into a contract, per OAC 340:75-7-52(a)(1) through (3).

(b) **Foster care reimbursement.** The foster care contract authorizes reimbursement to offset the cost of each child's care and a difficulty of care (DOC) ~~payment~~ reimbursement to address the additional expense of caring for a child with extraordinary needs. The foster care reimbursement is paid the month after the service is rendered. The OKDHS Committee on Rates and Standards authorizes the amount of reimbursement available through the foster care reimbursement and DOC payment rate, per OAC 340:75-7-53.

(1) Foster care ~~payments~~ reimbursements correspond to the child's age set out in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, as amended from time to time, as approved by the Commission for Human Services.

(2) Foster care ~~payments~~ reimbursements are provided to address the costs of room, board, clothing, and incidentals.

(3) Foster parents receive a clothing allowance for each child, per OAC 340:75-13-45.

(4) The medical expense of a child in foster care is covered through Medicaid when private insurance is not available to the child, per OAC 340:75-13.

(5) Reimbursement received through the foster care contract is not considered income pursuant to Section 131 of Title 26 of the United States Code Annotated and the foster family does not receive Form 1099 from OKDHS at year's end. Foster parents may consult their own tax advisor for advice.

(6) Foster care reimbursement and DOC ~~payment~~ reimbursement rates are a fixed monthly amount.

(7) When a partial month of foster care service is provided, reimbursement begins on the child's date of entry to the home and concludes on the day before the child's departure from the home. A prorated sum is paid based on the number of days of service provided multiplied by the daily rate, per OKDHS Appendix C-20.

(8) When a change in the child's age qualifies for a new rate, the new rate becomes effective on the first day of the month following the child's birthday.

(9) When a child is out of the foster home for family reunification purposes, pre-placement visits, or is absent without leave (AWOL) for up to seven consecutive days, the foster parent receives reimbursement if the child is expected to return to the foster home at the end of the seven days.

(10) The foster parent is eligible for prorated foster care reimbursement and DOC ~~payments~~ reimbursements when the child attends an Indian boarding school, Oklahoma School for the Deaf, Oklahoma School for the Blind, or a similar residential program and returns to the foster home for weekends or school vacations. When the child returns to the foster home for a summer vacation, the monthly rate is used.

(11) The foster parent is eligible for foster care reimbursement and DOC ~~payment~~ reimbursement for up to ~~20~~ ten days of each event of hospitalization for the child's treatment of health or mental health concerns when there is no evidence of foster parent misconduct contributing to the event.

(12) The foster care reimbursement is an automatic electronic filing system based on the child's placement episode in the KIDS system.

(13) A foster care contract is signed for approved Interstate Compact on the Placement of children (ICPC) foster families residing in another state providing care for children in OKDHS custody, per OAC 340:75-1-86. No foster care contract is signed for ICPC foster families living in Oklahoma caring for children in the custody of another state.

(14) There is no reimbursement after the effective date of cancellation or termination of the contract.

(c) **Reimbursement option.** The foster family may opt for ~~payment~~ reimbursement by OKDHS or a money payment for which the child is eligible in lieu of receiving foster home reimbursement, per OAC 340:75-7-52.1.

(d) **Cancellation of the foster care contract.** Cancellation of the foster care contract occurs when:

(1) the foster family fails to meet the terms and conditions of the contract. Cancellation of the contract results from:

(A) a felony conviction, per OAC 340:75-7-15(h)(1);

(B) the receipt of findings of the Oklahoma State Bureau of Investigation (OSBI) records search and Federal Bureau of Investigation (FBI) national criminal history records search when a child has been placed through kinship or in the home initially approved; or

(C) a serious and significant violation of the foster care contract, OKDHS rule, or law. Serious and significant violations include, but are not limited to, behaviors by the foster parent or other person in the foster home that place the child at significant risk of harm;

(2) OKDHS closes a foster family home that no longer meets OKDHS requirements, per OAC 340:75-7-12; or

(3) the foster parent fails to implement provisions of Form 04AF023E, Written Plan of Compliance, per OAC 340:75-7-94, designed to resolve conditions that present a risk to the child and do not conform with the requirements of the foster care contract or rules, per OAC 340:75-7-52.

(e) **Termination of the foster care contract.** A foster parent requests termination of the foster care contract verbally or in writing. Verbal requests are witnessed whenever possible.

(1) Contract termination occurs subsequent to a request by the foster family only when there are no pending issues of concern.

(2) When the relationship between the foster parents is dissolved, and the person who wishes to continue providing foster care services, per OAC 340:75-7-18, is not the primary foster parent, that foster parent signs a new foster care contract. The child is not removed from the home during contract transition when the foster parent is determined fit and continued placement is in the child's best interests.

340:75-7-52.1. Social Security benefits

(a) **Payee.** For a child in Oklahoma Department of Human Services (OKDHS) custody receiving Supplemental Security Income (SSI) or Social Security Administration (SSA) benefits, SSA, upon application, makes the kinship family the payee to receive these benefits. Upon application, the foster parent with whom the child has been placed at least ~~one year~~ nine months may be the payee to receive these benefits.

(b) **Kinship family.** The kinship family may receive the training stipend during the family assessment process while a child is in the home.

340:75-7-53. Difficulty of care

(a) **Difficulty of care payments.**

(1) Difficulty of care (DOC) rates are available to reimburse Oklahoma Department of Human Services (OKDHS), tribal, and contracted emergency foster care (EFC) foster families for the additional care and supervision required due to the child's extraordinary physical, mental, or emotional needs.

(2) DOC reimbursement is not available to children in specialized community homes, specialized foster care through Developmental Disabilities Services Division, therapeutic community homes, and therapeutic foster care placements.

(b) **DOC rates and descriptions.** DOC ~~payments~~ reimbursements are made in addition to foster care reimbursement or adoption assistance payments set out in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, as amended from time to time, as approved by the Commission for Human Services. The descriptions set out in OKDHS Appendix C-20 are viewed as guidelines from which Child Welfare staff makes the most appropriate increase recommendation. Not every situation clearly fits in one rate category. Consideration of the child's age is part of determining the appropriate rate category. When approved, DOC payments are:

(1) not retroactive; and

(2) available the first day of the month the DOC rate is requested.

(c) **DOC request.** The foster parent, Child Welfare (CW) worker, or adoption specialist may initiate the request for DOC.

(1) Requests are made in the child's KIDS case.

(2) The relevant CW supervisor reviews and may authorize DOC Rates I through IV based on the criteria per OKDHS Appendix C-20.

(3) Requests for DOC Rate V are forwarded to the Children and Family Services Division (CFSD) Foster Care programs manager.

(4) A CFSD committee reviews and makes the determination for DOC Rate V.

(5) Actions by each party in the DOC review process occur within ten calendar days of receiving all necessary information for a determination.

(6) Each DOC authorization is limited to ~~one year~~ six months.

PART 6. FOSTER HOME CARE SUPPORT SERVICES

340:75-7-65. Foster care child care and supportive services

Child Welfare (CW) staff arranges services that address the needs of foster parents as well as children in foster care. Foster parent needs are assessed as a component of treatment planning for each child in foster care and appropriate services are recorded on Form 04KI005E, Placement Plan. Service delivery and effect are monitored monthly to ensure intended

effects. Form 04KI005E is modified as necessary to address the evolving needs of foster parents.

(1) **Child care paid by OKDHS.**

(A) **Foster care.** Services available to foster families include child care when both foster parents in a foster home are employed 20 hours a week or more and have the same work hours or when only one foster parent works and the other foster parent has a significant disability that precludes employment.

(i) Child care must be provided:

(I) in a licensed and contracted child care center or home; or

(II) by an approved in-home provider who cares for the child at the foster parent's home, per OAC 340:40-13-1 and 340:40-13-2.

(ii) The foster parent may request approval for child care by contacting the child's CW worker.

(iii) Child care paid by Oklahoma Department of Human Services (OKDHS) must be approved before payment may occur.

(iv) Shelter host homes foster parents may be approved for child care paid by OKDHS.

(v) Contracted emergency foster care agencies may request, on a case-by-case basis, approval from Children and Family Services Division (CFSD) Foster Care Section to access child care.

(vi) The foster parent must provide written verification of gainful employment that includes the number of hours and days the foster parent works. In a foster family, when one foster parent works days and the other foster parent works during normal night time sleep hours, refer to OAC 340:40-7-7 and 340:40-7-8. When the foster parent operates a child care home, the child in foster care is only approved to attend an out-of-home child care home or center when:

(I) the foster parent's child care home consistently operates at licensed capacity;

(II) caring for the child during business hours will place the foster parent over licensed capacity; and

(III) the foster parent's licensing specialist confirms this.

(B) **Family Support Services Division (FSSD).** Child care may be available through local OKDHS FSSD staff for child care, per OAC 340:40, to:

(i) tribal foster parents providing care for children in tribal custody;

(ii) foster parents who have finalized an adoption on a foster child;

(iii) non-paid foster parents who are caring for children in OKDHS custody; and

(iv) children in the custody of another state placed in a kinship home through the Interstate Compact on the Placement of Children (ICPC).

(2) **Foster care child care not paid by OKDHS.** Foster care child care is not paid when the:

(A) child is placed in therapeutic foster care;

(B) foster parent has an ownership interest in the child care center;

(C) foster parent owns the child care home that the child attends;

(D) foster parent attends school or participates in training;

(E) foster parent chooses ineligible child care providers, per OAC 340:40-5-1;

(F) foster parent chooses more than one child care provider to provide service to a child on the same day;

(G) foster parent's hours of employment interfere with the provision of suitable family life; or

(H) foster parent makes informal arrangements for child care.

(3) **Child care services for a child with disabilities.** Refer to OAC 340:75-6-91.

(4) **Electronic benefit transfer (EBT) responsibilities.** Refer to OAC 340:40-10 for information regarding the EBT system that includes the manual claim process. Foster parent responsibilities include:

(A) watching the EBT training video;

(B) signing Form ~~08CC002E, Application for Child Care Services~~ 08MP001E, Request for Benefits and Services;

(C) swiping the EBT card every day the child attends child care;

(D) not swiping the EBT card for any day the child does not attend child care;

(E) checking the message on the point of service (POS) machine for correct times of attendance and approval;

(F) not giving the EBT card or personal identification number (PIN) to anyone, including the child care provider; and

(G) paying for care that OKDHS does not pay because:

(i) the EBT card was not swiped for the correct days and times the child attended child care;

(ii) swipes were denied and not corrected within ten days; or

(iii) the provider loses the weekly rate payment for absent days because the correct attendance for every day the child attended that month was not swiped.

(5) **Therapeutic child care services.** Therapeutic child care services are paid by OKDHS when recommended by a mental health professional and supporting documentation is provided. Prior authorization from CFSD Administrative Services Unit (ASU) is required. ASU makes the determination of the availability of funds.

(6) **Overpayment of child care.** OKDHS seeks repayment for any child care paid in error to a licensed child care center, home, or professional in the foster parent's own home. The foster parent is responsible for reimbursing these costs to the child care provider when overpayment occurs due to the foster parent's ineligibility for child care paid through OKDHS.

(7) **Informal arrangements or babysitting.** Foster parents may make informal care arrangements with friends, neighbors, or relatives for the occasional care of children, including before and after school hours.

(A) The foster parent ensures that informal care providers possess the maturity and skills to address the needs of the child in foster care.

(B) The foster parent secures prior authorization for informal care from the child's CW worker.

(C) The resource specialist considers whether the needs of the child can be met in informal care.

(D) Prior authorization may apply to multiple events using the same informal provider.

(E) A person younger than 18 years of age living outside of the home may not be an informal provider.

(F) An informal provider living in the home must be at least 16 years of age and related to the foster parent.

(G) Informal providers must be notified how to reach the foster parent and other emergency contacts.

(H) The foster parent does not permit a child in OKDHS custody to babysit a younger child, unless approved by the child's CW worker.

(I) The foster parent:

(i) may allow the child in OKDHS custody overnight stays with friends of the child;

(ii) knows the family;

(iii) reasonably believes the family and all people in the household are safe for the child to have a relationship with;

(iv) exchanges contact information, including name, address, and phone number; and

(v) uses the same discretion as to the safety and well-being of the child as with the foster parent's own child.

(8) **Alternate care.** The foster family is required to identify an alternate provider who can care for the child in case of family emergencies, family vacations, or when the family needs a break. The foster family is responsible for identifying an alternate provider and reimbursing the alternate provider. The alternate provider must be at least 21 years of age and willing to:

(A) submit to a background assessment by Oklahoma State Bureau of Investigation (OSBI), per OAC 340:75-7-15;

(B) submit to a CW records search for past confirmations of child maltreatment involving the alternate provider, per OAC 340:75-7-15;

(C) submit to a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age living in the house, per OAC 340:75-7-15;

(D) engage in an evaluation of the home to assess the location, condition, and capacity to accommodate the child in foster care;

(E) provide one reference on Form 04AF026E, Alternate Caregiver Reference Letter; and

(F) comply with discipline policy, per OAC 340:75-7-38, and confidentiality policy, per OAC 340:75-1-42.

(9) **Insurance for foster homes.** Liability insurance is provided for foster families for damages incurred by children in OKDHS custody pursuant to the terms of the policy. Questions related to foster parent liability insurance are referred to the designated insurance company.

(10) **Foster care associations.** OKDHS cooperates with and promotes the development of foster care associations for foster parents in each county. OKDHS provides names and addresses of foster families, who have provided written authorization for the release of this information, to persons who are developing a local foster care association.

(11) **Foster parent hotline.** The foster parent hotline, 1-800-376-9729, is maintained by the CW foster parent liaison in the Office of Information and Referral. The foster parent liaison assists with problem resolution, policy clarification, and grievance information.

(12) **Foster parents' rights.** Foster parents' rights are found in Section 7206.1 of Title 10 of the Oklahoma Statutes. Information shared among CW staff, foster parents, and parents includes, but is not limited to:

(A) the child's legal status;

(B) upcoming court hearings;

(C) reason for foster care placement;

(D) the child's and parent(s)' prior and present living experiences; and

(E) the child's medical, psychological, and behavioral information, current photographs, and educational records.

(13) **Foster care grievance procedures.** Foster parents and children in foster care have access to OKDHS grievance procedures through the Office of Client Advocacy, per OAC 340:2-3.

(14) **Foster care mediation program.** Foster parents have access to the foster care mediation program through the Oklahoma Commission on Children and Youth (OCCY), per OAC 340:75-1-12.8.

(15) **Timely response to questions or needs.** OKDHS staff commits to responding to foster families' questions and inquiries within one working day. The resource specialist is the key person to provide necessary information to the foster family.

(16) **Information relevant to fostering.** Pre-service and in-service training is provided to enhance the foster family's skills, ability to foster, and interests. A quarterly newsletter is sent to all foster families informing of OKDHS, related issues, and articles with relevant information.

PART 8. CONTINUOUS QUALITY ASSESSMENT OF A RESOURCE HOME

340:75-7-94. Foster care reviews

(a) **Concerns in a foster home.** Child Welfare (CW) staff evaluates concerns with discipline practices or other issues,

including, but not limited to, foster parent's judgment or supervision, at the time of observation or upon receipt of the information.

(1) CW staff evaluates and determines the need for a referral, per OAC 340:75-3-8.1.

(2) If a child in Oklahoma Department of Human Services (OKDHS) custody is removed from a foster home during an investigation and the decision is not to return the child to the home, the CW worker:

(A) notifies the foster family immediately by phone; and

(B) provides the foster family, within three days of the decision, Form 04MP031E, Notice of Decision Not to Return Child After Investigation.

(3) When the situation does not meet the criteria for abuse, neglect, or both, per OAC 340:75-3, the resource specialist documents the information on Form 04AF022E, Report of Violation of Rules in an OKDHS Resource Home.

(b) **Non-compliance issues.** When non-compliance issues or rule violations in the foster home require remediation for continued use of the home, Form 04AF023E, Written Plan of Compliance, is initiated. Form 04AF023E is a joint effort between OKDHS and the foster family to identify the action steps for the foster family and OKDHS to ensure continued compliance of the foster home.

(1) The resource specialist initiates Form 04AF023E:

(A) with the foster family to address issues identified as a result of an assessment or investigation, per OAC 340:75-3, or a rule violation and concern, per OAC 340:75-7-94(a); and

(B) within ten working days of the completed investigation, if no appeal is requested, per OAC 340:75-1-12.2, or, if appealed, within ten working days after a final determination of the findings is made by Children and Family Services Division (CFSD) Appeals Section.

(2) When new non-compliance issues are identified, Form 04AF023E is reviewed to determine whether additional action is warranted. If warranted, the action steps are added to the current Form 04AF023E.

(3) If the foster family disputes the identified issues and refuses to sign Form 04AF023E, the CW supervisor forwards Form 04AF023E to CFSD Foster Care Section for review. The Foster Care Section reviews and responds in writing to the CW supervisor within ten working days.

(4) When the non-compliance issue is smoking in the home or automobile while a child in OKDHS custody is present, and the foster parent refuses to comply, OKDHS may or may not:

(A) remove the child from the home;

(B) approve future placement of children in the foster home; and

(C) close the home when the child leaves the foster home.

(c) **Yearly re-assessments.** The foster parent's performance is formally assessed yearly to evaluate strengths, identify areas needing improvement, and their compliance with the requirements by providing complete, consistent, and truthful information in a timely manner. The resource remains approved, regardless of the timeliness or findings of assessments, until there is a specific action by either party to terminate the foster care contract or close the home.

(1) **Re-assessments.** Resource reviews:

(A) are conducted yearly by the assigned resource specialist following initial approval of the home using Form 04FC009E, Foster Home Annual Assessment, via KIDS Resource Re-Assess screen;

(B) are arranged at a time of convenience to foster families and conducted in the foster home. The resource specialist:

(i) reviews the resource record;

(ii) completes Form 04AF004E, House Assessment, with the foster family <u>ensuring the home is clean and safe</u>;

(iii) reviews with the foster family OKDHS Publication No. 99-17, Foster Parent Handbook, and Form 04AF021E, Verification of Receipt of OKDHS Rules;

(iv) explains Form 15GR008E, Notice of Grievance Rights - Foster Parents. The foster parent verifies the review of Form 15GR008E by signing;

(v) asks the foster parent to complete, every three years, Forms:

(I) 04AF010E, Resource Family Financial Assessment; and

(II) 04AD003E, Request for Background Check; and

(vi) provides Form 04AF008E, Medical Examination Report, every three years or more often if circumstances warrant; and

(C) conform to rules per OAC 340:75-7.

(2) **Review results.**

(A) The resource specialist and CW supervisor discuss any concerns identified in Form 04FC009E.

(B) The resource specialist and foster family review Form 04FC009E, and the foster parent signs.

(C) The CW supervisor signs and approves Form 04FC009E.

(D) Signed copies of Forms 04FC009E and 15GR008E are provided to the foster family.

(E) A signed copy of Form 04FC009E and attachments are filed in the resource record.

(3) **Placement of children.** CW workers and resource specialists:

(A) do not place additional children until Form 04FC009E is completed;

(B) do not move children currently placed in the home, even when the foster family fails to submit the required forms timely, per OAC 340:75-7-94(c)(1); and

(C) suspend or close the home until the forms per OAC 340:75-7-94(c)(1) are received, if there are no children currently placed.

(d) **Time frames regarding continued use or closure of a foster home.** If the decision regarding the continued use or closure of the foster home is made based on the findings of an abuse or neglect investigation, action is taken within ten working days of the completed investigation if no appeal is requested or if appealed, within ten working days after the findings are reviewed by the CFSD Appeals Section and the foster home is notified of the determination of the findings. If the decision to close is based on policy violation, non-compliance, or request of the resource family, action is taken immediately to proceed with notice of closure and the resource is closed in KIDS within 30 calendar days.

(e) **Closure of a foster home.**

(1) The foster home is closed when services are no longer needed, including a:

(A) kinship home when kinship children are no longer placed in the home; or

(B) jointly approved foster home for a specific child when the child leaves the home.

(2) The resource specialist contacts the foster family in person or by phone to discuss closure of the foster home and provides Form 04FC008E, Notice of Closure to OKDHS Foster Parents, that explains the reason for closure.

(3) Foster parents retain the right to appeal closure of the home through the fair hearing process, per OAC 340:75-1-12.6. When the local OKDHS office receives a copy of the appointment letter for the fair hearing, the resource specialist distributes one copy of Form 13MP002E, Hearing Summary, with attachments, to the appellant and authorized representative, if any, prior to the hearing date.

(4) The foster care contract is either cancelled or terminated per OAC 340:75-7-52.

PART 25. EMERGENCY FOSTER CARE PROGRAM

340:75-7-262. Emergency foster care

(a) **Purpose.** Emergency foster care (EFC) is short-term substitute care for children in the custody of Oklahoma Department of Human Services (OKDHS) provided by a contract agency to meet the child's needs through service coordination and delivery in conjunction with OKDHS.

(b) **Admissions.**

(1) **Shelters.** The Pauline E. Mayer, Laura Dester, and J. Roy Dunning Children's shelters are the primary points of admission to EFC.

(A) **Children eligible for EFC.**

(i) A child younger than six years of age ~~may not remain in an OKDHS operated shelter longer than 24 hours~~ is eligible for EFC. A child who reaches age six while in EFC remains eligible for the service.

(ii) When it is appropriate, per OAC 340:75-6-30, and in the best interests of the child younger than six years of age to have his or her sibling between the ages of six through nine years or minor parent placed in the same placement, a plan is negotiated with the contractor and OKDHS.

(iii) The placement of a child older than six years of age occurs only after written approval from Children and Family Services Division Foster Care Section.

(B) **Admission from shelter.** Shelter staff contacts the contract agency by phone and provides available information about the child's medical, educational, social, routine, and special care needs as required to select an appropriate placement. This information is provided to the contract agency upon discharge from the shelter and includes:

(i) the shelter intake sheet with all available information;

(ii) all personal possessions;

(iii) medications and equipment;

(iv) Form ~~DCFS-EFC-11~~ 04FE011E, Authorization for Foster Parent Consent for Medical Services - Emergency Custody, or Form ~~DCFS-EFC-12~~ 04FE009E, Authorization for Foster Parent Consent for Medical Services; and

(v) Form ~~OCA-GR-2~~ 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody. Shelter and contract agency staff coordinate admission.

(2) **Hospitals.** When a child in inpatient hospital care for treatment of medical conditions related to abuse, neglect, or illness requires EFC placement, relevant background and care information is provided to the contract agency to assist in identifying an appropriate placement. Priority for placement into EFC is given to children discharged from hospitals. The contract agency identifies an appropriate EFC placement and coordinates the hospital discharge date, time, and any special training required with the provider and notifies OKDHS.

(3) **Other EFC admissions.** A child who is diverted to a non-OKDHS operated shelter or remains in current placement pending admission into EFC is placed on a waiting list maintained by the OKDHS liaison. Admissions occur as beds become available.

(c) **Roles and responsibilities.**

(1) **CW worker.** The Child Welfare (CW) worker remains the primary connection among the child, parent(s), EFC agency, EFC provider, OKDHS liaison, other service providers, and court while the child is in EFC. The CW worker visits the child placed in EFC per OAC 340:75-6-48. At the time of admission or as soon as possible after placement, the CW worker provides the necessary information about the child to the EFC provider, including:

(A) behavioral, psychological, and social history;

(B) previous medical care;

(C) legal documentation verifying OKDHS custody status;

(D) religious affiliation; and

(E) Form ~~CWS-KIDS-7~~ 04KI004E, Placement Provider Information.

(2) **OKDHS liaison.** The OKDHS liaison assists the EFC agency, staff, and providers in maintaining effective working relationships with OKDHS staff by providing support and consultation regarding respective roles and responsibilities.

(3) **EFC agency.** The EFC agency ensures the availability of qualified, trained staff and EFC providers 24 hours a day for the placement and care of eligible children. The EFC agency coordinates with the CW worker to afford the child all services that promote the child's progress and ensures that the child's total care needs are met while in placement. To facilitate movement of children from EFC to another placement, weekly staffings occur between the CW worker and the contract agency.

(d) **Discharge from EFC.**

(1) **Notice.** When discharge from EFC to another type of placement is made, the contract agency is given as much advance notice as possible, but not less than two hours.

(A) The CW worker notifies the contract agency of the planned move in writing, using the Client Movement Authorization Form provided by the contract agency, and coordinates the date and time for placement.

(B) The CW worker shares information to assist the EFC provider in preparing the child for the move.

(C) The contract agency transports the child to the county office or site designated for pick-up by the CW worker or staff responsible for completing the new placement.

(2) **Change of placement information accompanies the child.** All forms completed by the EFC provider while the child is in care assist the new provider in helping the child adjust to the new placement, provide information needed for continuity of care, and alert the new provider of the child's special needs and strengths. These forms are not given to the parent(s) if the child is returning home. Required information and items include:

(A) all medications, with instructions for dosage and use;

(B) equipment or supplies required for the child's special care;

(C) dates of any follow-up appointments;

(D) personal items, unused OKDHS clothing authorizations, and clothing purchased by OKDHS, including disposable diapers;

(E) Women, Infants and Children (WIC) vouchers, non-perishable food, and other items obtained through WIC; and

(F) at least a 24-hour supply of formula, baby food, and other items for immediate use by the new provider.

SUBCHAPTER 10. EMERGENCY SHELTER CARE

340:75-10-9. Admissions and discharges

(a) **Admission criteria.** Children younger than 18 years of age, who are alleged abused or neglected, may be admitted to one of the two Oklahoma Department of Human Services (OKDHS) operated shelters, Pauline E. Mayer or Laura Dester, or a non-OKDHS operated shelter.

(1) A child may be admitted to an OKDHS shelter by a:

(A) law enforcement officer who has assumed protective custody;

(B) law enforcement officer with an emergency custody order from the court; or

(C) Child Welfare (CW) worker.

(2) Except in the case of law enforcement admission, only the child's CW worker admits the child to the shelter.

(3) If the child has not been seen by a licensed health professional and displays a significant medical problem or injury or appears under the influence of drugs or alcohol, the shelter staff requests the admitting law enforcement officer take the child for a medical examination prior to admission.

(b) **~~Shelter capacity and length of stay in~~ OKDHS operated ~~shelters~~ shelter capacity.** The specified licensed capacity is ~~42~~ 58 children at the Pauline E. Mayer shelter and ~~38~~ 50 children at the Laura Dester shelter. ~~OKDHS operated shelters deny further admission of children in OKDHS custody when operating at 90% capacity, in order to meet obligations under established court orders.~~ It is the intent that children move into safe, appropriate placements as soon as possible with the goal that the child:

(1) five years of age or younger remains in the shelter no more than ~~24 hours~~ five days. If the child does not return home during this time, the child is discharged to emergency foster care (EFC), per OAC 340:75-7-262 at the earliest opportunity; and

(2) six years of age or older remains in shelter care no more than 30 days. If an extended stay is required, the child's length of stay in the shelter does not exceed 60 days~~;~~.

~~(3) is not discharged from either shelter into another shelter setting in order to comply with the required time frames, per OAC 340:75-10-9(b)(1) and (2); and~~

~~(4)~~ ~~who remains~~ Children in ~~the~~ an OKDHS operated shelter~~, due to the inability of staff to locate an appropriate placement, is~~ are staffed weekly to determine the plan for the child.

(c) **Admission by Child Welfare.** Requests by CW for admission to an OKDHS operated shelter are made to ~~a~~ shelter ~~social worker~~ administrative staff at the Laura Dester Shelter and to shelter Child Welfare specialists at the Pauline E. Mayer Shelter.

~~(1)~~ The CW worker accompanies the child to the shelter and provides information essential to planning the child's care, including, but not limited to:

(~~A~~1) the child's identifying information, such as name, date of birth, and parent(s)' name and address;

(~~B~~2) the child's medical information, such as current prescriptions, planned medical appointments, medical problems, and current medical provider;

(~~C~~3) the reason for admission;

(~~D~~4) discharge plans;

(~~E~~5) any significant behaviors regarding the child, such as suicidal behavior;

(~~F~~6) visitation plans; and

(~~G~~7) the child's education history, such as the name of the last school and grade attended. The CW worker continues to provide updated information during the child's stay.

~~(2) The shelter social worker reviews any KIDS records of the child.~~

~~(3) Shelter direct care specialist (DCS) staff records the child's weight and height and documents any bodily injuries. Shelter staff ensures the child is fed, bathed, and provided clean clothing, as needed, and orients the child to the shelter.~~

(d) **Discharge process.** The child is prepared for discharge, through counseling by the shelter ~~social workers~~ Child Welfare specialist (CWS), personal contact by the CW worker, and preplacement visits, when possible. The shelter social worker ensures that the child's personal belongings and any medications accompany the child to the next placement. ~~Shelter social work staff completes the discharge process when a child is placed into EFC.~~

~~(e) **Diversion.** When the resident population of the Pauline E. Mayer shelter reaches 45 or more children, the shelter administrator or designee directs social work staff to divert further admissions or current residents to other non-OKDHS operated shelters. This process continues until the population is reduced to less than 45 children.~~

~~(1) When a child arrives at the shelter for admission and diversion is necessary, the child is admitted and the intake process is completed.~~

~~(2) Shelter social work staff contacts participating youth services shelters to arrange placement of the child requiring diversion. All intake information is sent with the child to the youth services shelter.~~

~~(3) The child diverted to youth services shelters is not returned to the Pauline E. Mayer shelter when the population is less than 45 children. EFC services are sought for the eligible child who is diverted.~~

SUBCHAPTER 13. OTHER CHILD WELFARE SERVICES AND MEDICAL SERVICES FOR CHILDREN IN OUT-OF-HOME CARE

PART 7. MEDICAL SERVICES

340:75-13-79. Transportation and subsistence

(a) Travel expenses may be defrayed only for necessary medical services not available in the community in which a child in Oklahoma Department of Human Services (OKDHS) custody and out-of-home placement resides. Oklahoma Health Care Authority (OHCA) ensures that necessary transportation is available to such children who are in need of medical services not available in the community. All children approved for Medicaid are eligible.

(1) Community-based residential care contractors providing transportation do not receive reimbursement.

(2) Placement providers are responsible for the child's transportation to routine medical appointments. Placement providers who must travel out of the community for necessary and non-routine medical services for the child use ~~Sooner Ride~~ SoonerRide. Non-Emergency Transportation (NET) service.

(A) All NET routine services must be scheduled by advance appointment at least three business days prior to the child's health care appointment, but may be scheduled up to 14 business days in advance.

(B) Standing appointments for the child may be scheduled beyond the 14-day time frame, not to exceed 30 days. The placement provider must phone the ~~Sooner Ride~~ SoonerRide call center and identify himself or herself as the child's foster parent.

(C) The placement provider has the option of receiving gasoline reimbursement for providing transportation if the provider chooses not to use public transportation or it is not available.

(b) If it is determined the child's condition requires urgent care, the placement provider must attempt to schedule NET services through ~~Sooner Ride~~ SoonerRide.

(1) ~~Sooner Ride~~ SoonerRide must be contacted on or before the date of service to allow for assignment of a trip number and mailing of a reimbursement form to the placement provider. The reservation center is open 24 hours a day, 7 days a week.

(2) If ~~Sooner Ride~~ SoonerRide cannot provide transportation or the placement provider chooses not to use NET for urgent care, the placement provider may receive gasoline reimbursement.

(c) If a child requires out-of-state medical care that involves the use of a commercial airline, approval and flight arrangements must be secured by contacting OHCA, Care Management Unit.

(d) Ambulance service is compensable for the child when other forms of transportation do not meet the medical needs of the child. Arrangements must be secured by contacting OHCA ~~Sooner Ride~~ SoonerRide coordinator.

(e) Subsistence, sleeping accommodations, and meals are paid with Title XIX funds for the child and one essential person. Any subsistence expense claimed on Form ~~10AD062E~~ 10AD006E, Travel Claim, must be documented with receipt and is initially handled through the local OKDHS office. Completed Form ~~10AD062E~~ 10AD006E, is sent to OHCA Finance Division Travel Claims.

SUBCHAPTER 15. ADOPTIONS

PART 10. ADOPTIVE FAMILY ASSESSMENT AND PREPARATION PROCESS

340:75-15-88. Completed resource family assessment and recommendation

(a) **Resource family assessment.** The resource family assessment is conducted as outlined in Form 04AF002E, Guidelines for Resource Family Assessment Bridge Family Profile. The completed assessment includes impressions of the family, their strengths and risks in adopting, and the special needs, age range, and gender of the child(ren) they wish to adopt.

(1) A copy of the resource family assessment, excluding the verification and reference sections, is reviewed with the family prior to completion of the final written assessment summary. The reference and verification sections are confidential and are not provided to the family.

(2) The family is given an opportunity to correct errors prior to completion of the final written assessment.

(3) Once the assessment is finalized, it is signed by the resource family applicant and contractor and submitted to the area adoption supervisor for approval. A copy of the final supervisor approved resource family assessment, excluding the verification and reference sections, is provided to the applicant by the adoption specialist.

(b) **Approval.** The resource family assessment is approved by the area adoption supervisor if the applicant meets requirements as outlined in Form 04AF002E and Oklahoma Department of Human Services (OKDHS) policy.

(c) **Resource family relocation.** When a family moves to another county within Oklahoma the assigned adoption specialist transfers the resource family record. An evaluation is done to reflect the adoptive family's new home and situation.

(d) **Denial.** Reasons for denial may include, but are not limited to:

(1) a lack of a stable, adequate income to meet the applicant's own or total family needs or poor management of available income;

(2) a physical facility that is inadequate to accommodate the addition of children to the home or that presents health or safety concerns;

(3) the applicant or any person residing in the home has a history of alleged or confirmed child abuse, neglect, or both;

(4) the applicant or any person residing in the home has a history of arrests or convictions.

(A) A felony conviction for any of the offenses listed in (i) through (iii) results in an automatic denial of the application.

(i) A crime involving violence including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery.

(ii) Child abuse or neglect.

(iii) A crime against a child, including, but not limited to, child pornography.

(B) A felony conviction of a prospective adoptive parent or anyone residing in the home for physical assault, domestic abuse, battery, or a drug related offense within a five year period preceding the date of the application results in denial of the application ~~unless special approval is obtained from the court, following initial approval by Children and Family Services Division (CFSD) Adoption Services Section, per OAC 340:75-15-88(e)~~. Any applicant who has, or is living with a person who has, any criminal history for any felony or a relevant misdemeanor will be reviewed by a committee.

(C) The application is denied if the applicant has been convicted of a sex offense and subject to or married to or living with a person subject to the Oklahoma Sex Offenders Registration Act;

(5) the age, health, or any other condition of the applicant would impede his or her ability to provide care for a child on a permanent basis into adult years;

(6) relationships in the household are unstable and unsatisfactory;

(7) the mental health of the applicant or other family or household member would impede the applicant's ability to provide care for a child;

(8) references are guarded or have reservations in recommending the applicant;

(9) the applicant does not complete the required pre-service training within one year of application, unless the applicant has previously completed Parent(s)' Resource for Information, Development and Education (PRIDE). Exceptions must be requested from the Adoption Services Section;

(10) the applicant has applied to adopt a child of a certain age, race, or other characteristic that OKDHS reasonably believes may not be available for adoption in the foreseeable future, per OAC 340:75-15-84; and

(11) one or more other factors concerning the applicant, a family, or household member or conditions in the home as described in the denial letter renders the applicant or home environment inappropriate as an adoptive resource.

~~(e) An applicant with a conviction, per OAC 340:75-15-88(d)(4)(B), may be considered on a case-by-case basis prior to initial placement of the child following consultation with and recommendation by the Adoption Services Section.~~

~~(1) If the applicant provides verifiable information that the applicant has been evaluated by a qualified professional who concluded that the applicant no longer poses a risk of harm to others, the factors listed in (2)(A) through (E) of this subsection are considered in determining whether to conditionally approve the home, subject to final approval by the court.~~

~~(2) The child is not placed in the applicant's home until evidence is presented to the court that clearly and convincingly indicates that no child will be at risk in the applicant's home and the court has given approval after reviewing the:~~

~~(A) nature and seriousness of the crime in relation to the adoption;~~

~~(B) time elapsed since the crime was committed;~~

~~(C) circumstances under which the crime was committed;~~

~~(D) degree of rehabilitation; and~~

~~(E) number of crimes committed by the person involved.~~

[OAR Docket #08-743; filed 4-25-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #08-671]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Risk Management
Part 1. Drug Policy
377:3-11-5. Substance screening [AMENDED]
377:3-11-9. Consequences of refusal [AMENDED]
Subchapter 13. Office of Public Integrity
Part1. General Provisions
377:3-13-1. General ~~Purpose~~ purpose, legal basis and authority [AMENDED]
377:3-13-2. Office of Public Integrity's ~~independent function~~ internal affairs investigations [AMENDED]
377:3-13-3. Affirmative Action Officer Duties ~~Monitoring~~ and reports [AMENDED]
377:3-13-4. Information sharing with other monitoring entities [REVOKED]
377:3-13-5. Access to and collection of information [REVOKED]
377:3-13-6. Certification of Secure Juvenile Detention Facilities Municipal Juvenile Facilities, and Community Intervention Centers [AMENDED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
DATES:
Comment period:
December 3, 2007 through January 3, 2008
Public hearing:
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Submitted to Governor:
February 4, 2008
Submitted to House:
February 4, 2008
Submitted to Senate:
February 4, 2008
Gubernatorial approval:
March 11, 2008
Legislative approval:
Failure of the Legislature to disapprove resulted in approval on March 28, 2008
Final adoption:
March 28, 2008
Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS.
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Subchapter 11 is being modified to include random drug testing of all staff which have direct contact with kids and consequences of refusal or unreasonable delay/inability to provide a sample for said drug tests. Subchapter 13 is being revised to implement new duties and requirements for the Office of Public Integrity.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 11. RISK MANAGEMENT

PART 1. DRUG POLICY

377:3-11-5. Substance screening

Drug and alcohol testing may be required for employees and job applicants under the following circumstances:

(1) **Job applicant testing.** Every job applicant who is conditionally offered employment in the following job families shall be tested:

(A) Juvenile ~~justice specialist~~ Justice Specialist;
(B) ~~Juvenile specialist~~ Youth Guidance Specialist;
(C) Police ~~officer~~ Officer;
(D) Recreational ~~therapist~~ Therapist;
(E) Institutional ~~safety & security coordinator~~ Safety & Security Coordinator;
(F) Registered ~~nurse~~ Nurse;
(G) Licensed ~~practical nurse~~ Practical Nurse; ~~and~~
(H) Nursing ~~manager~~ Manager~~.~~; and
(I) Food Service Personnel;
(J) Psychological Clinician.

(2) **Reasonable suspicion testing.** Any employee may be tested, at the request of the Executive Director or, if he is unavailable, the Chief of Staff, if a reasonable suspicion exists that the employee has violated this policy while on duty. A reasonable suspicion may be drawn from specific objective and articulate facts and reasonable inferences drawn from those facts in light of experience, and, among other things, may be based upon:

(A) Observable phenomena such as:
(i) The physical symptoms or manifestations of being under the influence of a drug or alcohol while at work or on duty; or
(ii) The direct observation of drug or alcohol use while at work or on duty;

(B) A report of drug or alcohol use while at work or on duty provided by reasonable and credible sources and which has been independently corroborated;

(C) Evidence that an individual has tampered with a drug or alcohol test during his employment with OJA; or

(D) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs while on duty or while on any OJA premises or premises with which OJA has contracted services, or operating any OJA vehicle, machinery, or equipment.

(3) **Post-accident testing.** Any employee may be tested when the Director of Safety and Risk Management has a reasonable suspicion that the employee or another person has sustained a work-related injury or that Office

of Juvenile Affairs property has been damaged as a direct result of the employee's use of drugs or alcohol, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed $500.00.

(4) **Post-rehabilitation.** Any employee who has had a confirmed positive test or has participated in a drug or alcohol dependency treatment program may be tested without prior notice for a period of up to two (2) years, commencing with the employee's return to work.

(5) **Random testing.** The Executive Director may order random drug testing for OJA permanent, temporary or probationary employees who hold a position within the applicable job families as listed in paragraph one of this rule. The affected employees shall be notified of the effective date and process for testing.

377:3-11-9. Consequences of refusal

(a) **Employees.** Any employee who refuses testing under this policy shall be subject to discipline up to and including discharge from employment. Inability to give an adequate urine sample shall be deemed a refusal, but the employee may overcome this conclusion by providing conclusive medical evidence of a pre-existing condition, which prevents the production of an adequate sample.

(b) **Job applicants.** Any job applicant who has received a conditional offer of employment from OJA and who refused to undergo drug and alcohol testing will not be hired by OJA. Unreasonable delay in submitting to testing shall be deemed a refusal.

SUBCHAPTER 13. OFFICE OF PUBLIC INTEGRITY

PART 1. GENERAL PROVISIONS

377:3-13-1. General purpose, ~~Purpose,~~ legal basis and authority

~~(a) **Purpose.** The Office of Public Integrity (OPI) is responsible for quality assurance for the Office of Juvenile Affairs.~~

~~(1) Programs monitored include:~~

~~(A) field services;~~

~~(B) institutional services;~~

~~(C) detention services;~~

~~(D) psychiatric hospitals caring for OJA custody youth;~~

~~(E) residential care and shelters operated or contracted by OJA; and~~

~~(F) nonresidential services contracted by OJA, including designated Youth Services agencies.~~

~~(2) The Office of Public Integrity is responsible for:~~

~~(A) monitoring the above mentioned programs and services for compliance with federal mandates, state statutes, and OJA policies, practices, and procedures;~~

~~(B) monitoring contract requirements for contracted services;~~

~~(C) if applicable, monitoring for compliance with American Correctional Association (ACA) and other professional standards; and~~

~~(D) certifying secure juvenile detention facilities, municipal juvenile facilities, and community intervention centers (CIC).~~

~~(b) **Legal basis and authority.** Authorization for the Office of Public Integrity is found in 10 O.S., § 7302-3.1.~~

(a) **Unit Purpose.** The Office of Public Integrity (OPI) is a unit established within the Oklahoma State Office of Juvenile Affairs (OJA) and is directly responsible, organizationally and administratively, to the OJA Executive Director. The unit is composed of three sections: (1) Internal Affairs/Employment Discrimination Investigations; (2) OJA Licensing and Programs Assessment Section; (3) Financial Contract Monitoring/Reviews Section and other duties as assigned by the Executive Director. The unit conducts investigations, performs on-site assessments, licensing visits, and financially monitors OJA state contracts, functions and activities to ensure compliance with, state statutes, OJA policies/procedures, contractual provisions, and other applicable professional rules and standards.

(1) Internal Affairs/EEO Investigations Section may among other activities and functions include investigations of:

(A) Allegations of serious misconduct and/or criminal violations committed by OJA personnel as assigned to the unit by the agency's Executive Director;

(B) Allegations of discrimination (Equal Employment Opportunity) either by or against OJA employees as received and assigned by the agency's Executive Director, affirmative action officer, or the agency's grievance manager; and

(C) Specifically assigned Caretaker Conduct Reviews (CCR) that are returned to the OJA operated juvenile institutions by the state Department of Human Services' Office of Client Advocacy (OCA) for administrative review, as well as major incidents (i.e. serious assaults, riots, escapes) that occur at the OJA operated institutions.

(2) OJA Licensing and Programs Assessment Section includes the licensing and assessing of the following:

(A) On-site licensing and unannounced monitoring visits to OJA state contracted juvenile detention centers, community intervention centers (CIC) and municipal juvenile detention facilities, See OJA Rule 377-3-13-6;

(B) Announced and unannounced assessments of contracted residential care, non-residential services and shelters as directed by the OJA Executive Director.

(C) On-site assessments of the OJA operated institutions;

(D) On-site assessments of the OJA Juvenile Services Unit (JSU) offices located throughout the state;

(E) Assessments of State Office units as directed by the OJA Executive Director;

(3) Financial Contract Monitoring/Review Section includes the financial monitoring of the following:

(A) OJA operated institutions;

(B) OJA contracted detention centers and community intervention centers;

(C) OJA contracted residential care and shelter services as directed by the OJA Executive Director;

(D) OJA contracted non-residential services provided by designated youth services agencies; by performing

(i) On-site contractor visits to reconcile claims against supporting documentation with a documented recommended corrective action, if appropriate;

(ii) Reviews of reimbursed claims for payment by OJA, to include: compliance with contract requirements; applicable laws, rules and regulations; and adequate supporting documentation.

(E) In addition to the above duties, the financial contract monitoring/review section shall perform in-depth financial audits as directed by the OJA Executive Director.

(b) **Legal Basis/Authority.** Authorization for the monitoring/assessment functions of the Office of Public Integrity is found in 10 O.S., § 7302-3.1. Authorization for detention certification is found in 10 O.S., §§ 7304-1.3C and 7303-1.2E. Authorization for certification of community intervention centers (CIC) is found in 10 O.S. § 7302-3.3.

(c) **Unit Independence.** The Office of Public Integrity is organizationally and administratively independent from the other units and divisions of the agency that actually provide, or contract for, programs and services. Communication and coordination with agency and contractor personnel is necessary and desirable during the investigative, assessment, and monitoring procedures.

(d) **Frequency of Assessments/Monitoring.**

(1) OPI shall conduct announced certification assessments of contracted facilities, i.e. detention centers and community intervention centers, and municipal juvenile detention facilities on a bi-annual basis, with announced annual inspections during the interim year. OPI may conduct unannounced assessments at the direction of the OPI administrator. OPI shall conduct announced assessments of its Juvenile Services Units (JSU) in each county of the state on a bi-annual basis and unannounced assessments as requested by the Juvenile Services Division Director with approval of the OJA Executive Director. OPI shall conduct program assessments of OJA institutions, State Office units, contracted residential care facilities, non-residential services and shelters as directed by the OJA Executive Director.

(2) OPI shall financially monitor the OJA contracts with the youth services agencies at a minimum of twice per fiscal year. OPI shall financially monitor other contracted facilities and services, OJA institutions, and State Office units at the direction of the OJA Executive Director.

377:3-13-2. Office of Public Integrity's ~~independent function~~ internal affairs investigations

~~The Office of Public Integrity is administratively independent from the programs and services it assesses or certifies. Communication and coordination with agency and contractor personnel is a necessary and desirable part of the monitoring process. However, to assure objectivity and independent oversight there is no prior distribution or modification of the monitoring reports by any program representative of the Agency or provider personnel.~~

(a) The Office of Public Integrity is responsible for conducting internal investigations of agency personnel who have been accused of serious misconduct and/or criminal behavior while on or off duty. Serious misconduct is defined as any violation of laws, policies, rules, or procedures that, if proven, could result in disciplinary actions of, suspension without pay, demotion, involuntary transfer, or termination of employment. OPI investigates only those internal misconduct allegation cases that have been assigned by the OJA Executive Director or designee.

(b) OPI is also responsible for conducting Equal Employment Opportunity (EEO) (discrimination) investigations as a result of complaints/grievances filed by OJA employees and/or clients. The OJA Executive Director, OJA grievance manager, or the OJA affirmative action officer may assign EEO (discrimination) complaints or grievances to OPI for investigation.

(c) OPI shall ensure there is a minimum of one state certified EEO investigator on its staff to investigate EEO (discrimination) complaints or grievances. The OJA EEO (discrimination) investigator(s) shall maintain state EEO investigator certification by attending the required number of hours of annual training as mandated by OPM Policy 530:10-3-22 and sending the OPM-3 form to the state Office of Personnel Management confirming the training was received for each calendar year.

377:3-13-3. Affirmative Action officer duties and ~~Monitoring~~ reports

~~Monitoring reports are public documents. The reports list any deficiencies needing corrective action. The program or service monitored shall receive the reports and submit a corrective action plan to the appropriate operational Unit of OJA within 30 days of date of the monitoring report. A copy of the corrective action plan is also submitted to the Office of Public Integrity.~~The OPI administrator is the designated affirmative action officer for the Office of Juvenile Affairs. In that capacity, the OPI administrator shall be responsible for preparing the agency's annual Affirmative Action Plan. The OPI administrator is also responsible for addressing reasonable accommodation requests under the American with Disabilities Act (ADA). The OPI administrator shall be knowledgeable about discrimination issues and shall be capable of answering employee inquiries about the subject, as well as provide instruction for training sessions. The OPI administrator will adhere to the annual training requirement established for agency Affirmative Action Officers in OPM Merit Rule 530:10-3-78 and the administrator will send the OPM-3 form to the state Office of Personnel Management confirming the training was received for each calendar year.

377:3-13-4. Information sharing with other monitoring entities [REVOKED]

~~When relevant, the Office of Public Integrity shares information with the Department of Human Service's Office of Client Advocacy and the Oklahoma Commission on Children and Youth's Office of Juvenile System Oversight.~~

377:3-13-5. Access to and collection of information [REVOKED]

~~The Office of Public Integrity is authorized to conduct investigations, interview residents and staff, and conduct on-site reviews of OJA and contracted operations.~~

377:3-13-6. Certification of Secure Juvenile Detention Facilities, Municipal Juvenile Facilities, and Community Intervention Centers

~~(a) **Certification.** The certification of secure detention facilities, municipal juvenile facilities, and community intervention centers by OJA is to ensure maintenance of minimum standards for the care and protection of juveniles detained in these facilities. OJA issues a two-year certificate for the temporary care of juveniles to a secure detention facility, a municipal juvenile facility, or a community intervention center when satisfied that the facility meets the standards set forth in this subchapter. The certificate is non-transferrable. If a certified facility is closed or sold, the facility may not be reopened until it has met all the Requirements for Juvenile Detention Facilities, Requirements of Municipal Juvenile Facilities, or the Requirements for Community Intervention Centers. A provisional certificate can be issued by OJA for a period of 90 days or more when a facility fails to meet some of the requirements as long as the health and safety of detainees are not substantially at risk. The Director of OJA will make the decision whether to reissue a provisional certificate.~~

~~(b) **Monitoring.** The Office of Public Integrity monitors for compliance with the certification requirements and offers technical assistance upon request. Upon receipt of a complaint that a facility is not in compliance with the certification requirements, the Office of Public Integrity conducts an investigation. The name of the complainant is kept confidential. The Office of Public Integrity shall advise the facility administrator of the outcome of the investigation.~~

~~(c) **Denial or revocation of certification.** When a facility is unable or unwilling to comply with requirements or has failed to adequately protect the health and safety of juveniles, OJA can deny the application, revoke the certification or refuse to renew the certification. The facility shall receive notice in writing of the decision and the grounds for such action.~~

~~(d) **Development and revision of standards.** The Office of Public Integrity and other OJA staff have the responsibility for developing certification standards. The development and revision of standards is subject to the rulemaking requirements of the Administrative Procedures Act.~~

(a) **Certification.** The certification of secure detention facilities, municipal juvenile facilities, and community intervention centers by OJA is to ensure maintenance of minimum standards for the care and protection of juveniles detained in these facilities. OJA issues a permanent two-year certificate to operate a secure detention facility, a municipal juvenile facility, or a community intervention center when satisfied the facility meets the standards set forth in this subchapter. The certificate is non-transferable.

(b) **Provisional certificate.** OJA shall issue a 90-day provisional certificate to operate a newly established secure juvenile detention facility, municipal juvenile facility, and community intervention center after determining the facility meets the respective requirements to include: physical plant, staffing ratio, and written policies. Prior to the conclusion of the 90 days, OJA shall conduct a full certification assessment of the facility to ensure its operation is in conformity with the requirements of a juvenile detention facility, municipal juvenile facility, or community intervention center. If the facility is in compliance OJA will issue a permanent two-year certificate to operate the facility. If the facility is not in compliance, OJA may issue a second 90-day provisional certificate to operate the facility, as long as the health and safety of juveniles are not substantially at risk. OJA shall conduct a second full certification assessment of the facility prior to the conclusion of the 90 days. Based on the findings of the second certification assessment, OJA will either issue the two-year certificate to operate the appropriate facility or deny the application. Only the OJA executive director may authorize more than two 90-day provisional certificates. Any facility that has been closed, sold, or had a change in operators may not operate as a juvenile detention facility, municipal juvenile facility, or a community intervention center until it has gone through this certification process.

(c) **Revocation of certification.** If a facility is unable or unwilling to comply with requirements or has failed to adequately protect the health and safety of the juveniles, OJA may revoke the facility's permanent two-year certification or its 90-day provisional certification. The OJA executive director must authorize the revocation of the certificate and the facility shall receive notice in writing of the decision and the grounds for such action.

(d) **Monitoring.** The Office of Public Integrity monitors for compliance with the certification requirements and offers technical assistance upon request. Allegations that a facility is not in compliance with certification requirements may necessitate an OPI investigation. The name of the complainant is kept confidential, if possible. OPI shall advise the facility administrator of the outcome of the investigation.

(e) **Development and revision of standards.** The OPI and other OJA staff may propose new or modified certification standards to the Executive Board of Juvenile Affairs. The development and revision of standards is subject to the rulemaking requirements of the Administrative Procedures Act.

[OAR Docket #08-671; filed 4-18-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #08-672]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Contract Programs and Services
Part 3. Contract-based Residential Care
377:10-7-15. Purpose [AMENDED]
377:10-7-16. Level of care system [AMENDED]
377:10-7-17. Specialized residential care ("Level C") [AMENDED]
377:10-7-18. Moderate intensity specialized residential care ("Level D") [AMENDED]
377:10-7-19. Moderate to high intensity specialized residential care ("Level D Plus") [AMENDED]
377:10-7-20. Specialized residential high intensity treatment programs ("Level E") [AMENDED]
377:10-7-21. Wilderness camp [REVOKED]
Part 7. Independent and Transitional Living
377:10-7-41. Independent living programs [AMENDED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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ANALYSIS:
Rule changes to subchapter 7 are due to modifications in the Level E contract. Changes were also made to remove language in the OJA administrative rules which duplicate requirements that are currently outlined in Department of Humans Services (DHS) and Oklahoma Health Care Authority (OHCA) regulations.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 7. CONTRACT PROGRAMS AND SERVICES

PART 3. CONTRACT-BASED RESIDENTIAL CARE

377:10-7-15. Purpose

The purpose of this Subchapter is to describe contract-based residential care (CBRC) programs. A CBRC facility is a group home, defined by 10 O.S., § 7301-1.3~~(17)~~ or a community residential center, ~~defined by 10 O.S., § 7301-1.3(9),~~ operated by a private, licensed Child Placing Agency or Residential Child Care Facility. The CBRC program shall contract with OJA to provide a specifically defined course of care and treatment for juveniles in OJA custody. The contract facility shall comply with the DHS published "Requirements for Residential Child Care Facilities" (OAC 340:110-3, Part 9). ~~or "Standards for Child Placing Agencies" (OAC 340:110-~~

377:10-7-16. Levels of care system

The Levels of Care system is a system in which a contract facility's service provision is measured against and defined by:

(1) a standardized set of approved criteria, as defined in OAC 377:10-7-17 through 377:10-7-20;

(2) requirements set forth in the contract between OJA and the facility; and

(3) basic licensure requirements as set out in DHS rules 340:110, "Requirements Residential for Child Care Facilities. ~~" and "Standards for Child Placing Agencies."~~

377:10-7-17. Specialized Residential Care ("Level C")

The standardized set of criteria for each "Level C" community-based residential care facility is provided in (1)-(8) of this Section.

(1) **Nature of program services.** The major focus of the "Level C" Program shall be to assist a juvenile to change or alter the juvenile's behavior problems through a residential rather than therapeutic model.

(A) The professional staff of the agency shall provide group and individual treatment. Outside consultation shall be available to assist. Designated "on call" staff shall provide crisis intervention.

(B) Group work shall focus on eliminating behavioral problems.

(i) Primary focus shall be on residential model.

(ii) Minimum based on the juvenile's individual needs and treatment plan.

(iii) The designated social work counseling staff shall provide individual therapy as needed.

(iv) Family treatment shall be available for families when appropriate.

(2) **Description of juveniles to be served.** Juveniles appropriate for placement in a "Level C" facility have demonstrated behavior problems.

(A) Typical behaviors of a juvenile placed in a "Level C" facility include:

(i) repeated minor criminal offenses;

(ii) difficulty in school;

(iii) problems with authority figures;
(iv) ~~exual~~ sexual acting out;
(v) verbal aggression;
(vi) peer difficulties; and
(vii) runaway incidents.

(B) A juvenile placed in "Level C" may be intellectually limited and have difficulty with impulse control.

(C) A juvenile appropriate for placement in a "Level C" facility is a low risk to self and others. Thus, 24-hour awake supervision is not necessary.

(3) **Educational services.** Education shall conform to standards of the State Board of Education. In-house educational program operated in conjunction with the local school system shall be optional. The facility shall ensure that:

(A) each juvenile shall be provided the training and education appropriate to the juvenile's abilities;

(B) special, remedial, and vocational education are available; and

(C) tutoring services are provided for juveniles who need them.

(4) **Recreational services.** Planned and supervised indoor and outdoor recreation shall be available. Juveniles shall have leisure time to pursue their talents, hobbies, and chosen positive interests. Recreation shall be available through campus facilities and community resources.

(5) **Employment services.** The facility shall provide services to prepare juveniles for employment and, when appropriate, facilitate job placement and job retention.

(6) **Independent living skills training.** Independent living focus shall be incorporated throughout the program with a goal of improving the ~~resident's~~ juvenile's capability to function in adulthood.

(7) **Description of staff.** Staff shall include professional and non-credentialed persons. Non-credentialed personnel shall typically perform basic care and custody functions. Social workers, psychologists, or other professional staff shall augment the service.

(A) Direct care staff may reside part time at the facility and shall be available 24 hours per day.

(B) Staff to juvenile ratio shall meet requirements as set forth in DHS rules OAC 340:110, "Requirements for Residential Child Care Facilities." All direct care staff shall meet, at minimum, state licensing standards.

(C) Direct care staff training shall be mandatory, formalized, and provided by professional and non-credentialed staff of the agency as well as resources outside the agency.

(D) Direct care staff shall participate in review staffings of each juvenile. The direct care staff may also access consultation

377:10-7-18. Moderate intensity specialized residential care ("Level D")

The standardized set of criteria for each "Level D" community based residential care facility is provided in (1)-(9) of this Section.

(1) **Nature of program services.** The basic goals of this level shall be elimination of behavioral problems through therapy and by provision of intensive, 24-hour awake supervision.

(A) Social services shall be generally provided by professional and direct care staff of the facility as a team. Facility staff shall have access to a consultant, as described in paragraph (c) of 377:10-7-2. The on-site direct care staff shall respond first to crisis situations. Backup shall be through the normal on-call schedule.

(B) The facility's environment shall provide a therapeutic setting. The professional staff of the facility with assistance from the direct care staff shall provide group work. The primary goal of groups is to stop a juvenile's pattern of aggressive behavior. Groups shall be held for a minimum of one hour per week. Individual therapy is provided for each juvenile for a minimum of one hour per week based on the juvenile's individual needs and treatment plan. The facility's designated social work or counseling staff shall provide individual therapy.

(C) Mental health consultation shall be available for juveniles directly through a licensed psychologist, psychiatrist, or clinical social worker.

(2) **Description of juveniles to be served.**

(A) A juvenile appropriate for placement in a "Level D" facility shall have demonstrated behavior problems. The juvenile may have a history of multiple failed placements. Typical behaviors are:

(i) repeated minor criminal offenses;
(ii) difficulty in school;
(iii) problems with authority figures;
(iv) sexual acting out;
(v) verbal aggression;
(vi) physical aggression toward authority figures;
(vii) peer difficulties; and
(viii) runaway behavior.

(B) A juvenile placed in a "Level D" facility may experience emotional difficulties which can be treated in a structured community-based setting. The juvenile also has consistent antisocial and aggressive behavior. The juvenile may be intellectually limited and incapable of controlling impulses, requiring a high degree of individualized supervision and services.

(3) **Educational services.** Education shall conform with the standards of the State Board of Education. In-house educational programs operated in conjunction with the local school system are optional. The facility shall ensure that:

(A) each juvenile is provided the training and education appropriate to the juvenile's abilities;

(B) special, remedial, and vocational education are available; and

(C) tutoring services are provided for juveniles who need them.

(4) **Recreational services.** Planned and supervised indoor and outdoor recreation shall be available for each juvenile. The facility shall provide leisure time to pursue talents, hobbies, and chosen interests. Recreation shall be available on campus and/or through community resources.

(5) **Employment services.** The facility shall provide services to prepare a juvenile for employment and, as appropriate, ~~faciliate~~ facilitate job placement and job retention.

(6) **Independent living skills training.** The program shall incorporate a focus on independent living with a goal of improving the juvenile's capability to function in adulthood.

(7) **Description of staff.** Staff shall include professional and non-credentialed persons. Non-credentialed personnel shall perform basic care and custody functions. Social workers, psychologists, or other professional staff shall augment services provided by non-credentialed staff. Twenty-four hour awake supervision shall be provided. Line staff shall typically have specific shift assignment. If the direct care staff members live in the facility, a shift component shall be in place to ensure continuous awake supervision and staff capability to respond to crisis situations on a 24-hour basis.

(A) Staff to juvenile ratio shall meet requirements as set forth in DHS rules OAC 340:110, "Requirements for Residential Child Care Facilities." Juvenile care and professional staff shall meet, at minimum, state licensing standards.

(B) Juvenile care and professional staff shall receive formal training in excess of the minimum required, upon entering the job and on an ongoing basis. The facility shall provide training through a combination of in-house and outside training.

(C) Direct care staff shall participate in staffing of each juvenile as a part of the treatment team. All direct care staff shall have access to psychological and/or psychiatric consultation.

377:10-7-19. Moderate to High Intensity Specialized Residential Care ("Level D Plus")

The standardized set of criteria for each "Level D Plus" community based residential care facility is provided in (1)-(10) of this Section.

(1) **Nature of program services.** The basic goals of the program shall be eliminating behavioral problems through therapy and by providing 24-hour awake supervision.

(A) Social services shall be generally provided by professional and direct care staff of the facility as a team. Consultants shall be available to staff. On-site, direct care staff shall respond initially to crisis situations. Backup shall be through normal on-call schedule.

(B) The facility shall provide a therapeutic setting. The primary goal of groups shall be to stop a juvenile's pattern of aggressive behavior. Groups shall be held at a minimum of two hours per week. An agency social worker or counseling staff shall provide individual therapy for each juvenile a minimum of one hour per week. Family therapy shall be available when needed.

(C) Psychological/psychiatric intervention shall be available to a juvenile by direct contact with a psychologist, psychiatrist, or psychiatric consultant or from the facility's designated social worker or counseling staff with psychological or psychiatric case consultation.

(2) **Description of juveniles to be served.** Juveniles appropriate for "Level D Plus":

(A) may have multiple, failed placements;

(B) may exhibit typical behavior such as: ~~a combination of repeated criminal offenses, school difficulty, problems with authority figures, verbal aggression, and peer difficulty;~~

(i) a combination of repeated criminal offenses;

(ii) difficulty in school;

(iii) problems with authority figures;

(iv) verbal aggression; and

(v) peer difficulties

(C) may evidence antisocial and/or aggressive behavior;

(D) may be intellectually limited with no impulse control requiring individualized services;

(E) may have emotional difficulties that are amenable to treatment in structured, community-based setting; and

(F) may experience chemical abuse secondary to other criminal/behavior problems.

(3) **Educational services.** The facility shall provide education according to the standards of the State Board of Education. Programs may have in-house education operated in conjunction with the local school system. The facility shall ensure that:

(A) each juvenile is provided the training and education appropriate to the juvenile's abilities;

(B) special, remedial, and vocational education are available; and

(C) tutoring services are provided for juveniles who need them.

(4) **Recreational services.** The facility shall provide planned and supervised indoor and outdoor recreation. ~~Residents~~ Juveniles shall have leisure time to pursue their talents, hobbies, and chosen positive interests. Services are campus facilities and/or through use of community resources.

(5) **Employment services.** The facility shall provide services to prepare juveniles for employment and, as appropriate, facilitate job placement and job retention.

(6) **Independent living skills training.** Independent living training shall be incorporated throughout the program with a goal of providing each juvenile with adequate life skills and experiences to function as an adult.

(7) **Staffing.** The facility shall provide 24-hour, awake coverage. Two direct care staff shall be on duty on shifts in which ~~residents~~ juveniles are awake and not in school. Two staff shall typically be on the afternoon/evening shift, the day shift, weekends, school holidays, and during the summer. One consultant (psychiatrist, psychologist, or M.S.W.) shall be available to the administrator and staff at least two hours per week.

(8) Description of staff. Staff shall include professional and non-credentialed personnel. Non-credentialed staff shall typically perform basic care and custody functions. Social workers, psychologists, or other professional staff shall enhance basic care services. If live-in juvenile care is provided, shifts must ensure 24-hour, continuous, awake supervision and capability to respond to crises on 24-hour basis.

(A) Staff to client ratio shall meet requirements for "Residential Child Care Facilities." Direct care and professional staff must meet, at minimum, the state licensing standards.

(B) Direct care and professional staff should have more formal training than the minimum required. Training should be both in-house and outside training.

(C) Direct care staff shall participate in staffing each juvenile as part of treatment team. All direct care staff shall have access to psychological and/or psychiatric consultation.

377:10-7-20. Specialized residential high intensity treatment programs ("Level E")

The standardized set of criteria for each "Level E" community based residential care facility is provided in (1)-(9) of this Section.

(1) **Nature of program services.** Intervention is characterized by a highly structured environment and regularly scheduled contact with professional staff. Crisis intervention shall be formalized on a 24-hour basis.

(A) Social services shall be delivered in both group and individual sessions. The primary goal shall be behavior-focused. Structured group treatment shall be provided at a minimum of two hours per week. Individual treatment shall be provided at a minimum of one hour per week. Families shall be involved in the therapeutic process, ~~when appropriate~~ as indicated by the juvenile's individual treatment plan.

(B) The residential component of this level shall include 24-hour awake supervision by professional staff. Juveniles in this level are considered a high risk to themselves or the community. ~~These juveniles often run away from placement.~~ The contractor shall be required to assist in apprehending and returning to the facility juveniles who are AWOL.

(2) **Description of juveniles to be served.** Juveniles in this group have displayed extreme antisocial and aggressive behavior but are typically not psychotic, although may have DSM IV R diagnosis and may receive psychotropic medication. Juveniles may frequently exhibit serious behavioral problems which may reflect emotional disturbance. Juveniles may have resided in an OJA-operated or private institution, residential psychiatric facility, or other community-based placement prior to placement into "Level E". In many instances, juveniles may be placed into this program as a diversion from institutionalization. These juveniles require a structured, controlled environment with a high degree of supervision accompanied by intensive services. Juveniles considered for placement into a "Level E" facility evidence a combination of behavioral descriptors including:

(A) very high AWOL risk;

(B) dysfunctional behavior in public school settings;

(C) repeated indiscriminate acts of violence and aggression toward peers, property and/or authority figures;

(D) multiple delinquent offenses; and

(E) may have substance abuse related problems, coupled with:

(i) a current diagnostic evaluation that calls for placement into a highly structured community-based setting;

(ii) multiple failed placements in community-based residential care, especially "Level D", "Level D Plus", and OJA-operated group homes;

(iii) institution eligibility; or

(iv) parole eligibility from the institution with a recommendation for community placement into a staff secure facility.

(3) **Educational services.** The facility shall provide educational opportunities to conform with the standards of the State Board of Education. The facility shall provide juveniles enrolled in the public education program six hours of structured classroom education as outlined by the local school boards. The facility shall ensure that each juvenile completes a pre- and post-program test to measure educational progress using a test approved in writing by OJA. The facility shall enter the testing data into the OJA database. Four of the six hours shall include math, social studies, English and science. The facility shall ensure that the summer education program is accredited to provide appropriate credit for studies completed by juveniles. Certified teachers shall provide educational services. Programs shall have in-house education operated in conjunction with the local school ~~system~~ districts. The facility shall ensure that:

(A) each juvenile is provided the training and education appropriate to the juvenile's abilities;

(B) special, remedial, and vocational education are available; and

(C) tutoring services are provided for juveniles who need them.

(4) **Recreational services.** The facility shall provide supervised indoor and outdoor recreation for each juvenile. ~~Recreation specialists on the staff shall provide recreational services.~~ The facility shall develop and maintain a policy which includes a written recreational program as required by 340:110-3-152(e)(7). The Executive Director or the affected division ~~administrator~~ director shall approve the policy. The program shall include clearly defined objectives designed to attain positive behavior changes. Recreational programs may be available either on campus or through facilities in the community as outlined in 340:110-3-154(1)(A)(B)(3)(N).

(5) **Employment services.** The facility shall provide necessary services to prepare juveniles for employment and, when appropriate, facilitate job placement and job retention.

(6) **Staffing guidelines.** ~~The staffing team for a 12-bed facility shall be as follows:~~ Facilities shall be staffed in accordance with DHS Rule 340:3-153.1(d) for Executive Program Director qualifications. In addition, the following requirements shall be used for other facility positions:

(A) One full-time Administrator who shall direct the treatment plans for each juvenile, participate in providing individual or group interactions, administratively supervise the counseling staff and administer the program. The administrator shall be on 24-hour call. ~~The full-time administrator must have the following qualifications:~~

~~(i) a bachelor's degree in a behavioral science field, knowledge of personnel management, and five years experience in direct service provision to juveniles; or~~

~~(ii) a masters degree, knowledge in personnel management, and three years experience in direct service provision to juveniles in residential care.~~

(B) One Consultant is available for each facility. ~~, who is a licensed psychiatrist, psychologist, or clinical social worker shall be available to the Administrator and all counseling and direct care staff at least four hours per week~~ Consultation is provided on an as needed basis by a Psychiatrist, Psychologist, MSW, Licensed Social Worker, Licensed Professional Counselor, or Licensed Martial and Family Therapist who shall be available to the Executive Director and all counseling and direct care staff;

(C) ~~One program coordinator with at least a bachelor's degree in a human service field shall be available to coordinate activities of the total program and directly supervise the counselor and direct care staff;~~ The program shall employ two recreation specialists, if applicable as designated in the facility contract;

~~(D) One recreation specialist with a bachelor's degree in recreational therapy or a related field.~~

(~~E~~D) At a minimum, each program must have a:

(i) certified teacher;

(ii) part-time secretary; and

(iii) nutritionist ~~(eight hours a month)~~ who in accordance with DHS Rule (340:110-3-154.4) is responsible for:

(I) planning meals; and

(II) assuring compliance with licensing and Health Department standards.

(7) Direct care staffing guidelines. The ~~following requirements apply to a facility with 12 or fewer beds. If the number of residents exceeds 12, the~~ contractor must meet the staffing guidelines set forth in the Department of Human Services "Standards for Child Placing Agencies" or "Standards for Residential Child Care Facilities". ~~Direct care staffing requirements for facilities with 12 of fewer beds are as follows:~~

~~(A) One bachelor level counseling or direct care staff member with at least two years of experience in direct service provision to troubled juveniles shall work on the morning and evening shift.~~

~~(B) One direct care staff who has a minimum of two years experience in working with troubled juveniles must be present on each shift.~~

~~(C)~~ Staffing shall be sufficient to allow for at least two~~, awake counseling/~~direct-care staff at all times ~~and staff on morning and night shifts and,~~ one of which is a counselor ~~staff and two direct care staff~~ on the evening shift.

(8) **Reporting requirements.**

(A) Counseling and direct-care staff shall:

(i) participate in developing treatment plans for each juvenile;

(ii) provide individual and group interactions with the juveniles;

(iii) provide crisis intervention and assist with the juveniles in the on-site classroom,

(iv) participate with the juveniles in recreational opportunities or interact with the juvenile in the experiential/recreational component as required by the programmatic requirements;

(v) prepare daily log narrative as to each juvenile's behavior;

(vi) participate in the weekly staffings of each juvenile; and

(vii) provide information for court reports.

(B) Facility shall submit a monthly and year-end report to OJA as outlined in the facility's contract.

(~~8~~9) **Staff training.** The ~~contractor~~ facility director shall be responsible for ensuring staff meet the training ~~all staff in~~ requirements as set forth in DHS Licensing Standards for Residential Child Care Facilities Rule 340:110-3-153.1 (m & n) and Oklahoma Health Care Authority (OHCA) 317:30-5-1043. In addition, each staff shall have an orientation training, which shall includes a behavior management course on a passive restraint modality such as MANDT training.

(~~9~~10) **Description of facility.** The facility must be free standing and meet all fire, health and safety standards and Standards for Child Placing Agencies or Residential Child Care Facilities. If a provider seeks to establish a "Level E"

Program on an existing campus, the provider shall develop and submit to the Executive Director or the affected division ~~administrator~~ director a written, demonstrable plan to totally separate this program from a lower level program. Staff may not be shared unless they serve only part-time at each program. Populations may not commingle on a daily basis.

377:10-7-21. Wilderness camp [REVOKED]

~~(a) **Nature of program services.** The Office of Juvenile Affairs may operate or contract for residential wilderness programs. Program services must be designed to hold juveniles accountable by presenting a graduated series of projects involving physical or therapeutic activities in a supportive group atmosphere. A wilderness program shall provide highly structured, outdoor activities which equip a juvenile with skills and knowledge to effectively return to the local community.~~

~~(b) **Staffing guidelines.** The facility shall be sufficiently staffed in all categories of personnel so that juveniles have access to staff, program, and services. Sufficient staff shall be available to provide continuous day and night supervision of the juveniles and protection of the facility as well as allow staff relief from duty. Staff ratios shall comply with licensing requirements.~~

~~(1) Direct care staff ratios shall be no lower than one staff member to eight juveniles (1:8) during the day and evening shifts, and 1:10 during the night shift. Volunteers may not be used to satisfy the staff to client ratio.~~

~~(2) Professional counselor/social worker staff ratios shall be no lower than one counselor to twenty juveniles (1:20). A counselor is not required during the late shift, but must be on call for emergencies.~~

~~(3) The program shall have one program coordinator, with at least a Bachelor's degree in a social service or behavioral related field, to coordinate activities of the total program and directly supervise the counselor and direct care staff;~~

~~(4) The program shall employ two recreation specialists.~~

~~(5) The program shall employ one certified teacher per 12 juveniles. When the number of juveniles is not a multiple of 12; i.e., 13-23 or 25-35, the need for additional teachers or teachers aides shall be determined by the needs of the juveniles in the program. The facility shall provide a 12-month school on site. At least one teacher shall be certified in special education.~~

~~(c) **Staff qualifications.**~~

~~(1) The qualifications for the position of facility director shall include:~~

~~(A) a bachelor's degree in an appropriate discipline;~~

~~(B) two years of related administrative experience; and~~

~~(C) demonstrated administrative ability and leadership.~~

~~(2) The qualifications, authority, and responsibilities of wilderness camp personnel who are not covered by a merit system, civil service regulations, or union contracts shall be specified in writing by statute or by the provider agency to the contracting agency.~~

~~(d) **Counseling and direct care staff responsibilities.** Counseling and direct care staff shall:~~

~~(1) participate in developing treatment plans for each juvenile;~~

~~(2) provide individual and group interactions with the juvenile;~~

~~(3) provide crisis intervention;~~

~~(4) assist with the juvenile in the on-site classroom;~~

~~(5) interact with the juvenile in the experiential/ recreational component;~~

~~(6) prepare daily log narrative as to each juvenile's behavior;~~

~~(7) participate in the weekly stuffing's of each juvenile; and~~

~~(8) provide information for court reports.~~

~~(e) **Staff training.** The wilderness camp operator Director shall be responsible for ensuring all staff receive training in behavior management, including restraint techniques.~~

~~(f) **Staffing pattern.** If the facility's actual staffing pattern differs from the above guidelines, the facility shall submit a written plan for approval to the OJA Executive Director or the affected division administrator. The plan shall define the staffing pattern of the agency and clearly illustrate how each of the staffing guideline functions is provided.~~

~~(g) **Description of facility.** The facility must be free standing and meet all local, state, and federal fire, health, and safety standards and appropriate DHS Licensing Standards.~~

PART 7. INDEPENDENT AND TRANSITIONAL LIVING

377:10-7-41. Independent living programs

Independent living programs, as defined by 10 O.S., § 7301-1.3~~(18)~~, are programs and services which assist juveniles to enhance skills and abilities required for adult living. In addition to minimum staff supervision, independent living services include:

(1) assisting juveniles in making arrangements for a place to live;

(2) completing a juvenile's education or vocational training;

(3) obtaining employment; and

(4) other independent living services as needed.

[OAR Docket #08-672; filed 4-18-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #08-673]

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PERMANENT final adoption

RULES:

Subchapter 11. Case Records and Reports

377:25-11-1. Case Records [AMENDED]

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The rule is being changed because the current rule, 377:25-11-1 Case Records, references two rule citations that have changed.

CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 11. CASE RECORDS AND REPORTS

377:25-11-1. Case records

JSU staff shall comply with rules related to case records, confidentiality, safeguarding, and disclosure as set forth in OJA rules ~~377:10-1-4~~ 377:10-1-7 through ~~377:10-1-7~~ 377:10-1-11 and with appropriate American Correctional Association standards (ACA).

[OAR Docket #08-673; filed 4-18-08]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITUTIONAL SERVICES

[OAR Docket #08-674]

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RULES:
Subchapter 7. Medical Health Care
377:35-7-2. Surgery [AMENDED]
377:35-7-4. Sanctions/discipline [AMENDED]
377:35-7-5. ~~Refusal of non-necessary medical care~~Juveniles refusal of Medical Services [AMENDED]
377:35-7-6. Response to refusal of necessary medical services [REVOKED]
377:35-7-8. Medical isolation [AMENDED]
377:35-7-10. Second medical opinions [REVOKED]

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The rule revision in subchapter 7 is needed to condense the guidelines for medical and surgical processes to one rule.

CONTACT PERSON:
Robert Morey, (405) 530-2820.

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SUBCHAPTER 7. MEDICAL AND HEALTH CARE

377:35-7-2. Surgery

(a) **Non-Emergency.** When an ~~institutional physician~~ Institutional Physician determines a juvenile requires non-emergency surgery, the physician shall refer the juvenile to a specialist for a second opinion. The ~~institutional physician~~ Institutional Physician shall provide all information regarding the juvenile's treatment to the Institutional Superintendent and any further information provided by the specialist. If the specialist agrees that the juvenile requires surgery, the Institutional Superintendent shall request a documented medical consult. The Institutional Superintendent shall ensure that the Division ~~Administrator~~ Director and Chief of Staff have notification of all non-emergency surgery procedures prior to treatment. Prior to the surgery, the institutional JJS ~~worker~~ shall contact the

juvenile's parent, guardian or legal custodian to request written authorization for hospitalization and for the doctor to perform the juvenile's surgery.

(b) **Emergency.** The Institutional Superintendent shall authorize surgery if the attending physician deems the surgery to be an emergency and the attending physician advises the ~~superintendent~~ Institutional Superintendent, that because of the emergency nature, the surgery should be done before the parent can be contacted. The Institutional Superintendent shall notify the Division ~~Administrator~~ Director within 24 hours after any emergency surgery. When the Institutional Superintendent authorizes emergency surgery, the institutional JJS ~~worker~~ shall make every effort to contact the juvenile's parent, guardian or legal custodian to:

(1) notify them of the action taken; and

(2) provide details concerning the surgery.

(c) **Secondary Medical Opinions.**

(1) In OJA operated institutions, every juvenile shall be first evaluated by the designated Institutional Physician. Routine medical procedures or illnesses of a minor nature, as determined by a Institutional Physician, require no second medical opinion.

(2) Any problem requiring a surgical procedure shall be referred to a specialist. In addition, any problem which is not within the realm of the Institutional Physician's expertise or responding to his/her treatment in an expected manner shall be referred to a specialist. When the juvenile is referred to a specialist by the Institutional Physician and both the Institutional Physician and specialist agree with a treatment protocol, an additional opinion shall not be warranted.

(3) A juvenile may request a second medical opinion when he/she believes the problem is not responding to the treatment which is afforded by the institutional physician. The Institutional Physician shall review the request to obtain a second medical opinion. If the Institutional Physician denies the request the juvenile may appeal the decision to the Institutional Superintendent. If the Institutional Superintendent thinks a second medical opinion request is frivolous or should be denied for other reasons, he/she shall make a recommendation to the Institutional Services Division Director, who may obtain assistance from a separate contracted licensed physician in resolving the matter.

(4) Issues regarding the delivery and procurement of medical services shall be addressed at a first level by the Institutional Superintendent and the involved physician. As a second level response, unresolved issues shall be forwarded to the Institutional Services Division Director, who may develop necessary policy or request a review by a separate contracted licensed physician.

377:35-7-4. Sanctions/discipline

Medical staff shall not impose sanctions on juveniles for refusing to accept medical care.

377:35-7-5. ~~Refusal of non-necessary medical care~~ Juvenile's refusal of medical services

(a) A juvenile shall have the right to refuse non-necessary medical care.

(1) Non-necessary medical care, as determined by the physician, consists of procedures and treatments that do not pose a serious threat to the juvenile's health if not performed. If the physician determines that omission of the care poses a serious threat to the juvenile's health, the care shall be considered necessary.

(2) When a juvenile refuses non-necessary medical care, the juvenile shall complete, date, and sign the appropriate form indicating his or her refusal. The physician shall include a written explanation of the need for the care recommended and the probable consequences of not receiving the care.

(b) Designated institutional staff shall respond to a juvenile who refuses necessary medical services as follows:

(1) The juvenile shall receive life sustaining and emergency medical services;

(2) The juvenile shall be counseled to accept necessary medical services;

(c) If the juvenile continues to refuse medical treatment, the Institutional Superintendent shall ensure that:

(1) The juvenile shall be hospitalized; or

(2) The juvenile shall be referred to the court of jurisdiction as unmanageable to enforce necessary medical services; and

(3) The juvenile's parent or guardian shall be notified.

377:35-7-6. Response to refusal of necessary medical services [REVOKED]

~~(a) Designated institutional staff shall respond to a juvenile who refuses necessary medical services as follows:~~

~~(1) The juvenile shall receive life sustaining and emergency medical services;~~

~~(2) The juvenile shall be counseled to accept necessary medical services;~~

~~(b) If the juvenile continues to refuse medical treatment, the superintendent shall ensure that:~~

~~(1) The juvenile shall be hospitalized; or~~

~~(2) The juvenile shall be referred to the court of jurisdiction as unmanageable to enforce necessary medical services; and~~

~~(3) The juvenile's parent or guardian shall be notified.~~

377:35-7-8. Medical isolation

(a) If the institution does not have a medical isolation unit/area and medical isolation is required, the juvenile shall be immediately transferred to a hospital.

(b) The Institutional Physician shall determine placement of any juvenile in medical isolation, per the juvenile's diagnosis and medical risk.

377:35-7-10. Second medical opinions [REVOKED]

~~(a) In institutions, every juvenile shall be first evaluated by the institutional physician. Routine medical procedures or illnesses of a minor nature, as determined by a physician, require no second medical opinion.~~

~~(b) Any problem requiring a surgical procedure shall be referred to a specialist. In addition, any problem which is not within the realm of the institutional physician's expertise or responding to his/her treatment in an expected manner shall be referred to a specialist. When the juvenile is referred to a specialist by the institutional physician and both the institutional physician and specialist agree with a treatment protocol, an additional opinion shall not be warranted.~~

~~(c) A juvenile may request a second medical opinion when he/she believes the problem is not responding to the treatment which is afforded by the institutional physician. The institutional physician shall review the request to obtain a second medical opinion. If the institutional physician denies the request the juvenile may appeal the decision to the superintendent. If the institutional superintendent thinks a second medical opinion request is frivolous or should be denied for other reasons, he/she shall make a recommendation to the Institutional Services Division Administrator, who will obtain assistance from the a contracted licensed physician in resolving the matter.~~

~~(d) Issues regarding the delivery and procurement of medical services shall be addressed at a first level by institution administration and the involved physician. As a second level response, unresolved issues shall be forwarded to the Institutional Services Division Administrator, who may draft necessary policy or request a review by the contracted licensed physician.~~

[OAR Docket #08-674; filed 4-18-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND FACILITATORS

[OAR Docket #08-735]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors
450:21-1-1. Purpose and applicability [AMENDED]
450:21-1-2. Statutory authority [AMENDED]
450:21-1-3. Definitions [AMENDED]
450:21-1-4. Meaning of verbs in rules [AMENDED]
450:21-1-5. Compliance with laws, rules [AMENDED]
450:21-1-6. Applications [AMENDED]
450:21-1-7. Minimum curriculum requirements, ten (10) hour courses [AMENDED]
450:21-1-7.2. Minimum curriculum requirements, twenty-four (24) hour courses [AMENDED]
450:21-1-7.4. Critical Incidents [NEW]
450:21-1-7.5. Participant record system [NEW]
450:21-1-7.6. Participant records, basic requirements [NEW]
450:21-1-7.7. Participant record storage, retention and disposition [NEW]
450:21-1-7.8. Confidentiality of participant information [NEW]
450:21-1-7.9. Notes [NEW]
450:21-1-8. Administrative responsibilities, institutions or organizations conducting ADSAC [AMENDED]
450:21-1-9. Facilities, equipment and instructional material [AMENDED]
450:21-1-9.1. Physical facility environment and safety [NEW]
450:21-1-9.2. Hygiene and sanitation [NEW]
450:21-1-10. ~~Ten or 24 hour~~ADSAC facilitator certification, qualification and disqualification [AMENDED]
450:21-1-10.1. Inactive status/closure [NEW]
450:21-1-11. Facilitator training [AMENDED]
450:21-1-13. Consumers with disabilities [AMENDED]
450:21-1-14. State and federal statutes and regulations [AMENDED]
Subchapter 3. Certification Denial or Sanctions and Participant Grievance
450:21-3-1. Administrative denial, suspension, or revocation of certification [AMENDED]
450:21-3-1.1. Fitness of applicants [AMENDED]
450:21-3-2. Grounds for reprimand, suspension or revocation of certification, organizations, institutions and facilitators [AMENDED]
450:21-3-3. Sanctions and hearings [AMENDED]
450:21-3-4. Participant rights and grievance policy [NEW]
450:21-3-5. ODMHSAS advocate general [NEW]
Subchapter 5. Course Attendance and Completion
450:21-5-1. ~~Student~~Participant attendance and completion of ADSAC [AMENDED]
450:21-5-2. ADSAC reporting of completions [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-451 through 3-453.1; 47 O.S. §§ 6-212.2, 11-902 and 761(D); 22 O.S. §§ 991a and 991c.

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N/A

ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 21 are part of the Department's review of Title 450. The proposed rules clarify existing rules and further standardize the ADSAC course process. Requirements for critical incidents, participant record system, confidentiality, charting, physical plant, record requirements, and participant rights are expanded, strengthened and clarified.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS

450:21-1-1. Purpose and applicability

This chapter sets forth the standards and criteria used in the certification of Alcohol and Drug Substance Abuse courses, institutions and organizations offering courses and facilitators and implements 43A O.S. §§ 3-451 through 3-460.

450:21-1-2. Statutory authority

(a) Under 43A O.S. § 3-453(~~D~~E), ODMHSAS has authority to certify Alcohol and Drug Substance Abuse Courses. Pursuant to 47 O. S. § 6-212.2, persons convicted of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or other drug related revocation or suspension of driving privileges must complete an Alcohol and Drug Substance Abuse Course as a requirement for reinstatement of Oklahoma driving privileges.

(b) Pursuant to 43A O. S. §§ 3-453, ODMHSAS is authorized to adopt rules governing:

(1) Applications and certification of individuals, institutions and organizations ~~and institutions~~ to conduct ~~AD-SAC~~ an Alcohol or Drug Substance Abuse Course (AD-SAC);

(2) Denial, suspension or revocation of certification of individuals, institutions and organizations;

(3) Minimum requirements for all ADSAC content and curricula;

(4) Minimum qualifications for all ADSAC facilitators;

(5) Enrollment fees for those attending an ADSAC course;

(6) Facilities, equipment and instructional materials for ADSAC;

(7) Minimum qualifications for facilitators of ADSAC facilitator training;

(8) ADSAC ~~student~~ participant attendance requirements; ~~and~~

(9) Requirements for certifying to ~~ODMHSAS~~ the Oklahoma Department of Mental Health and Substance Abuse Services and ~~DPS~~ the Oklahoma Department of Public Safety successful course completion of ADSAC by a ~~person~~ participant;

(10) Operational and physical site requirements for all institutions and organizations offering ADSAC courses; and

(11) Training requirements for ADSAC facilitators.

450:21-1-3. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the

health, safety, or welfare of a participant by staff responsible for the participant's health, safety, or welfare, including, but not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the participant; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a participant.

"ADSAC" means Alcohol and Drug Substance Abuse Course.

~~**"10 Hour ADSAC Facilitator"** means an individual certified to teach the ten (10) hour ADSAC.~~

"~~24 Hour~~ ADSAC Facilitator" means an individual certified to teach both the ten (10) or the twenty-four (24) hour ADSAC courses.

"Administrator" means the person responsible for administering ADSAC courses within a certified institution or organization ~~or institution~~.

"Action Code" means a numerical designation applied to ADSAC by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC.

"Audit" means a systematic inspection of accounting records involving analyses, tests, and confirmations or the hearing or investigation by an auditor.

"Certification" means an institution, organization, ~~institution~~ or individual approved by ODMHSAS to conduct ADSAC courses.

"Commissioner" means the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services.

"Conflict of interest" means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC Facilitator.

"Consumer" means an individual, adult or child, who is receiving services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Course" means multiple classes offering an approved ADSAC curriculum.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved institution or organization approved to do ADSAC, or the routine work with a participant in an ADSAC course. Critical incidents specifically include, but are not limited to: self-destructive behavior; deaths and injuries to the participant, participant's family, staff or visitors; abuse of a participant, fire, unauthorized disclosure of information; damage to or theft of property belonging to a participant or an approved institution or organization; other unexpected occurrences; or events subject to litigation. A critical incident may involve multiple individuals or results.

"Curricula" (plural of Curriculum) See Curriculum.

"Curriculum" means a specific course of study in alcohol and drug substance abuse designed for ADSAC.

"Denial" means a refusal to certify to conduct ADSAC courses.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards.

"DPS" means Department of Public Safety.

"Equipment" means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC course.

"Evidence based practice" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"Facilitator candidate" means an individual who has applied for and is in the process of ~~to be~~ being certified to conduct an ADSAC course~~, as either a 10 hour or~~ as an ~~24 hour~~ ADSAC ~~Facilitator~~ facilitator.

"Facility" means any ODMHSAS approved building in which ADSAC is conducted.

"Guest instructor" means non-certified individual invited to discuss a specific portion of ADSAC curriculum under the direct supervision of a certified ADSAC facilitator.

"Instructional material" means written or printed data distributed to the ~~student~~ participant during ~~the normal course of~~ an ADSAC course ~~schedule,~~ for informational or educational purposes.

"Intern facilitator" means a facilitator who has initial approval to conduct ADSAC courses under supervision, ~~either 10 Hour or~~ both ten (10) and twenty-four (24) ~~Hour~~ hour, but who has not completed internship or training requirements, and is not certified.

"Lapse" means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

"Notes" means a complete, chronological written description of any intervention(s) provided to a participant requiring documentation. Notes may include the participant's response and are written by the ADSAC staff delivering the service.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

~~**"Offender"** means a person convicted of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges.~~

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"OSBI" means the Oklahoma State Bureau of Investigation.

"Participant" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug-related revocation or suspension of driving privileges in Oklahoma and who is involved in the ADSAC process.

"Professional setting" means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and HIPAA, and without distraction or interruption from adjacent business or activities.

"Recertification" means the renewal of certification for an institution, or organization, or instructor to provide ADSAC courses.

"Revocation" means cancellation of an existing certification to conduct or instruct ADSAC courses.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a participant, or risk thereof. Serious injury specifically includes loss of limb or limb function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a participant. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

~~**"Student"** means an individual who pays an enrollment fee to attend ADSAC.~~

"Suspend" means to temporarily cancel certified ADSAC services or certification for a designated period of time.

"Transtheoretical Model of Change" or **"TMC"** means a model which identifies distinct stages of change existing for each individual involved in any educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

"Unique identifier" means a code developed by the institution or organization or individual providing ADSAC services that allow each participant to be identified. The same unique identifier should not be used for more than one participant.

450:21-1-4. Meaning of verbs in rules

The attention of the facility is drawn to the distinction between the use of the words "shall," "should," and "may" in this ~~chapter~~ Chapter:

(1) **"Shall"** is the term used to indicate a mandatory statement, the only acceptable method under the present standards.

(2) **"Should"** is the term used to reflect the most preferable procedure, yet allowing for the use of effective alternatives.

(3) **"May"** is the term used to reflect an acceptable method that is recognized, but not necessarily preferred.

450:21-1-5. Compliance with laws, rules

(a) All institutions, organizations ~~or institutions~~ and facilitators certified by ODMHSAS to conduct ADSAC courses shall do so in accordance with all applicable laws of the State of Oklahoma and all applicable rules of ~~(OAC~~ Title 450~~)~~ OAC ~~of ODMHSAS~~.

(b) Each applicant for ADSAC facilitator shall declare in writing, in a format and manner prescribed by the Commissioner of ODMHSAS, or designee, that he or she has read and understands §§ 3-451 through ~~3-460~~ 3-461 of Title 43A of the Oklahoma Statutes and this ~~chapter~~ Chapter and agrees to abide by the terms thereof, along with future amendments thereto, as a condition for obtaining and retaining such approval or certification.

(c) ODMHSAS shall process all applications~~,~~ for certification and recertification and enforce these standards and criteria (rules) in this ~~chapter~~ Chapter, and related laws.

(d) Approved institutions, organizations~~, institutions~~ and facilitators shall not make reference to ODMHSAS or DPS in any advertisement regarding ADSAC. Advertising shall be truthful in all communication with prospective ~~students~~ participants. Implication of exclusive services by any one organization is prohibited.

(e) All institutions, organizations~~, institutions~~ and facilitators certified to conduct ADSAC courses must promptly notify ODMHSAS of a change of mailing or physical address within fourteen (14) days of said change.

(f) The fees for those attending a ten (10) hour ADSAC course shall be one hundred and fifty dollars ($150.00) per ~~student~~ participant; and for persons attending the twenty-four (24) hour courses the fee shall be three hundred and sixty dollars ($360.00).

(g) The ADSAC institution or organization ~~or institution~~ shall pay ODMHSAS ten percent (10%) of each ADSAC fee collected, which ODMHSAS shall remit to the Oklahoma State Treasurer to be credited to the ODMHSAS Revolving Fund.

(h) The payment from the ~~ADSAC~~ fee collected for each ADSAC course participant shall be made to ODMHSAS within thirty (30) days of course completion ~~of the course~~.

(i) A check for the appropriate fee shall accompany the completion roster, unless otherwise stipulated in writing by ODMHSAS.

(j) Each institution, organization and facilitator ~~and school~~ shall annually submit to ODMHSAS a ~~notarized affidavit~~ written and signed statement documenting the records of the number of courses conducted, number of participants, and fees paid for the ~~ADSACs~~ ADSAC courses submitted within the previous twelve (12) months are accurate.

(k) Compliance with this Chapter may be determined by a review of all ADSAC-related records; documents and reports; facilitator, staff and participant interviews; and any other relevant documentation of the institution, organization or facilitator.

450:21-1-6. Applications

(a) Applications for certification of institutions, organizations or ~~institutions and~~ facilitators to conduct ~~10 hour or 24 hour~~ ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.

(b) ODMHSAS shall give each institution, organization~~, institution~~ and facilitator candidate requesting certification to conduct ~~10 hour or 24 hour~~ ADSAC courses the following:

(1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;

(2) A copy of these standards and criteria; and

(3) The appropriate application(s).

(c) An institution or organization ~~or institution~~ applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:

(1) Completed application;

(2) Film approval form(s) for the ten (10) ~~or~~ and twenty-four (24) ~~Hour~~ hour ADSAC;

(3) Instructional materials for the ten (10) ~~or~~ and twenty-four (24) ~~Hour~~ hour ADSAC;

(4) Written verification the applicant is a nonprofit educational institution of higher learning appropriately accredited pursuant to state law, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;

(5) Completed certification applications and resumes of proposed facilitators;

(6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC course(s) will be conducted; and

(7) Letters of support from at least two (2) of the following individuals ~~(and~~ who serve in the ~~location~~ community in which each proposed site, including satellites, is located~~)~~:

(A) District or Associate District Judge;

(B) County Sheriff;

(C) Municipal Judge;

(D) District or Assistant District Attorney; or

(E) Chief of Police.

(d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services

as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.

(e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications, except the institution or organization ~~it~~ need not submit items previously submitted ~~and~~ that are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).

(f) Renewal of certification of ADSAC institutions or organizations ~~or institutions~~ shall be contingent upon submission of renewal application and programmatic history of compliance with Oklahoma Administrative Code, Title 450. The application for renewal shall include all items required for initial certification.

(g) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:

(1) A letter of recommendation from an administrator of a certified institution or organization ~~or institution~~;

(2) A current resume, which shall include:

(A) ~~Education~~ Educational background including an official college transcript from an accredited college or university~~,~~; and

(B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).

(3) A completed application~~;~~. ~~and~~

(4) A one hundred dollar ($100.00) application fee for initial certification; and

(5) Upon initial application ~~and every six (6) years thereafter~~, a completed Oklahoma State Bureau of Investigation background check or ~~and~~ a similar background check from any other state(s) of residence for the past five (5) years~~.~~;

(6) Provide a current, recognizable, color, photographic image, in good condition, no smaller than two (2) inch by two (2) inches of the applicant every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008; and

(7) A new OSBI background check must be submitted every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008. The results of the OSBI background check must be submitted with the recertification application and any conviction may result in denial of certification. This will be required of all individuals who have been certified as ADSAC facilitators for six (6) years or more, recertifying after July, 1, 2008.

~~(5) Remission of a one hundred dollar ($100.00) application fee for initial certification.~~

(h) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years ~~(36 months)~~ commencing with the date of issue.

(i) Faxes will not be accepted as permanent copies for an applicant's record.

(j) Applications are good for one (1) year from acceptance. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

(k) Completed applications must be received by ODMHSAS ~~thirty~~ twenty (~~30~~ 20) days prior to the ~~publicly announced~~ new facilitator training event.

(l) A facilitator whose certification has been expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, with the exception of attending the initial ADSAC facilitator training, and successful completion of the training exam.

(m) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, including attending the initial ADSAC facilitator training, and successful completion of the training exam.

(~~m~~n) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

450:21-1-7. Minimum curriculum requirements, ten (10) hour courses

(a) The standardized ADSAC curriculum approved by ODMHSAS shall be utilized by all ADSAC institutions, organizations~~, institutions~~ and facilitators for the ten (10) hour ADSAC course. Any additional materials must be consistent with the format of the main curricula, ~~and~~ follow the ~~transtheoretical~~ Transtheoretical ~~model~~ Model of ~~change~~ Change and prior to implementation receive written approval from ODMHSAS.

(b) The ten (10) hour ~~Alcohol and Drug Substance Abuse~~ ADSAC Course shall at a minimum include instruction on:

(1) Legal aspects of drinking or using other drugs and driving;

(2) Physiological aspects of using alcohol and other drugs;

(3) Sociological aspects of using alcohol and other drugs;

(4) Effects and possible outcomes of drinking or using other drugs and driving~~,~~;

(5) Scope of the problem of drinking or using other drugs and driving~~,~~;

(6) The history/origins of alcohol and other drugs;

(7) The effects of substance abuse on family and friends; and ~~in the abuse of alcohol and other drugs~~

(8) Alternative plans/strategies to using alcohol or other drugs and driving~~, and~~.

(c) Each curriculum shall provide for a full ten (10) hours of block-teaching classroom instruction, and shall be conducted in no fewer than three (3) sessions with each session no more than three and one half (3.5) hours in duration, and conducted

on no fewer than three (3) separate days. These hours shall not be inclusive of:

(1) Meal or break times; or

(2) ADSAC administrative functions except for enrollment form completion and fee payment.

(d) Participants ~~Students~~ may be admitted for fifteen (15) minutes after the official starting time of the class without having to make up this time.

(e) Each curriculum shall provide for a discussion period following each audio-visual presentation. Audio-visual materials shall not comprise more than ten (10) percent of the class and must have been submitted and approved at the time of application for certification and at each six (6) year anniversary thereafter.

(f) Each ten (10) hour curriculum shall provide for a pre- and post-test. The ~~Pretest~~ pre-test shall be given during the first two (2) hours of the beginning of each course, and the ~~Post-test~~ post-test at the end of each course. The purpose is to determine ~~student~~ participant gain in knowledge of the material.

(g) The ADSAC institution, organization~~, institution~~ or facilitator shall provide each~~ student~~ participant a list of community referrals and resources~~ provided~~ approved by ODMHSAS.

(h) Class size shall not exceed twenty-four (24)~~ students~~ participants.

(i) No ten (10) hour ADSAC course shall be combined with, or presented in conjunction with any other educational or clinical class, track, program or assessment process.

450:21-1-7.2. Minimum curriculum requirements, twenty-four (24) hour courses

(a) The standardized ADSAC curriculum approved by ODMHSAS shall be utilized by all ADSAC institutions, organizations~~, institutions~~ and facilitators for the twenty-four (24) hour ADSAC. Any additional materials must be consistent with the format of the main curricula, ~~and~~ follow the ~~trans-theoretical~~ Transtheoretical ~~model~~ Model of ~~change~~ Change and prior to implementation receive written approval from ODMHSAS.

(b) The minimum curriculum requirements for the twenty-four (24) hour ADSAC course~~ for second and subsequent offenders~~ includes, but is not limited to, appropriate instruction on:

(1) Legal aspects of drinking or using other drugs and driving;

(2) Physiological aspects of using alcohol and other drugs;

(3) Sociological aspects of using alcohol and other drugs;

(4) Effects and possible outcomes of drinking or using other drugs and driving;

(5) Scope of the problem of drinking or using other drugs and driving;

(6) The history/origins of alcohol and other drug abuse;

(7) Alternatives to using alcohol or other drugs and driving; and

(8) The effects of substance abuse on family and friends~~ in the abuse of alcohol and other drugs~~.

(c) The curriculum shall be covered within the following time-frames:

(1) Not more than two (2) hours of education on a single day~~.~~;

(2) Not more than four (4) hours of education in a single week~~.~~;

(3) The time-frames shall not be inclusive of:

(A) Meal or break times; or

(B) ADSAC administrative functions except for enrollment form completion and fee payment.

(4) ~~Students~~ Participants may be admitted up to fifteen (15) minutes after the official time of the class without having to make up the time.

(d) The curriculum shall provide for a discussion period following each audiovisual presentation. Audiovisual presentation shall not ~~be used for more than ten (10) percent of the total class time.~~ comprise more than ten (10) percent of the class and must have been submitted and approved at the time of application for certification and at each recertification anniversary thereafter.

(e) The curriculum shall provide for a ~~Pre~~ pre- and ~~Post~~ post-test, as prescribed by ODMHSAS. The ~~Pre~~ pre-test shall be given in the first two (2) hour block of classroom facilitation, and the ~~Post~~ post-test shall be given at the end of the final block of~~ classroom~~ course facilitation. These tests are to determine the ~~student~~ participant gain in knowledge ~~gain~~ of the material.

(f) The ADSAC institution, organization and facilitator shall provide ~~Each~~ each ~~student~~ participant~~ shall be given~~ a list of community referrals and resources~~ as appropriate~~ approved by ODMHSAS.

(g) Class size shall not exceed twenty-four (24)~~ students~~ participants.

450:21-1-7.4. Critical incidents

(a) The institution, organization or facilitator shall report critical incidents. Documentation of critical incidents shall minimally include:

(1) The name of the institution or organization, and signature of the person(s) reporting the incident;

(2) The name(s) of the participant(s), staff member(s) or property involved;

(3) The time, date and physical location of the incident;

(4) The time and date the incident was reported and the name of the staff person within the facility to whom it was reported;

(5) A description of the incident;

(6) Resolution or action taken, date action was taken, and signature of appropriate staff member(s); and

(7) Severity of each injury, if applicable. Severity shall be indicated as follows:

(A) No off-site medical care required or first aid care administered on-site;

(B) Medical care by a physician or nurse or follow-up attention required; or

(C) Hospitalization or immediate off-site medical attention was required.

(b) Critical incidents shall be reported to ODMHSAS as follows:

(1) Critical incidents requiring referral to medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS within twenty-four (24) hours of the incident being documented;

(2) Critical incidents involving allegations constituting a sentinel event or abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four (24) hours after the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours after the incident.

(c) Critical incidents shall be reported to the Provider Certification Division of ODMHSAS.

450:21-1-7.5. Participant record system

(a) Each institution or organization shall maintain an organized system for the content, confidentiality, storage retention and disposition of participant records adhering to the following guidelines.

(b) Participant records shall be contained within equipment which shall be maintained under locked and secure measures.

(c) The institution or organization shall maintain identification and filing systems which enable prompt record location and accessibility by facilitators and staff.

(d) Participant records shall be maintained at the site where the participant is being served. In the case of temporary office space and satellite offices, records may be maintained in the main (permanent) office and transported in secured locked boxes in vehicle trunks to and from satellite offices, when necessary. Participant records may be maintained at the administrative offices of the institution or organization; however, in such cases a working copy of the participant record for the purposes of documentation and review of services provided must be maintained at the site in which the participant is receiving services.

(e) Compliance may be determined by a review of records; interviews with facilitators, other staff; and other documentation.

(f) The institution or organization shall store, retain, and dispose of participant records in a manner compatible with the protection of participant's rights against confidential information disclosure at a later date. ODMHSAS-operated facilities shall comply with Records Disposition Schedule 82-17 as approved by the Oklahoma Archives and Records Commission.

(g) Records of ADSAC course attendance shall be retained for six (6) years.

450:21-1-7.6. Participant records, basic requirements

(a) Participant records shall be developed and maintained to ensure that all appropriate individuals have access to relevant course and other information regarding the participant. The record shall communicate information in a manner that is organized, clear, complete, current and legible.

(b) Entries in participant records shall be legible, signed with first name or initial, last name, and dated by the person making the entry.

(c) The participant shall be identified by name and an organization or institution generated unique identifier on each sheet in the participant record, on both sides of each page if both sides are used.

(d) A signed consent in a form designated by the Commissioner or designee shall be part of the case record for any person admitted to an ADSAC course.

450:21-1-7.7. Participant record storage, retention and disposition

(a) Each institution, organization and facilitator shall:

(1) Limit access to participant records to persons on a need to know basis;

(2) Require participant records be stored under lock and key;

(3) With regard to closed participant records, require:

(A) Confidential storage under lock and key;

(B) Record disposition and destruction under confidential conditions; and

(C) Maintain written documentation to be available for participants for a minimum of six (6) years after completion of all course requirements. Written documentation shall include, but not be limited to:

(i) completed pre and post tests;

(ii) notes, if existing;

(iii) proof of completion of course; and

(iv) enrollment form.

(b) EXCEPTION: With regard to 450:18-7-4(a) (3) (B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

450:21-1-7.8. Confidentiality of participant information

(a) The confidentiality of all ADSAC information and records (including all ADSAC participant and course records), shall be kept, recorded, released, maintained, and provided to requesting parties in accordance with all applicable state and federal laws.

(b) For the purposes of certification, all institutions, organizations and facilitators will abide by 42 CFR, Part 2 as required for covered entities protecting the confidential and privileged nature of information in compliance with state and federal law and which requires at a minimum:

(1) all ADSAC course information, whether recorded or not, and all communications between institution and organization staff, facilitators and participant are both privileged and confidential and will not be released without the signed consent of the participant or the participant's legally authorized representative;

(2) the identity of a participant who has received or is receiving ADSAC services is both confidential and privileged and will not be released without the signed consent of the participant or the participant's legally authorized representative;

(3) limiting access to ADSAC course and participant information to only those persons or agencies actively engaged in the treatment of the participant and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a participant, or the participant's legally authorized representative, may access the participant's ADSAC course information;

(5) certain state and federal law exceptions to disclosure of ADSAC course information without the signed consent of the participant or the participant's legally authorized representative exist and the facility will release information as required by those laws; and

(6) notifying a participant of his or her right to confidentiality in writing.

450:21-1-7.9. Notes

When addressing issues related to the ADSAC course that must be reflected by written documentation in the participant's record, the following must be included:

(1) date;

(2) start and stop time for each session referenced;

(3) signature of the staff person providing the service;

(4) credentials of the staff person providing the service;

(5) participant response if present;

(6) any problems identified; and

(7) any interventions.

450:21-1-8. Administrative responsibilities, institutions or organizations conducting ADSAC

(a) Each institution or organization ~~or institution~~ certified to conduct ADSAC courses shall provide ODMHSAS, in a manner prescribed by the Commissioner of ODMHSAS or designee, a monthly schedule of courses to be conducted. The ~~scheduled courses~~ course shall be provided per the submitted course schedule and the course may only be canceled if zero (0) ~~students~~ participants show up for the course within fifteen (15) minutes after the scheduled course starting time. Any institution or organization requiring pre-enrollment may cancel a course prior to the scheduled first session and after the expiration of the pre-enrollment time period, if no participants have pre-enrolled. The course schedule shall be submitted no later than thirty (30) days in advance of any course start and shall include~~;~~:

(1) The complete address, street, building name and suite where applicable, city and zip code, where each course will be conducted;

(2) The name of the course facilitator;

(3) The beginning and ending times of each session of the course; and

(4) Enrollment in ten (10) or twenty-four (24) hour ~~classes~~ courses shall be limited to twenty-four (24) ~~students~~ participants.

(b) Each ~~organization or~~ institution or organization certified to conduct ADSAC shall advise ODMHSAS seven (7) days in advance of:

(1) A ten (10) ~~Hour~~ hour or twenty-four (24) ~~Hour~~ hour ~~Course~~ course cancellation; or

(2) A scheduled facilitator change (unless change is due to illness or other ~~instructor~~ facilitator emergency); or

(3) Any change of the date or hour of the scheduled ten (10) ~~Hour~~ hour or twenty-four (24) ~~Hour~~ hour ~~Course~~ course.

(c) Failure to offer either a ten (10) ~~Hour~~ hour or twenty-four (24) ~~Hour~~ hour ~~Course~~ course at an approved site for three (3) consecutive months shall constitute a withdrawal from that site and require another application for certification.

(d) If no ~~students~~ participants attend the first session of a ten (10) or twenty-four (24) hour course, a second or subsequent session is not required.

(e) Failure to either provide a scheduled course to one (1) or more attending ~~students~~ participants, or staff a scheduled course site for ~~up to~~ fifteen (15) minutes after the scheduled course ~~beginning~~ starting time may result in administrative reprimand, suspension or revocation. ~~Class~~ A course may be canceled when zero (0) ~~students~~ participants show up ~~after~~ for the course within fifteen (15) minutes of the scheduled course ~~beginning~~ starting time.

(f) ODMHSAS personnel shall be admitted to any course without charge, upon request and display of proper credentials for the purpose of audit and review.

(g) Certified institutions, organizations and facilitators must provide, for each telephone number published specific to ADSAC, continuous availability, either in person, by phone, answering machine, electronic voice mail, or engage a professional answering service. Numbers published for the purpose of ADSAC advertisement must ~~not~~ be answered by individuals ~~other than those certified to provide ADSAC services~~ with proper inservice training in all relevant aspects of 42 CFR, Part 2 and HIPAA.

(h) Institutions and ~~Organizations~~ organizations certified to conduct ADSAC courses shall be responsible for the conduct of the facilitators they employ, and shall have written policies outlining the institution's or organization's oversight procedures.

450:21-1-9. Facilities, equipment and instructional material

(a) Each ~~facility~~ site where an ADSAC course is held must meet local and state fire, health and safety standards. ODMHSAS may request state or local fire inspectors or other state health or safety officials to conduct an inspection of any facility suspected of being hazardous.

(b) Each ~~facility~~ institution or organization must provide a safe, confidential and comfortable environment for ~~students~~ participants and ~~instructors~~ facilitators, with minimum distractions.

(c) All equipment must be in good working condition.

(d) Instructional material issued to ~~students~~ participants such as handouts, pamphlets, workbooks, etc., must have been submitted to ODMHSAS upon application by the organization or institution for certification or recertification. Each participant shall be given a new, unused journal of the Level I or Level II ADSAC journal as his or her property.

(e) Each ~~facility~~ ODMHSAS approved site shall be a professional setting as appropriate for the purposes of conducting an ADSAC course.

(f) ~~Facilities~~ Sites shall not be designed or used for the primary purpose of eating or sleeping (hotel/motel sleeping rooms, restaurant dining rooms, etc.).

(g) No new ADSAC course shall be located within one thousand (1000) feet of an establishment with the primary purpose of serving alcoholic beverages.

450:21-1-9.1. Physical facility environment and safety

(a) All institutions and organizations providing ADSAC courses shall ensure the safety and protection of all persons within the institution's or organization's physical environment (property and buildings, leased or owned).

(b) Institutions and organizations shall accomplish this by:

(1) Meeting all fire, health and safety regulations, code and statutory requirements of federal, state, or local government;

(2) All institutions and organizations shall have a fire, health and safety inspection, as required from the State Fire Marshal or local authorities, and shall maintain a copy of said inspection and attendant correspondence regarding any deficiency;

(3) If there is no authority available to provide inspection for the institution or organization, then the institution or organization shall show evidence to ODMHSAS of:

(A) An emergency preparedness plan to provide effective utilization of resources to best meet the physical needs of participants, visitors, and staff during any disaster (including, but not limited to, fire, flood, tornado, explosion, prolonged loss of heat, light, water, and/or air conditioning). This plan shall be evaluated annually, and revised as needed;

(B) Training and orientation regarding the location and use of all fire extinguishers and first aid supplies and equipment;

(C) Emergency evacuation routes and shelter areas shall be prominently posted in all areas;

(D) Fire alarm systems shall have visual signals suitable for the deaf and hearing-impaired;

(E) An emergency power to supply lighting to preselected areas of the institution or organization; and

(F) Maintenance of institution and organization grounds to provide a safe environment for participants, facilitators and visitors.

(4) There shall be a written plan for the protection and preservation of participant records in the event of a disaster.

450:21-1-9.2. Hygiene and sanitation

Regarding lavatory facilities, sewage, solid waste disposal, water and pest inspection, institutions and organizations offering ADSAC courses shall comply with all local and state rules, regulations, codes and building codes, providing proof to ODMHSAS of such compliance upon audit or request.

450:21-1-10. ~~Ten or 24 hour~~ ADSAC facilitator certification, qualification and disqualification

(a) Minimum qualifications for certification of ~~10 Hour~~ ADSAC facilitators are as follows:

(1) Possess a bachelor's degree in behavioral or healthcare sciences education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the ~~addiction~~ substance abuse treatment field. This work experience can be in the areas of clinical, prevention or direct care;

(2) A valid driver's license or state identification card;~~.~~

(3) Completion of the following in the order listed below:

(A) Observe one (1) complete twenty-four (24) hour ADSAC course conducted by a certified facilitator. This observation must be completed and verified to ODMHSAS prior to attending facilitator training;

(B) Attend the ~~instructor~~ new facilitator training and pass the ODMHSAS Certification Examination for ~~10 Hour~~ ADSAC Facilitator; and

(i) a minimal score to pass the exam shall be eighty (80) percent;

(ii) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;

(iii) the exam shall require the participant to correctly identify the major components of the interactive journaling process; and

(iv) the exam shall require the participant to correctly identify rules from this chapter~~;~~.

(C) Conduct ~~a~~ one complete twenty-four (24) hour ADSAC under the supervision of a certified ADSAC facilitator or an ODMHSAS representative.

(4) The facilitator candidate shall be allowed one (1) year to complete all training requirements. Failure to meet all requirements within one (1) year will result in denial of certification. To be reconsidered, the candidate will be required to re-apply to ODMHSAS.

(5) Renewal of certification as ~~a~~ an ~~10 Hour~~ ADSAC ~~Facilitator~~ facilitator shall be dependent upon acceptance of a completed renewal application submitted to ODMHSAS, remission of a ~~twenty-five~~ fifty dollar ($~~25.00~~ 50.00) application fee for renewal of certification, and the accomplishment of minimum standards. These standards are:

(A) Each facilitator shall conduct at least two (2) complete ten (10) or twenty-four (24) hour courses during each twelve (12) month period beginning with the date of initial certification~~.~~:

(i) To be eligible for recertification as an ADSAC facilitator capable of conducting both ten (10) and twenty-four (24) hour ADSAC courses, verification of having conducted at least two (2) twenty-four hour (24) ADSAC courses in the last three years prior to the request for recertification; and

(ii) Submission of proof of having conducted less than two (2) twenty-four (24) hour ADSAC courses in the three (3) years prior to the request

for recertification, shall result in the facilitator being required to attend a one (1) day training event addressing skills consistent with twenty-four (24) hour course facilitation.

(B) Documentation of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with ~~six~~ four (~~6~~4) hours coming from area~~s~~ (i), four (4) hours coming from area (ii) ~~and/or (ii)~~ and ~~six~~ four (~~6~~4) hours coming from area (iii):

(i) adult education,

(ii) facilitation skills, ~~and~~

(iii) ~~alcohol and other drug~~ general substance abuse training~~.~~, and

(iv) Hours for any mandatory trainings required by ODMHSAS may come from area (iii) above.

(6) All renewals of certification are due on the third anniversary of certification. After July 1, 2008 all certification renewals may come due on January 1 of the renewal year. If a universal certification date is adopted, then, requirements for certification renewals will be accepted on a prorated basis during the transition period.

~~(b) An applicant for Certified Facilitator for the twenty-four (24) hour ADSAC shall meet the following qualifications:~~

~~(1) Be certified as a 10 Hour ADSAC Instructor (in good standing) for at least one (1) year;~~

~~(2) Observe at least six (6) hours of a 24 Hour ADSAC Course;~~

~~(3) Present at least six (6) hours of a 24 Hour ADSAC under the observation of a certified 24 Hour ADSAC Facilitator, and receive written recommendation for certification from said observer; and~~

~~(4) Attend six hours of ODMHSAS 24 Hour ADSAC Facilitator training and pass the ODMHSAS Certification Examination for twenty four (24) Hour ADSAC Facilitator;~~

~~(A) a minimal score to pass the exam shall be eighty (80) percent;~~

~~(B) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;~~

~~(C) the exam shall require the participant to correctly identify the major concepts of adult learning and basic facilitation skills; and~~

~~(D) the exam shall require the participant to correctly identify rules from this chapter;~~

~~(c) Renewal for certification as a 24 hour ADSAC Facilitator shall be dependent upon application for recertification, remission of a twenty five dollar ($25.00) application fee for renewal of certification, and the accomplishment of the following:~~

~~(1) Each facilitator shall conduct at least two (2) complete courses during each twelve (12) month period beginning with the initial certification.~~

~~(2) Documentation of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with six (6) hours coming from areas (A) or (B) and six (6) hours coming from area (C):~~

~~(A) adult education,~~

~~(B) facilitation skills, and~~

~~(C) alcohol/drug training.~~

(~~d~~b) An applicant may not be certified nor certification as an ADSAC facilitator renewed under any of the following conditions:

(1) A non-pardoned felony conviction within the last five (5) years;

(2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,

(3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

450:21-1-10.1. Inactive status/closure

(a) An active ADSAC course, institution or organization certification may be placed on inactive status by written request:

(1) An inactive certification forfeits all rights and privileges granted by the certification;

(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;

(3) When certification is placed on inactive status, it remains inactive for at least one (1) year from the date of inactivation;

(4) Active status may be re-established upon payment of a prorated renewal fee and submission of prorated continuing education hours required during the renewal year if there are no other impediments to certification;

(5) When an ADSAC institution or organization satellite must cease operation for less than twelve (12) months, all participant records shall be transported to the main site unless they can be secured on site under rules defined in 450:21-1-7.5;

(6) During such a temporary closure due to being placed on inactive status of the main ADSAC site or location, effort should be made to ensure participant records remain accessible as defined in 450:21-1-7.5;

(7) Participants attending an ADSAC course shall be given written notification of a temporary closure with contact information in the event all course sessions have not been completed;

(8) ODMHSAS shall be notified in writing of the temporary closure of any ADSAC site (DUI school). The written notification shall contain:

(A) The reason for closing;

(B) Contact information for participant course records; and

(C) A projected date for resumption of business.

(9) Upon receipt of written notification of closure, ODMHSAS shall remove the institution or organization(s) telephone number from the monthly State Certified DUI Schools referral list; and

(10) Upon written notification of intent to resume business, ODMHSAS shall add the institution or organization(s) telephone number to the monthly State Certified DUI Schools referral list.

(b) Institutions and organizations operating for the purpose of conducting ADSAC having to close permanently shall comply with the following:

(1) When a satellite closes permanently, all participant records shall be transported to the main location under rules defined in 450:21-1-7.5;

(2) When the main location of an institution or organization closes permanently, all participant records shall be secured as defined in 450:21-1-7.5;

(3) Participant records shall remain accessible as defined in 450:21-1-7.5;

(4) Participants shall be given written notification of the closure with contact information, including ODMHSAS, in the event all coursework is not completed;

(5) ODMHSAS shall be notified in writing of any closure of an institution or organization operating for the purpose of conducting ADSAC courses. The written notification shall contain:

(A) the reason for closing; and

(B) contact information for participant records.

(6) Upon receipt of written notification of closure, ODMHSAS shall remove the site(s) telephone number from the monthly State Certified DUI Schools referral list.

(c) An active ADSAC facilitator certification may be placed on inactive status by written request:

(1) An inactive certification forfeits all rights and privileges granted by the certification;

(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;

(3) When certification is placed on inactive status, the certification remains inactive for at least twelve (12) months from the date of inactivation;

(4) Inactive status shall not be allowed to continue for more than thirty-six (36) months; and

(5) Active status may be re-established upon payment of a prorated renewal fee and submission of prorated continuing education hours required during the renewal year if there are no impediments to certification.

450:21-1-11. Facilitator training

(a) Minimum qualifications for institutions or organizations ~~or institutions~~ conducting ADSAC ~~Facilitator~~ facilitator training, and the minimum qualifications for individuals conducting ~~instructor~~ facilitator training are as follows:

(1) All ADSAC ~~Facilitator~~ facilitator training shall only be conducted by non-profit organizations, educational institutions or governmental agencies.

(2) The ~~Curricula~~ curricula for the training shall be as follows:

(A) A minimum of twenty-four (24) hours of instruction~~.~~, and

(B) These hours shall be offered in no less than four (4) days and for no more than eight (8) hours per day.

(3) ~~Teachers~~ Instructors for facilitator training must have:

(A) A minimum of two (2) years experience as an ADSAC facilitator; or

(B) A ~~masters~~ master's degree from an accredited college or university; or

(C) Four (4) years related experience in the subject matter to be taught.

(4) Each facility where facilitator training courses are conducted shall:

(A) Meet all applicable local and state fire, health and safety standards; and

(B) Provide a safe and comfortable environment for facilitators and facilitator candidates conducive to the learning experience.

(5) Instructional equipment must be in good working order.

(6) ~~Facilitator Training~~ Institutions or organizations ~~or institutions shall notify potential students, in writing, that facilitator training received prior to written application to ODMHSAS shall not be accepted for Facilitator Certification requirements~~ providing facilitator training prior to receiving written approval from ODMHSAS may not be accepted for facilitator certification requirements.

(b ~~7~~) Each institution or organization ~~or institution~~ shall advise ODMHSAS in writing the names of candidates who did not complete training and the names of persons have successfully completed the facilitator training.

(c) All facilitator trainings shall be consistent with the requirements of this Chapter and the training curricula shall consist of recognized evidence based, best practices.

450:21-1-13. Consumers with disabilities

Each institution and organization providing ADSAC shall have a written policy addressing its awareness of, and intent to comply with, the (U.S.) Americans with Disabilities Act of 1990.

450:21-1-14. State and federal statutes and regulations

All institutions, organizations and facilitators shall comply with all applicable federal and state statutes and regulations.

SUBCHAPTER 3. CERTIFICATION DENIAL OR SANCTIONS AND PARTICIPANT GRIEVANCE

450:21-3-1. Administrative denial, suspension, or revocation of certification

(a) ODMHSAS may deny the certification of any institution, organization, ~~institution,~~ or facilitator ~~(10 Hour or 24 Hour)~~ to

conduct ADSAC who fails to qualify for, or comply with, the provisions of this ~~chapter~~ Chapter.

(b) ODMHSAS may reprimand, suspend, revoke or deny renewal of the certification of any institution, organization~~, institution,~~ or facilitator ~~(10 Hour or 24 Hour)~~ who fails to qualify for or comply with the provisions of this ~~chapter~~ Chapter.

(c) In the event ODMHSAS determines action should be taken against any ~~person~~ institution, organization or facilitator certified under this Chapter, the proceeding shall be initiated pursuant to the rules of ODMHSAS as set forth in Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and the Administrative Procedures Act.

(d) Institutions, ~~Organizations~~ organizations ~~or institutions~~ or facilitators~~, 10 Hour or 24 Hour,~~ who have had certification ~~renewal~~ denied or revoked, shall be ineligible for reapplication for a period of five (5) years.

(e) Institutions, ~~Organizations~~ organizations~~, institutions~~ or individuals whose certification has expired may apply for initial certification.

450:21-3-1.1. Fitness of applicants

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as a certified ADSAC facilitator and to set forth the criteria by which the Commissioner or designee may determine the fitness of applicants.

(b) The substantiation of the items below related to the applicant may result in the initiation of suspension or revocation of certification, or denial of, or delay of certification of the applicant. These items include, but are not limited to:

(1) Evidence of the ~~Lack~~ lack of necessary skill and abilities to provide adequate services;

(2) Misrepresentation on the application or any other materials submitted to the ODMHSAS;

(3) A violation of the rules of professional conduct set forth in this Chapter.

(4) Evaluations of supervisors, employers or instructors;

(5) ~~Evaluation of competency-based project supervisor~~ Allegations from other governmental entities;

(6) Findings resulting from investigations prompted by ~~Allegations~~ allegations of ~~consumers~~ participants, peers or the public;

(7) Transcripts or other findings from official court, hearing or investigative procedures;

(8) Any ~~felony~~ convictions for alcohol and other drug related offenses, violent offenses, or moral turpitude within the last ten (10) years ~~for an offense of violence~~;

(9) Any unpardoned felony convictions within five (5) years; or

~~(10) Any felony conviction for a sexual offense; or~~

~~(11) Any felony conviction for moral turpitude.~~

(10) The revocation, suspension, reprimand or any other administrative action ordered by another certifying or licensing body may result in the denial, revocation or suspension of facilitator certification by ODMHSAS.

(c) ODMHSAS may require explanation of negative references prior to issuance of certification.

(d) Those certified to conduct ADSAC courses by ODMHSAS shall not perform such courses when the ability to perform such services are impaired for any reason. Facilitators shall seek assistance for any problems that impair the ability to perform required services, and, if necessary, limit, suspend or terminate the delivery of ADSAC courses.

(e) A field examination submitted through questionnaires answered by persons competent to evaluate a facilitator's professional competence which may include the submission of such documentary evidence relating to a facilitator's experience and competence as required by ODMHSAS may be required.

(f) If in the course of an investigation, ODMHSAS determines that a facilitator has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner, or designee may order a summary suspension of the facilitator's certification to conduct ADSAC courses.

(g) ODMHSAS may require remedial interventions to address any problems or deficiencies identified from this section as a requirement for retaining active certification.

450:21-3-2. Grounds for reprimand, suspension or revocation of certification, organizations and institutions and facilitators

(a) Administrative sanctions may be taken against an institution or organization ~~or institution~~ certified to conduct ADSAC for any of the following reasons:

(1) ~~Erroneous or false information supplied in any part of the application for certification~~ Refusal to allow a facilitator candidate to observe an ADSAC course;

(2) Allowing more than twenty-four (24) ~~students~~ participants in any ~~one 10 Hour or 24 Hour~~ course;

(3) Tardiness or failure to make reports~~,~~ or to transmit funds required by this ~~chapter~~ Chapter;

(4) Erroneous or falsified information relating to any documents submitted to ODMHSAS including the application for certification;

(5) Conflict of interest by the institution or organization ~~or institution~~ or its personnel;

(6) Allowing a non-certified, non-approved, or intern facilitator to conduct an ADSAC without a certified ADSAC facilitator (ten (10) ~~Hour~~ hour or twenty-four (24) ~~Hour~~ hour, as required by the ADSAC course being given) present;

(7) Failure to maintain all records required by ODMHSAS;

(8) Using facilities not approved by ODMHSAS;

(9) Knowingly permitting any ~~10 Hour or 24 Hour ADSAC~~ facilitator to violate any rule of this Chapter, or any other relevant Chapter of these Administrative Rules;

(10) Use of unapproved curriculum or instructional material not pre-approved by ODMHSAS;

(11) Use of inappropriate materials/equipment or materials/equipment in poor repair;

(12) Failure to provide at least two (2) complete ADSAC ~~10 Hour~~ courses within twelve (12) months;

(13) Failure to provide appropriately certified facilitators for courses;
(14) Beginning a course prior to the scheduled time;
(15) Failure to wait at least a full fifteen (15) minutes when zero (0) students participants are present at the scheduled beginning time for a course;
(16) Failure to provide the complete course for any students participants arriving within fifteen (15) minutes of the scheduled start time;
(17) Failure to provide ODMHSAS with a class course schedule at least thirty (30) days in advance of presentation;
(18) Failure to provide ODMHSAS class course schedule changes at least seven (7) days in advance of presentation except when facilitator changes are due to illness or other emergency;
(19) Failure to complete ODMHSAS requirements for adding class course sites;
(20) Failure to notify ODMHSAS of any facilitator violations of this chapter Chapter, or of facilitator terminations due to violations of this chapter Chapter;
(21) Establishing the legal business residence of the institution or organization outside the State of Oklahoma;
(22) Issuance of completion certificates to students participants who fail to complete the full ten (10) hours of instruction for first offenders or the full twenty-four (24) hours of instruction for second and subsequent offenders or who fail to meet any other course requirement;
(23) Violation of, or failure to meet, any other applicable standard contained in this chapter;
(24) Knowingly allowing an ADSAC Facilitator facilitator to collect fees for or, issue receipts, for or issuing issue completion certificates, for or conducting an assessment during a course, or solicit students participants for assessments, at a later date, during the course of an ADSAC.; or
(25) Refusal to allow a facilitator candidate to observe an ADSAC.
(26) Any other just and verifiable cause including, but not limited to, unethical or illegal activities.

(b) Administrative sanctions may be taken against a certified facilitator certified to conduct 10 Hour or 24 Hour ADSAC for any of the following reasons:
(1) Erroneous or false information contained in the individual's application for certification;
(2) A conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges;
(3) Conviction of any alcohol or other drug related misdemeanor or any felony conviction;
(4) Any Unlawful unlawful conduct on duty or in the presence of students participants;
(5) Any activity which is a conflict of interest;
(6) Use or abuse of intoxicating beverages or other drugs while teaching facilitating an ADSAC course;
(7) Permitting a student participant to attend a course while using or under the influence of any mood-altering substances, including alcohol;
(8) Dismissal by a certified institution or organization or institution for violation of state statutes, or of the standards and criteria in this chapter Chapter;
(9) Use of curriculum or instructional material not approved by ODMHSAS;
(10) Willful failure, or refusal, to cooperate with an investigation by ODMHSAS, or employing ADSAC agency, into a potential or alleged violation of applicable rules in this chapter Chapter;
(11) Refusal to allow a facilitator candidate to observe an ADSAC course,;
(12) Issuance of completion certificate(s) to student participant(s) who have not completed a full ten (10) hours of instruction, or who fail to complete the full twenty-four (24) hours of instruction, or failure to meet any other ADSAC requirement;
(13) Violation of any applicable rule in this chapter Chapter, or any other applicable chapter;
(14) Falsification of any report, or document submitted, or prepared for submission, to ODMHSAS.;
(15) Collecting fees for; or issuing receipts for; or issuing completion certificates for; or conducting an assessment during; or soliciting students participants for assessments at a later date during the course process of an ADSAC course;.
(16) Any verbal or physical sexual misconduct language or actions with or toward a student participant, presenting for enrollment or enrolled in an ADSAC course;.
(17) Failure to provide at least two (2) complete ADSAC 10 Hour courses appropriate to the level of certification within twelve (12) months.; or
(18) Any other just and verifiable cause including, but not limited to, unethical or illegal activities.

(c) ADSAC facilitators shall report all violations and suspected violations of this Chapter by any individual to ODMHSAS staff assigned to the ADSAC division.

450:21-3-3. Sanctions and hearings

All sanctions regarding ADSAC institutions, organizations, institutions and 10 Hour or 24 Hour facilitators and all administrative hearings and appeals related to such sanctions shall be made and carried out in accordance with Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and the Administrative Procedures Act.

450:21-3-4. Participant rights and grievance policy

(a) All certified ADSAC institutions and organizations shall comply with applicable rules in Title 450, Chapter 15. Consumer Rights.
(b) Those programs which are providing services within a correctional facility should detail the following due to circumstance:
(1) The provider shall document provisions of 450:15-3-2 (a), (b) and (d);

(2) The provider shall provide written grievance policy and procedure including time frames for the grievance process;
(3) The provider shall describe the procedure used when the grievance is against a staff. This policy may refer to Department of Corrections mandated policy and procedure; and
(4) The provider shall describe the facility's responsibility for evaluation, review, and resolution should the allegation be substantiated. All certified ADSAC institutions, organizations and individuals shall comply with applicable rules in Title 450, Chapter 15, Consumer Rights. Those programs which are providing services within a correctional facility should detail the following due to circumstance:
(A) provide written grievance policy and procedure including time frames for the grievance process;
(B) describe the procedure used when the grievance is against a staff. This policy may refer to Department of Corrections mandated policy and procedure; and
(C) describe the facility's responsibility for evaluation, review, and resolution should the allegation be substantiated.

450:21-3-5. ODMHSAS Advocate General

The ODMHSAS Advocate General, in any investigation regarding consumer rights, shall have access to participant, institution or organization records and staff as set forth in Title 450, Chapter 15.

SUBCHAPTER 5. COURSE ATTENDANCE AND COMPLETION

450:21-5-1. ~~Student~~ Participant attendance and completion of ADSAC

(a) The ADSAC institution or organization ~~or institution~~ shall require ~~students~~ participants to complete all portions of an approved curriculum schedule.
(b) The ADSAC course shall allow a ~~student~~ participant unable to attend one (1) or more portions to make up portion or portions missed at another regularly scheduled course at the certified institution or organization ~~or institution~~ at which the course was originally scheduled.
(c) All ten (10) ~~Hour~~ hour course work shall be completed, including payment in full within sixty (60) days of the participant attending the first ADSAC course session. Failure to complete all course work within ~~the~~ sixty (60) days shall result in the loss of all course credit and any funds remitted. Re-enrollment in either the same or a different ADSAC course following failure to complete an ADSAC within the stated time limit shall require full course attendance prior to the issuance of a Certificate of Completion. All ~~students~~ participants enrolling in a ten (10) hour ADSAC course shall be notified of this fact in writing.
(d) All twenty-four (24) ~~Hour~~ hour course work shall be completed, including payment in full ~~and paid~~ within one hundred eighty (180) days of the first course session. Failure to complete all course work, including payment in full within the one hundred eighty (180) days shall result in the loss of all course credit and any funds remitted. Re-enrollment in either the same, or a different ADSAC following failure to complete an~~d~~ ADSAC course within the state time limit shall require full course attendance prior to the issuance of a Certificate of Completion. All ~~students~~ participants enrolling in a twenty-four (24) hour ADSAC course shall be notified of this fact in writing.
(e) All ~~ADSACs~~ ADSAC institutions, organizations and facilitators shall make required course work available to enrolled ~~students~~ participants within the times frames set forth in this standard. ~~ADSACs~~ ADSAC institutions, organizations and facilitators failing to make required course work available within the stipulated time frames, for any reason, shall refund to ~~student~~ participant any fees paid for said course.
(f) Each institution or organization ~~or institution~~ shall issue a receipt from a pre-numbered duplicate receipt set to each ~~student~~ participant upon receipt of all or part of the required enrollment fee. Each organization or institution shall have receipts to be used specifically for ADSAC.
(g) Each institution or organization ~~or institution~~ shall maintain the pre-numbered receipts and a record on both course and ~~student~~ participant for five (5) years after completion of said course. Such records shall also consist of:
(1) Course information:
(A) Completion roster; and
(B) Attendance records; and
(2) ~~Student~~ Participant information:
(A) Enrollment form;
(B) Written referral documenting an assessment, when appropriate pursuant to OAC 450:22-1-11;
(C) Pre- and Post-Test;
(D) Evaluation Form completed by the participant ~~student~~; and
(E) Copy of the Completion Certificate.
(h) For participants who have a primary language other than English:
(1) The participant shall be referred to an ADSAC course offered in that language if one is available in the area. If no such course is available then an interpreter shall be present for all sessions;
(2) If an interpreter is required, the interpreter shall not be younger than eighteen (18) years of age and should not be related to the participant; and
(3) An interpreter shall be identified to all ADSAC course participants as an interpreter.

450:21-5-2. ADSAC reporting of completions

(a) Each certified ADSAC institution or organization ~~or institution~~ shall report successful course completions to ODMHSAS within thirty (30) days from the date the course is completed, in a format prescribed by ODMHSAS. Certified institutions or organizations ~~or institutions~~ shall not report a completion until all course requirements have been met, to

include the ~~student's~~ participant's payment of the full required ADSAC fee.

(b) Each ~~student~~ participant who successfully completes the course, 10 Hour or 24 Hour, shall be issued an ODMHSAS ~~certificate~~ Certificate of ~~completion~~ Completion by the ADSAC that shall include the appropriate Action Code as listed below:

(1) 224-10 for persons having completed a 10 Hour course~~.~~;

(2) 224-24 for persons having completed a 24 Hour course.

(c) The name, driver's license number, date of birth and address of those completing a ten (10) or twenty-four (24) hour ADSAC classes for the purposes of license reinstatement shall be submitted to ODMHSAS.

[OAR Docket #08-735; filed 4-25-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 22. CERTIFICATION OF ALCOHOL AND DRUG ASSESSMENT AND EVALUATIONS RELATED TO DRIVER'S LICENSE REVOCATION

[OAR Docket #08-736]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
450:22-1-1. Purpose and applicability [AMENDED]
450:22-1-1.1. Certification duration [AMENDED]
450:22-1-3. Definitions [AMENDED]
450:22-1-5. General statement [AMENDED]
450:22-1-6. ADSAC~~Driver offender~~ assessors and assessment agencies [AMENDED]
450:22-1-6.1. Institutional and organizational description, assessment agencies [NEW]
450:22-1-7. ODMHSAS responsibilities [AMENDED]
450:22-1-9. Certified approved sites [AMENDED]
450:22-1-10. ~~Offender~~Participant evaluation [AMENDED]
450:22-1-11. Standardized evaluation instruments [AMENDED]
450:22-1-11.1. Critical incidents, assessors and assessment agencies [NEW]
450:22-1-11.2. Participant record system [NEW]
450:22-1-11.3. Participant records, basic requirement assessors, assessment agencies [NEW]
450:22-1-11.4. Participant record storage, retention and disposition [NEW]
450:22-1-11.5. Confidentiality of drug or alcohol abuse treatment information [NEW]
450:22-1-11.6. Note [NEW]
450:22-1-11.7. Biopsychsocial assessment [NEW]
450:22-1-12. Assessor applicants~~Assessment personnel~~ [AMENDED]
450:22-1-15. Assessor responsibilities [AMENDED]
450:22-1-15.1. Fitness of applicants [AMENDED]
450:22-1-16. Denial or revocation of assessment certification [AMENDED]
450:22-1-17. Physical facility environment and safety, assessors and assessment agencies [NEW]
450:22-1-18. Hygiene and sanitation, assessors and assessment agencies [NEW]
450:22-1-19. State and federal statutes and regulations [NEW]
450:22-1-20. Inactive status and closure [NEW]
450:22-1-21. Participant rights and grievance policy [NEW]
450:22-1-22. ODMHSAS advocate general [NEW]

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Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-451, 3-460 through 3-461; 47 O.S. §§ 6-212.2, 11-902 and 761(D); 22 O.S. §§ 991a and 991c.

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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 22 are part of the Department's review of Title 450. The proposed rules clarify existing rules and further standardize the ADSAC assessment process. Requirements for critical incidents, participant record system, confidentiality, charting, physical plant, record requirements, and participant rights are expanded, strengthened and clarified.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

450:22-1-1. Purpose and applicability

This chapter implements 43 A O.S. § 3-460 through 3-461 and~~.~~ sets forth the standards and criteria for persons applying for certification and certified by ODMHSAS to conduct alcohol and drug assessment and evaluation related to driver's license revocation.

450:22-1-1.1. Certification duration

ODMHSAS ~~may~~ shall certify assessors for ~~one~~ three (~~1~~3) years.

450:22-1-3. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a participant by staff responsible for the participant's health, safety, or welfare including, but not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the participant; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a participant.

"ADSAC" means Alcohol and Drug Substance Abuse Course.

"Addiction Severity Index" or **"ASI"** is a multidimensional clinical and research instrument that rates the severity of a substance use or abuse problems for diagnostic evaluation and assesses change(s) in treatment status and outcome.

"American Society of Addiction Medicine Patient Placement Criteria" or **"ASAM PPC"** means the most recent clinical guide published by the American Society of Addiction Medicine to be used in matching patients to appropriate levels of care.

"Assessor" means an individual certified to conduct alcohol and other drug assessments related to driver's license revocations.

"Assessment" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

"Assessment agency" means an agency certified by ODMHSAS to provide substance abuse treatment services authorized through Title 43A, 3-415, A. 1, with an additional certification to provide ADSAC assessments using certified assessors.

"Audit" means a systematic inspection of accounting records involving analyses, tests, and confirmations or the hearing or investigation by an auditor.

"Certification" means ODMHSAS approval for an individual or agency to conduct alcohol and other drug assessments related to driver's license revocations.

"Certified Alcohol and Drug Counselor" or **"CADC"** means any person who is certified through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Conflict of Interest" means a conflict between the private interests and public obligations of a certified institution, organization or assessor.

"Consumer" means an individual, adult or child, who has applied for, is receiving, or has received services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved ADSAC assessor or assessment agency, or the routine work with a participant during the course of an ADSAC assessment. Critical incidents specifically include, but are not limited to, the following: adverse drug events; self destructive behavior; deaths and injuries to the participant, participant's family, staff and visitors; medication errors; neglect or abuse of a participant; fire; unauthorized disclosure of information; damage to or theft of property belonging to a participant or an approved assessment agency; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Defendant Questionnaire" or **"DQ"** is an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent using the American Society of Addiction Medicine, patient placement criteria.

"DOC" means the Oklahoma Department of Corrections.

"DPS" means the Oklahoma Department of Public Safety.

"Driver Risk Inventory-II" or **"DRI-II"** is an assessment or screening instrument, which contains six scales measuring truthfulness, driver risk, stress coping ability, and severity of alcohol or other drug abuse and classifies a~~n in-dividual~~ participant as being either a substance abuser or substance dependent in compliance with current Diagnostic and Statistical Manual criteria.

"Evidenced based practice" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more participants that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the participant's treatment goals and objectives, and does not include social or daily living skill development as described in educational group counseling.

"Independent practitioner" means any professional, appropriately licensed or certified as an alcohol and drug counselor through the State of Oklahoma, pursuant to state law, and certified by ODMHSAS to conduct ADSAC assessments who does so through the format of a private practice.

"Individual counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with one participant to promote positive emotional or behavioral change.

"Intensive outpatient services" or "IOP" means an organized, non-residential outpatient treatment service with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the individual participates in daytime

treatment services but goes home at night. Intensive Outpatient shall correspond to ASAM Patient Placement Criteria Treatment Level: Level II.1, Intensive outpatient.

"Juvenile Automated Substance Abuse Evaluation" or "JASAE" is a survey based on adolescent norms to assess alcohol and other drug problem severity using current DSM and ASAM guidelines. The JASAE includes attitude, age and life situation in the evaluation process.

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Multidimensional Addictions and Personality Profile" or "MAPP" is an instrument designed to identify substance use disorders and other personal adjustment problems related to recidivism risk. The MAPP will assist with the determination of appropriate types and levels of care.

"Mutual support group" means a non-professional, widely available, peer directed, system of support meetings, available at little or no charge to the participant, in a group format, dedicated to the support and teaching of the skills related to an alcohol and other drug free lifestyle.

"Needs assessment" or **"NEEDS"** is a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs.

"Note" mean a complete chronological written description of any intervention(s) provided to a participant requiring documentation. Notes may include the participant's response and are written by the ADSAC staff delivering the service.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

~~**"Offender"** means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug- related revocation or suspension of driving privileges.~~

"OSBI" means Oklahoma State Bureau of Investigation.

Participant" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol- or drug- related revocation or suspension of driving privileges in Oklahoma and is who involved in the ADSAC process.

"Professional setting" means a building or site ~~facility~~ that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and 45 C.F.R. Parts 160 & 164 (HIPAA), and without distraction or interruption from adjacent business or activities.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of individuals served by the facility and certified or recognized by ODMHSAS.

"Psych~~o~~social History" means an individual and family history of alcohol and drug abuse, an individual and family psychiatric history and a medical history of the individual and ~~family psychiatric history, and a medical history of the individual,~~ an educational history, personal and employment history identifying the unique aspects of the individual.

"Residential treatment" means treatment for a participant in a live-in setting which provides a twenty-four (24) hour therapeutic regimen. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III. 5, Clinically managed High-Intensity Residential Services.

~~**"SALCE" or "Substance Abuse Life Circumstances Evaluation"** is a ninety eight (98) item survey addressing alcohol and/or drug use based on DSM-IV and ASAM guidelines. The SALCE also assesses attitude and life stressors. The SALCE is normed to the adult population.~~

~~**"SASSI" or "Substance Abuse Subtle Screening Inventory"** is a brief, easily administered psychological screening tool that assists in the identification of individuals with high probabilities of substance use disorder.~~

~~**"Second Opinion"** is a brief, easily administered screening tool designed to assist the ADSAC assessor with placement decisions.~~

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a participant, or risk thereof. Serious injury specifically includes loss of limb or limb function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a participant. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

~~**"SUDDS" or "Substance Use Disorders Diagnostic Schedule"** is a structured interview consisting of ninety nine (99) items with nine (9) subscales designed to identify relative severity of substance abuse problem in an individual. This instrument exists in both paper and pencil and computer versions.~~

"TAAD" or "Triage Assessment for Addictive Disorders" is a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

"Unique identifier" means a code developed by the institution or organization or individual providing ADSAC services that allow each participant to be identified. The same unique identifier should not be used for more than one participant.

"Victims Impact Panel" or "VIP" means the two (2) hour presentation, identified statutorily, intended to enhance awareness of the participant regarding possible impact on others by the individual driving while impaired.

450:22-1-5. General statement

The following standards and criteria govern:

(1) Certification of individuals and agencies approved to provide assessment services;

(2) Assessment standards;

(3) Assessment responsibilities and activities of certified assessors and assessment agencies; and

(4) Requirements for reporting completed assessments to ODMHSAS.

450:22-1-6. ADSAC ~~Driver offender~~ assessors and assessment agencies

(a) Alcohol and other drug assessments shall be provided by individuals or agencies certified by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation. ODMHSAS certified community mental health centers, ODMHSAS certified alcohol and drug treatment programs, and probation offices shall be considered for such certification.

(b) Certified assessors and assessment agencies shall:

(1) Recommend and monitor certified assessors for compliance to applicable rules within Title 450; and

(2) Provide assessment services only at sites approved by ODMHSAS.

(c) Certified assessors and assessment agencies are responsible for:

(1) ~~Timely reporting~~ Reporting assessment data to ODMHSAS in the time frames set forth in this Chapter;

(2) Make recommendations based upon ODMHSAS-required assessment instruments;

(3) Ensure exception findings meet current American Society of Addiction Medicine's (ASAM) over-ride criteria; and

(4) Providing liaison with ODMHSAS, the courts and other agencies.

(d) Each ~~program~~ agency certified to conduct assessments for the evaluation related to driver's license revocation shall be responsible for the conduct of assessors they employ, and shall have written policies outlining the ~~program's~~ agency's oversight procedures to include, but not limited to, financial arrangements with the participant.

(e) Each assessor and assessment agency shall annually submit to ODMHSAS a written and signed statement verifying that the previously submitted information on the number of ADSAC assessments conducted, participants assessed and fees paid for assessments conducted for the previous twelve (12) months is accurate. This statement shall be submitted within thirty (30) days of the end of the calendar year.

450:22-1-6.1. Institutional and organizational description, assessment agencies

(a) The certified assessment agency shall have a written organizational description. The written organizational description at a minimum shall include:

(1) defining the overall target population for whom services will be provided;

(2) stating in writing the overall mission statement; and

(3) stating in writing the agency goals and objectives.

(b) There shall be documentation that these statements have been approved by the certified agencies governing authority.

(c) The certified assessment agency shall have documentation demonstrating these documents are available and communicated to ADSAC staff.

(d) The certified assessment agency shall have documentation demonstrating these documents are available to the general public upon request.

(e) Each certified assessment agency shall have in writing, the following:

(1) Identification of the ADSAC assessors to provide these services; and

(2) Admission and exclusionary criteria to identify the type of participants for whom the ADSAC services are primarily intended.

(f) The certified agency shall have a written statement of the procedures and plans for attaining goals and objectives. These procedures and plans should define specific tasks, set target dates and designate staff responsible for carrying out the procedures and plans.

450:22-1-7. ODMHSAS responsibilities

ODMHSAS shall have the authority and duty to:

(1) ~~Annually review this chapter and amend as needed~~ Monitor assessors and assessment agencies for compliance with applicable State and Federal laws and the rules of this Chapter;

(2) Establish, monitor and enforce reporting requirements and report forms;

~~(3) Monitor assessors for conflict of interest;~~

~~(4) Provide or approve assessor training, continuing education and certification;~~

~~(5) Notify all appropriate assessor applicants of ODMHSAS approved training;~~

(~~6~~3) Certify assessors and assessment agencies;

(~~7~~4) Approve sites for assessment services; ~~and~~

(~~8~~5) Upon receipt of a valid written consent for release of information, certify to DPS that a person has participated in and successfully completed an ~~alcohol and substance abuse~~ ADSAC evaluation and assessment program~~.~~;

(6) Ensure compliance with the rules in this Chapter as determined by a review of ADSAC-related records, documents and reports, staff and participant interviews and any other relevant documentation;

(7) Conduct compliance review of all assessors and assessment agencies; and

(8) Establish training requirements for all assessors.

450:22-1-9. Certified approved sites

(a) Alcohol and other drug assessment and evaluation shall be provided at sites approved by ODMHSAS. Sites shall meet the following standards for consideration of approval:

(1) Sites shall be in professional settings appropriate for the assessment and for safeguarding the confidentiality of the ~~consumer~~ participant;

(2) Hours and days of operation shall be during regularly scheduled periods which make assessment services accessible to ~~consumers~~ participants, including those

employed between 8:00 a.m. and 5:00 p.m., and to the general public;

(3) The site's days and hours of operation shall be professionally and conspicuously displayed on the outside of the building along with a business phone number used for scheduling of appointments;

(4) For sites in multi-office buildings, the days and hours of operation shall be posted in the building directory or on the door of the site office;

(5) Sites for the primary purpose of eating or sleeping, i.e., hotel/motel sleeping rooms, restaurant dining areas, etc., will not be considered for approval; and

(6) Sites shall be handicapped-accessible and meet all other requirements of the Americans with Disabilities Act of 1990.

(b) No new ADSAC assessment site shall be located within one thousand (1000) feet of an establishment with the primary purpose of serving alcoholic beverages.

450:22-1-10. ~~Offender~~ Participant evaluation

(a) The assessment and evaluation of the ~~offender~~ participant shall be as comprehensive as possible and shall include, but not be limited to:

(1) A formal face-to-face clinical interview consisting of, at a minimum:

(A) Socio-demographic and background information;

(B) Personal history; and

(C) A completed and scored current version of the Addiction Severity Index (ASI).

(2) The assessor shall obtain and document the ~~offender's~~ participants driving history information from public record(s), when ~~possible~~ made available. This information shall, at a ~~minimally~~ minimum, include the following:

(A) Arrest date;

(B) All charges relating to alcohol and drug offenses; and

(C) Driving record~~;~~.

(3) Alcohol and other drug information as supplied by the ~~offender~~ participant or referring party:

(A) Blood alcohol concentration at time of arrest;

(B) Prior alcohol/drug treatment;

(C) Polydrug use;

(D) Prior alcohol-related arrest(s); and

(E) Prior drug related arrest(s)~~; and~~.

(4) Pursuant to 450:22-1-11, the use of completed and scored standardized evaluation instruments~~.~~; and

(5) All information shall be in a format prescribed by the Commissioner of ODMHSAS or designee.

(b) Recommendations, known as Intervention Categories, shall be based on scores derived from and verified by, a battery of required and appropriate assessment/evaluation instruments, and adhered to by all assessors unless otherwise indicated by ODMHSAS:

(1) All those identified as being at low risk to recidivate as indicated by scores derived from the assessment process shall be referred to educational interventions only:

(A) Intervention Category One shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and recommendations shall consist of:

(i) ten (10) hour ADSAC course, and

(ii) Victims Impact Panel.

(iii) the ten (10) hour ADSAC course and Victims Impact Panel may be attended concurrently.

(B) Intervention Category Two shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and a previous alcohol or drug related offense resulting in license revocation pursuant to Title 47, § 6-212.2, A and recommendations shall consist of:

(i) twenty-four (24) hour ADSAC course, and

(ii) Victims Impact Panel.

(iii) the twenty-four (24) hour ADSAC course and the Victims Impact Panel may be attended concurrently.

(2) All those identified as being at moderate risk to recidivate shall be referred to a combination of educational and clinical interventions:

(A) Intervention Category Three, shall be identified by alcohol or drug scale scores from the DRI I or DQ of forty (40) to sixty nine (69) and recommendations shall consist of:

(i) twenty-four (24) hour ADSAC course, and

(ii) Victims Impact Panel, and

(iii) substance abuse related group involvement for six (6) weeks, meeting one (1) time per week.

(iv) The twenty-four (24) hour ADSAC should be attended prior to the initiation of the six (6) week substance abuse group;

(B) Those with scoring appropriate for an Intervention Category Four or Five and placed at this level due to clinical override shall be required to attend:

(i) twelve (12) weeks of substance abuse related group meeting a minimum of one (1) time per week and a maximum of two (2) times per week, and

(ii) twelve (12) weeks of mutual support group attendance, once per week:

(iii) VIP or mutual support participation may be attended any time during the process; and

(iv) It must be possible to complete the combination of interventions within ninety (90) days.

(3) All those identified as being at problem risk to recidivate shall be referred to clinical interventions only:

(A) Intervention Category Four shall be identified by alcohol or drug scale scores from the DRI II or DQ of seventy (70) to eighty nine (89) and recommendations shall consist of:

(i) intensive outpatient treatment, and

(ii) aftercare, and

(iii) twelve (12) mutual support meetings.

(iv) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.

(v) The combination of interventions recommended must be able to be completed within ninety (90) days.

(4) All those identified as being at severe risk to recidivate shall be referred to clinical interventions only:

(A) Intervention Category Five will be identified by alcohol or drug scale scores from the DRI II/DQ of ninety (90) to one hundred (100) and recommendations shall consist of:

(i) residential or inpatient treatment, and

(ii) aftercare, and

(iii) mutual support meetings.

(iv) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.

(v) The combination of interventions recommended must be able to be completed within ninety (90) days.

(5) If no groups are available or if the participant has a significant, appropriately diagnosed co-occuring disorder, then individual counseling can be substituted for group counseling. This must be addressed with an override and cleared through ODMHSAS.

(6) Interventions completed prior to the assessment may be accepted if:

(A) the intervention is completed after the offense resulting in license revocation, and

(B) the intervention meets or exceeds all the requirements listed in the recommendation, and

(C) the provider of the intervention is appropriately accredited.

(7) Assessments will remain valid for six (6) months from the date of completion:

(A) If after six (6) months, action toward completing assessment recommendations has not been initiated, then the assessment shall be considered invalid and a new assessment will be required, and

(B) The participant must be notified of this fact in writing upon assessment.

(8) Any recommendation can be lowered one intervention category through the appropriate use of one of the available overrides. ODMHSAS approval must be granted for overrides of more than one intervention category.

(9) Any significant discrepancy between the scores obtained on either the DRI II or the DQ and an appropriately chosen additional supportive instrument should be cause for reevaluation of participant's answers to the assessment instruments. If the discrepancy cannot be resolved, then an override should be considered.

(10) Any recommendation can be lowered with the appropriate use of one of the following overrides;

(A) "services not available",

(B) "geographic accessibility",

(C) "on waiting list for appropriate level of care",

(D) "language barriers", or

(E) "sustained abstinence".

(11) In each instance, the most appropriate and applicable override category shall be used.

(12) All overrides must be supported in writing and with information or evidence that clearly justifies the decision made. Verifying and/or validating documentation must be included in the record.

(13) "Services not available" should be used when one or more of the services required for a specific intervention category are temporarily not available within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:

(A) The recommendation should be reduced to the first intervention category with all services available, and

(B) Before using this override, the participant's address shall be verified;

(14) "Geographic accessibility" should be used when one or more of the services required for a specific intervention category does not exist within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:

(A) The recommendation should be reduced to the first intervention category with all services available, and

(B) Before using this override, the participant's address shall be verified;

(15) "On waiting list for appropriate level of care" should be used when one or more of the services required for a specific intervention category is not available within seventy (70) miles from the town the participant identifies as a home town as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:

(A) The service recommended must also not be available within thirty (30) days of the initial date of assessment,

(B) The recommendation should be reduced to the first intervention category with all services available, and

(C) Before using this override, the participant's address shall be verified.

(16) "Language barriers" should be used when one or more of the services required for a specific intervention category is not offered in the language of a non-English speaking participant within seventy (70) miles from the town the participant identifies as the home town:

(A) The recommendation should be altered to include the most appropriate combination of interventions available in the participant's language,

(B) Due to problems with service availability caused by language barriers, this is the only override in which interventions from multiple categories can be commingled, and

(C) Before using this override, the participant's address shall be verified.

(17) "Sustained abstinence" should be used when an override may be appropriate when recognizing that a significant period of verifiable abstinence or recovery exists between the time of the offense and the assessment:

(A) The abstinence/recovery must be at least six (6) months' duration,

(B) The abstinence/recovery must be continuous,

(C) The abstinence/recovery must be verifiable,

(D) Three notarized statements from individuals who know, but are not related to, the participant, and

(E) The notarized statement verifying abstinence/recovery will be in a form prescribed by the commissioner of ODMHSAS or designee.

450:22-1-11. Standardized evaluation instruments

(a) Standardized evaluation instruments shall be administered in the manner intended and ~~be~~ findings shall be a component of the overall assessment and recommendations.

(b) The approved standardized evaluation instruments shall ~~include~~ be limited to:

(1) For all alcohol and drug related driving offenses resulting in license revocation, a ~~A~~ completed and scored, current computerized version of the Driver Risk Inventory-II (DRI-II) in a face-to-face structured interview. ~~However, for~~ For all non-driving alcohol and drug related convictions resulting in license revocation, ~~an offender convicted of a felony or misdemeanor non-driving, alcohol or other drug offense(s),~~ a completed and scored, current computerized version of the Defendant Questionnaire (DQ) shall be used ~~instead of the DRI-II~~ and;

(2) A completed and scored current version of the Addiction Severity Index (ASI) serving as the biopsychsocial;

(3) A completed and scored ~~third~~ additional, supportive clinical instrument to support initial findings, shall be chosen by the assessor from the menu of approved supportive ~~third~~ instruments listed below~~;~~:

(A) Juvenile Automated Substance Abuse Evaluation (JASAE); or

(B) Multidimensional Addictions and Personality Profile (MAPP); or

(C) Needs Assessment (NEEDS); or

(D) ~~Second Opinion; or~~

~~(E) Substance Abuse Subtle Screening Inventory (SASSI); or~~

~~(F) Substance Abuse Life Circumstances Evaluation (SALCE); or~~

~~(G) Substance Use Disorders Diagnostic Schedule (SUDDS); or~~

~~(H)~~ Triage Assessment for Addictive Disorders (TAAD); and

(4) A thorough face-to-face interview.

(5) All ~~third~~ additional, supportive clinical assessment instruments shall be used only in a manner consistent with the instrument design, ~~and intent~~ intended purpose and to ~~matching~~ support ~~with~~ the identified level of severity of the ~~offender~~ participant; ~~An instrument designed for establishing the probability of substance dependence will only be utilized with consumers in which there is an indication of substance dependence.~~

(6) No clinical decision shall be based on scores derived from the ASI;

(7) All assessment instruments approved for use in the ADSAC process shall be used according to directions from the manual of each instrument; and

(8) Assessment instruments appropriate for use with those with a primary language other than English shall be identified as the instruments are approved for use by ODMHSAS.

450:22-1-11.1. Critical incidents, assessors and assessment agencies

(a) The ADSAC assessor or assessment agency shall report every critical incident. Documentation of critical incidents shall minimally include:

(1) The facility, name and signature of the person(s) reporting the incident;

(2) The name(s) of the participant(s), staff member(s) or property involved;

(3) The time, date and physical location of the incident;

(4) The time and date the incident was reported and the name of the staff person within the facility to whom it was reported;

(5) A description of the incident;

(6) Resolution or action taken, description of the action taken, date action was taken, and signature of appropriate staff member(s); and

(7) Severity of each injury, if applicable. Severity shall be indicated as follows:

(A) No off-site medical care required or first aid care administered on-site;

(B) Medical care by a physician or nurse or follow-up attention required; or

(C) Hospitalization or immediate off-site medical attention was required.

(b) Critical incidents shall be reported to ODMHSAS as follows:

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four (24) hours of the incident being documented;

(2) Critical incidents involving allegations constituting a sentinel event or patient abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.

(c) Critical incidents involving those involved in the ADSAC process shall be reported to Provider Certification.

450:22-1-11.2. Participant record system

(a) Each ADSAC assessor and assessment agency shall maintain an organized system for the content, confidentiality, storage retention and disposition of participant records.

(b) The assessor or assessment agency shall have required documentation within the record.

(c) Participant records shall be contained within equipment which shall be maintained under locked and secure measures.

(d) The assessor and assessment agency shall maintain identification and filing systems which enable prompt record location and accessibility by appropriate ADSAC assessors and other treatment professionals.

(e) Participant records shall be maintained in the facility or office where the individual is being served. In the case of temporary office space and satellite offices, records may be maintained in the main (permanent) office and transported in secured locked boxes in vehicle trunks to and from satellite offices, when necessary. Participant records may be permanently maintained at the administrative offices; however, a working copy of the participant record for the purposes of documentation and review of services provided must be maintained at the site in which the participant is receiving services.

(f) The assessor and assessment agency shall store, retain and dispose of participant records in the manner set forth in this Chapter. These procedures shall be compatible with protection of participant rights against confidential information disclosure at a later date. ODMHSAS-operated facilities shall comply with Records Disposition Schedule 82-17 as approved by the Oklahoma Archives and Records Commission.

450:22-1-11.3. Participant records, basic requirement assessors, assessment agencies

(a) All participant records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the participant. The participant record shall communicate information in a manner that is organized, clear, complete, current, and legible. All participant records shall contain the following:

(1) Entries in participant records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;

(2) The participant shall be identified by name and unique identifier on each sheet in the participant record, on both sides of each page if both sides are used; and

(3) A signed consent for assessment shall be obtained before any person can receive an ADSAC assessment and, placed in the participants record.

450:22-1-11.4. Participant record storage, retention and disposition

(a) Each assessment agency and ADSAC assessor shall:

(1) Limit access to participant records to persons on a need to know basis;

(2) Require participant records be stored under lock and key; and

(3) With regard to closed participant records, require:

(A) Confidential storage under lock and key;

(B) Record disposition and destruction under confidential conditions; and

(C) Maintain written assessment documentation to be available for participants for a minimum of six (6) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) notes; and

(iii) referrals and recommendations made as a result of the assessment.

(b) EXCEPTION: With regard to 450:18-7-4(a) (3) (B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

450:22-1-11.5. Confidentiality of drug or alcohol abuse treatment information

(a) The confidentiality of all drug or alcohol abuse treatment information and records shall be kept, recorded, released, maintained, and provided to requesting parties in accordance with state and federal laws.

(b) All assessors and assessment agencies shall protect the confidential and privileged nature of substance abuse treatment information in compliance with state and federal law by ensuring at a minimum:

(1) all substance abuse treatment information, whether recorded or not, and all communications between an ADSAC assessor, staff and a participant are both privileged and confidential and will not be released without the written consent of the participant or the participant's legally authorized representative;

(2) the identity of a participant who has received or is receiving substance abuse treatment services is both confidential and privileged and will not be released without the written consent of the participant or the participant's legally authorized representative;

(3) to limit access to substance abuse treatment information to only those persons or agencies actively engaged in the treatment of the participant and to the minimum amount of information necessary to carry out the purpose for the release;

(4) a participant, or the participant's legally authorized representative, may access the participant's substance abuse treatment information;

(5) certain state and federal law exceptions to disclosure of drug or alcohol abuse treatment information without the written consent of the participant or the participant's legally authorized representative exist and the agency will release information as required by those laws; and

(6) to notify a participant of his or her right to confidentiality.

450:22-1-11.6. Note

When addressing any issues related to the ADSAC assessment process that must be reflected in written documentation in the participant's ADSAC assessment record, the following shall be included:

(1) date;

(2) start and stop time for each assessment or session referenced;

(3) signature of the staff person providing the service;

(4) credentials of the staff person providing the service;

(5) participant response, if present;

(6) any problems identified; and

(7) any interventions.

450:22-1-11.7. Biopsychsocial assessment

(a) Biopsychsocial assessments are face-to-face interviews conducted by an ADSAC assessor designed to elicit historical and current information regarding the behavior and experiences of a participant, and are designed to provide sufficient information for problem formulation, intervention planning, and formulation of appropriate substance abuse-related clinical interventions to reduce or eliminate recidivism.

(b) All assessors shall complete a biopsychsocial assessment which gathers sufficient information that could assist the participant.

(1) Identification of the participant's strengths, needs, abilities and preferences;

(2) Previous mental health and substance abuse treatment history.

(3) Health history and current biomedical conditions and complications;

(4) Alcohol and drug use history;

(5) Family and social history, including family history of alcohol and drug use;

(6) Educational attainment, difficulties, and history;

(7) Cultural and religious orientation;

(8) Vocational, occupational and military history;

(9) Marital or significant other relationship history;

(10) Recreational and leisure history;

(11) Legal history;

(12) Present living arrangement;

(13) Economic resources;

(14) Current support system;

(15) Assessment summary or diagnosis, and signature of the assessor and date of the assessment; and

(16) A completed current version of the ASI, that addresses all the above requirements.

450:22-1-12. Assessor applicants ~~Assessment personnel~~

(a) An applicant for certification as an assessor shall submit proof of the following:

(1) ~~Possess~~ Possession of a bachelor's degree or above in the behavioral or health sciences. Those certified as ADSAC assessors prior to July 1, 2005 and without a break in ADSAC certification will be allowed to continue certification without a bachelor's degree. All applicants for initial certification after July 1, 2005 must possess a bachelor's degree or above in the behavioral or health sciences. This includes those attempting to renew lapsed certification; and

(2) ~~Have~~ Having at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and

(3) Current~~ly be licensed~~ licensure as an LADC or certified as an alcohol and other drug counselor and supervised by an LADC pursuant to Oklahoma state statutes~~.~~; or

(4) Current status as an LADC candidate, under supervision of an LADC and work at a certified ADSAC assessment agency where one or more certified ADSAC assessors are employed; and

(A) Have at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and

(B) Be trained or have proven experience in the identification and management of alcohol and other drug abuse problems and clinical interviewing skills;

(5) ~~Complete the ODMHSAS Assessor Training; and~~ A recognizable, current, photographic image of the applicant no smaller than two (2) inch by two (2) inch;

(6) Completion of the eighteen (18) hour ODMHSAS new assessor training; and

(7) Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application.

(b) Applications for certification as an assessor shall be made in writing to ODMHSAS on a form in a manner prescribed by the Commissioner or designee.~~, and include the following:~~

(c) Completed applications must be received by ODMHSAS twenty (20) days prior to the training event. Before being certified, the applicant shall:

~~(1) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and~~

(1) Complete and pass the ODMHSAS assessment skills competency examination. A minimum score to pass the exam shall be eighty (80) percent:

(A) the exam shall require the applicant to correctly identify the major aspects of the Driver Risk Inventory-revised (DRI-II), the Defendant Questionnaire (DQ) and the Addiction Severity Index (ASI);

(B) the exam shall require the applicant to correctly identify the major components of motivational interviewing; and

(C) the exam shall require the applicant to correctly identify rules from this chapter.

~~(2) Documentation of current licensure or certification as an alcohol and drug counselor; and~~

(2) Observe one (1) assessment with written permission of the participant;

~~(3) Remission of the one hundred dollar ($100) application fee for initial certification~~

(3) Conduct two (2) assessments, after completing the new assessor training under the supervision of a certified ADSAC assessor, with written permission of the participant; ~~and~~

~~(4) An official transcript; and~~

(4) Provide ODMHSAS a copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers;

~~(5) A current OSBI background check or a similar background check from other state(s) of residence for the past five (5) years.~~

(5) Remit to ODMHSAS the one hundred dollar ($100) application fee for initial certification;

~~(6) Faxes will not be accepted as part of a permanent file.~~

(6) Provide ODMHSAS an official transcript from an appropriately accredited college pursuant to state law;

~~(7) Applications are good for one (1) year from acceptance. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.~~

(7) Provide ODMHSAS a current OSBI background check or a similar background check from another state of residence for the past five (5) years: and

(8) ~~Completed applications must be received by ODMHSAS thirty (30) days prior to the publicly announced training event.~~ Prior to attending the training for new facilitators attend a two (2) day ASI training.

~~(c) Before being certified, the applicant shall:~~

~~(1) Complete the ODMHSAS approved assessor training;~~

~~(2) Complete and pass the ODMHSAS assessment skills competency examination;~~

~~(i) a minimal score to pass the exam shall be eighty (80) percent;~~

~~(ii) the exam shall require the applicant to correctly identify the major aspects of the Drivers Risk Inventory revised (DRI II), the Defendant Questionnaire (DQ) and the Addiction Severity Index (ASI);~~

~~(iii) the exam shall require the applicant to correctly identify the major components of motivational interviewing;~~

~~(iv) the exam shall require the applicant to correctly identify rules from this chapter; and~~

~~(3) Observe one (1) assessment with written permission of the consumer; and~~

~~(4) Conduct two (2) assessments under the supervision of a certified assessor, with written permission of consumer.~~

~~(d) Upon completion of the above requirements, the certified assessor~~

~~providing the supervision shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the Commissioner of ODMHSAS and a copy of one (1) written court report done by the applicant.~~

(d) ODMHSAS may require explanation of negative references prior to issuance of certification.

(e) Upon completion of the above requirements, the certified assessor providing the supervision shall submit a copy of one (1) written court report completed by the applicant and an evaluation of the applicant's skill level on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.

(f) Faxes will not be accepted as part of a permanent record.

(g) Applications are good for one (1) year from acceptance. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

(h) Any prior sanctions by ODMHSAS of an individual may be cause for denial of an assessor application.

(~~e~~i) An assessor applying for renewal ~~must~~ shall submit the following for ODMHSAS review:

(1) Complete ODMHSAS renewal application form;

(2) Submit documentation of receiving ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include the following subject areas with four (4) hours coming from area (A), four (4) hours coming from area (B) and two (2) hours coming from area (C) ~~in~~: ~~substance abuse, assessment instruments and interview techniques,~~;

(A) the application and use of approved assessment instruments,

(B) evidence based interview techniques,

(C) general substance abuse, and

(D) if a mandatory training is required by ODMHSAS the hours may come from area (C) above.

(E) ~~however, they~~ training hours shall not include ~~DUI School Instruction~~ ADSAC course facilitation; and

~~(3) Remit the $25 application renewal fee for certification.~~

(3) A new recognizable, current, photographic image of the applicant every six years no smaller then two (2) inch by two (2) inch, with any qualifying recertifications occurring on or after July 1, 2008;

(4) Provide ODMHSAS a new OSBI background check for the applicant every six years, with any qualifying recertifications occurring on or after July 1, 2008; and

(5) The fifty dollar ($50) application renewal fee for certification.

(j) Certification shall be valid for thirty six (36) months.

(~~f~~k) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification.

(1) A person whose certification has ~~been~~ expired for less than twelve (12) months must make application for an initial certification as set forth in 450:22-1-12 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.

(2) A person whose certification has ~~been~~ expired for twelve (12) months or more must make application for an initial certification as set forth in 450:22-1-12.

(l) Each assessor shall notify ODMHSAS of any change of application information related to his or her email address,

phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

(m) All renewals of certification are due on the third anniversary of certification. After July 1, 2008, all certification renewals may come due on January 1 of the renewal year. If a universal recertification date is adopted, the requirements for certification renewals will be accepted on a prorated for the transition period.

450:22-1-15. Assessor responsibilities

(a) ADSAC assessments shall be provided by individuals certified by ODMHSAS to provide such assessments.

(b) All fees due ODMHSAS shall be remitted within thirty (30) days. Any fees identified as being delinquent shall be paid within thirty (30) days of discovery of the omission.

(c) Certified assessors shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of completing an assessment if the court is anticipating such a report ~~assessing an individual if the individual is referred by the court~~;

(3) Provide information in writing regarding state and local area education and treatment resources specific to ~~each~~ the area in which the ~~consumer~~ participant resides, to each individual assessed appropriate to the referral recommendations and in a format prescribed by the Commissioner of ODMHSAS or designee;

(4) Manage and distribute all reports according to confidentiality laws under 42 CFR, Part 2, as well as all 45 C.F.R. Parts 160 & 164 (HIPAA) regulations~~;~~ and inform all participants that all contacts, evaluation results and reports are protected through federal confidentiality regulations under 42 CFR, Part 2;

(5) Assure there is no conflict of interest by:

(A) referring ~~individuals~~ participants to only those ~~agencies~~ services in which the assessor has no vested interest; ~~and~~

(B) providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) ~~maintain~~ maintaining written assessment documentation to be available for consumers for a minimum of ~~three~~ five (~~3~~5) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) clinical interview notes; and

(iii) referrals and recommendations made as a result of the assessment.

(6) Provide liaison with court officials and related other agencies; ~~and~~

(7) ~~Remit 10% of each fee collected for assessment and evaluation to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund within thirty (30) days.~~ The fee for those undergoing an assessment and evaluation is one hundred seventy-five dollars ($175.00)~~.~~; ~~Any additional charges or fees attached to the assessment process will be set by the legislature.~~

(A) Remit 10% of each fee collected for assessment and evaluation to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund within thirty (30) days. Completion of assessment includes payment in full by the participant for the assessment service; and

(B) No additional charges, extra fees or interest shall be attached to the assessment process.

(8) Explain possible liability and ability to pay for ODMHSAS-affiliated, private and other education and treatment facilities~~.~~;

(9) ~~Inform individuals receiving assessments that all contacts, evaluation results and reports are protected through federal regulations of confidentiality, 42 CFR Part 2.~~

~~(10)~~ For those ~~offenders~~ participants whose license was withdrawn due to ~~receiving~~ an alcohol and drug related ~~license revocation~~ offense on or before June 30, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, as verified by DPS, the assessor shall:

(A) provide the ~~offender~~ participant with a certificate of completion;

(B) affix the official embossed assessor seal; ~~and~~

(C) report completion to the Department of Public Safety through ODMHSAS; and~~.~~

(D) verify the participant has completed the assessment to include payment in full.

(~~11~~10) For those ~~offenders~~ participants whose license was withdrawn due to receiving an alcohol and drug related ~~license revocation~~ offense on or after July 1, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, the assessor shall: ~~verify he or she has completed all tasks identified by the assessment and required for license reinstatement; and,~~

(A) provide the ~~offender~~ participant with a certificate of completion;

(B) affix the official, embossed assessor seal and stamp, with the stamp in red ink; and

(C) report completion to the Department of Public Safety through ODMHSAS;~~.~~

(D) verify he or she has completed all tasks identified by the assessment and required for license reinstatement,

(E) verify the participant has completed all recommendations identified through the assessment and required for license reinstatement; and

(F) verify the participant has completed the ADSAC assessment to include payment in full.

~~(12) The fee for this verification of completion will be as set by the legislature.~~

(~~13~~ 11) Those participants whose most recent offense was before September 1, 1993 should be referred to DPS to verify an assessment is not required.

(~~14~~ 12) Provide ODMHSAS written notification of those ~~offenders~~ participants successfully completing required education and treatment, including the ~~offender's~~ participant's name, address, date of birth and driver's license number in a manner prescribed by the Commissioner or designee;

(~~15~~ 13) Each assessor and assessment agency shall annually submit to ODMHSAS a ~~notarized affidavit documenting~~ written and signed statement verifying that the previously submitted information on the number of assessments conducted, number of ~~consumers~~ participants assessed, and fees paid for assessments conducted for the previous twelve (12) months~~.~~;

(~~16~~ 14) Certified ADSAC assessors and ~~programs~~ agencies must provide~~,~~ to a caller adequate information regarding the ADSAC assessment process and scheduling requirements. The ~~for each~~ phone number published specific~~,~~ for each assessor ~~phone number published specific to assessment and evaluation,~~ must be ~~continuous~~ continuously ~~availability~~ available, either answered in person, ~~by phone,~~ answering machine, electronic voice mail, or ~~engage~~ a professional answering service. Numbers published for the purpose of ADSAC assessment and evaluation advertisement must ~~not~~ be answered by individuals appropriately trained in all relevant aspects of 42 CFR, Part 2 and HIPAA regulations ~~other than those certified to provide assessment and evaluation services.~~;

(~~17~~ 15) All assessors will complete a minimum of six (6) ADSAC assessments during each twelve (12) month period in order for assessor certification to remain active;~~.~~

(~~18~~ 16) Each assessor and program shall ~~have available~~ maintain an inventory of required and approved instruments sufficient to meet ODMHSAS requirements~~.~~;

(~~19~~ 17) Provide each individual assessed with ~~a form containing~~ information regarding all assessor certifications and licensures to include; name, phone number and address of the certifying or licensing body. If certified rather than licensed, the name of the licensed individual serving as supervisor with all licensures including; name, phone number and addresses of the licensing bodies pursuant to Oklahoma state statutes. Contact information for ODMHSAS, ADSAC ~~the DUI Programs~~ personnel at ODMHSAS shall be included. All information shall be in a form prescribed by the Commissioner of ODMHSAS or designee;~~.~~

(18) Each certified assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least 15 days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to 30 days after a change has occurred~~.~~;

(19) For participants who have a language other than English:

(A) The participant shall be referred to an ADSAC assessor fluent in that language, if such as assessor is available. If no assessor fluent in the language is available then an interpreter shall be present for the entire assessment process; and

(B) If an interpreter is required, the interpreter shall not be younger than eighteen (18) years of age and should not be related to the participant.

(20) Provide assessment services only at sites approved by ODMHSAS;

(21) Report all data to ODMHSAS within thirty (30) days;

(22) Make recommendations based on ODMHSAS required assessment instruments;

(23) Make all recommendations based on current accepted placement criteria; and

(24) Preference in clinical referrals shall be given to institutions and organizations possessing a substance abuse certification from ODMHSAS, if such service is available.

450:22-1-15.1. Fitness of applicants

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as an assessor for evaluations related to driver's license revocation, and to set forth criteria by which the Commissioner or designee may determine the fitness of applicants.

(b) The substantiation of the items below related to the applicant may result in the initiation of suspension or revocation of certification, or denial of, or delay of certification of the applicant. These items include, but are not limited to:

(1) Evidence of the ~~Lack~~ lack of necessary skill and abilities to provide adequate services;

(2) Misrepresentation on the application or any other materials submitted to the ODMHSAS;

(3) A violation of the rules of professional conduct set forth in this Chapter.

(4) Evaluations of supervisors, employers or instructors;

(5) ~~Evaluation of competency based project supervisor~~; Allegations form other governmental entities;

(6) Findings resulting from investigations prompted by a~~A~~llegations of ~~consumers~~ participants, peers or the public;

(7) Transcripts or other findings from official court, hearing or investigative procedures;

(8) Any convictions for alcohol and other drug related offenses, violent offenses, or moral turpitude within the last ten (10) years; or

(~~8~~9) Any unpardoned felony convictions within five (5) years; or

~~(9) Any felony conviction for a sexual offense;~~

~~(10) Any felony conviction for moral turpitude; or~~

~~(11) Any felony conviction for an offense of violence.~~

(10) The revocation, suspension, reprimand or any other administrative action ordered by another certifying or licensing body may result in the denial, revocation or suspension of assessor certification by ODMHSAS.

(c) ODMHSAS may require explanation of negative references prior to issuance of certification.

(d) Those certified to conduct ADSAC assessments by ODMHSAS shall not perform such assessments when, for any reason, such services are impaired by an inability to perform such services. Assessors shall seek assistance for any problems creating an inability to perform as an assessor, and, if necessary, limit, suspend or terminate the delivery of ADSAC assessment services.
(e) A field examination submitted through questionnaires answered by persons competent to evaluate an assessor's professional competence which may include the submission of such documentary evidence relating to an assessor's experience and competence as required by ODMHSAS may be required.
(f) If in the course of an investigation, ODMHSAS determines that an assessor has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the assessor's certification to conduct ADSAC assessments.
(g) ODMHSAS may require remedial interventions to address any problems or deficiencies identified from this section as a requirement for retaining active certification.

450:22-1-16. Denial or revocation of assessment certification

(a) ODMHSAS may reprimand, suspend, revoke or deny certification or renewal of the certification of any assessor or assessment agency failing ~~who fails~~ to qualify for, or comply with the provisions of this Chapter.
(b) In the event that ODMHSAS determines action should be taken against any person certified under this Chapter, the proceeding shall be initiated pursuant to the rules of ODMHSAS as set forth in Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and the Administrative Procedures Act.
(c) Assessors and assessment agencies that ~~who~~ have had certification renewal denied or certification revoked shall not be eligible for re-application for a period of five (5) years.
(d) Assessors and assessment agencies whose certification has expired may apply for certification in accordance with 450:22-1-12.
(e) All those certified by ODMHSAS shall report all violations and suspected violations of this chapter to ODMHSAS staff assigned to the ADSAC division immediately.
(~~e~~f) ODMHSAS may also impose the following administrative sanctions against any certified assessor or assessment agency for any of the following reasons, including, but not limited to:

(1) Erroneous or false information contained in the individual's application for certification;
(2) A conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges while certified as an assessor;
(3) Any alcohol or other drug related misdemeanor or felony conviction while certified as an assessor;
(4) Unlawful conduct ~~on duty or~~ in the presence of a ~~consumer~~ participant;
(5) Conducting an assessment on more than one (1) ~~consumer~~ participant at a time~~.~~;
(6) Tardiness or failure to make reports, or to transmit funds as required by this ~~chapter~~ Chapter;
(7) Erroneous or falsified information relating to any documents submitted to ODMHSAS;
(8) Allowing a non-certified individual to conduct an assessment without a certified ADSAC assessor present at all times unless otherwise permitted by this Chapter;
(9) Failure to maintain all records required by ODMHSAS;
(10) Use of facilities not approved by ODMHSAS;
(11) Any activity which is a conflict of interest;
(12) Use of any intoxicating ~~beverages~~ substance or illegal drugs while conducting an assessment;
(13) Conducting an assessment while the ~~consumer~~ participant is using or under the influence of any intoxicating substance causing impairment ~~mood-altering substances~~, including alcohol;
(14) Dismissal by an ODMHSAS certified organization or institution for violation of state statutes, or of the standards and criteria in this ~~chapter~~ Chapter;
(15) Knowingly permitting any assessor to violate any rule of this Chapter, or any other relevant Chapter of these Administrative Rules;
(16) Use of assessment instruments not pre-approved by ODMHSAS for use in ADSAC assessments as one of the ~~three~~ standardized instruments;
(17) Willful failure, or refusal, to cooperate with an investigation by ODMHSAS, or employing agency, into a potential or alleged violation of applicable rules in this ~~chapter~~ Chapter;
(18) Refusal to allow an ADSAC assessor candidate to observe an ADSAC assessment as required for training;
(19) Issuance of completion certificate(s) to ~~consumer~~participant(s) who have not completed, or who fail to complete any ADSAC assessment recommendation requirement;
(20) Violation of any applicable rule in this Chapter, or any other applicable Chapter;
(21) Falsification of any report, or document submitted, or prepared for submission, to ODMHSAS and DPS;~~.~~
(22) Collecting fees for; or issuing receipts for; or issuing completion certificates for; or conducting an assessment during; or soliciting students for assessments at a later date during ~~the~~ any ADSAC course;~~.~~
(23) Any ~~verbal or physical~~ sexual ~~misconduct~~ language or actions with or toward a ~~consumer~~ participant;~~.~~
(24) Any other just and verifiable cause including, but not limited to, moral turpitude, unethical or illegal activities~~.~~;
(25) Failure to wait at least a full fifteen (15) minutes when a ~~consumer~~ participant is late for an assessment prior to canceling the session~~.~~;
(26) Failure to provide ODMHSAS with the physical address for conducting assessments~~.~~;
(27) Failure to complete ODMHSAS requirements for adding assessment sites;

(28) Failure to notify ODMHSAS of knowledge of any ADSAC assessor violations of this chapter, or of assessor terminations due to violations of this chapter;
(29) Establishing the legal business residence for the purpose of conducting assessments outside the state of Oklahoma;
(30) Violation of or failure to meet any applicable rule contained in this chapter;
(31) Knowingly allowing an assessor to conduct an assessment or solicit students for an assessment during an ADSAC; or
(32) Any other just and verifiable cause including but not limited to ~~moral turpitude or illegal activities~~ verbal or physical abuse of participants.

450:22-1-17. Physical facility environment and safety, assessors and assessment agencies

(a) All ADSAC assessors and assessment agencies providing ADSAC assessments shall ensure the safety and protection of all persons within the site's physical environment (property and buildings, leased, rented, occupied or owned) of all those participating in the assessment process.
(b) This shall be accomplished by:
(1) Meeting all fire and safety regulations, code, or staututory requirements of federal, state, or local government;
(2) All sites shall have an annual fire and safety inspection from the State Fire Marshal or local authorities, and shall maintain a copy of said inspection and attendant correspondence regarding any deficiency; and
(3) If there is no authority available to provide such inspection, then the independent practitioner or assessment agency shall provide proof to ODMHSAS staff of the following:
(A) An emergency preparedness plan to provide effective utilization of resources to best meet the physical needs of participants, visitors, and staff during any disaster (including, but not limited to, fire, flood, tornado, explosion, prolonged loss of heat, light, water, and/or air conditioning). This plan shall be evaluated annually, and revised as needed;
(B) Staff training and orientation regarding the location and use of all fire extinguishers and first aid supplies and equipment;
(C) Emergency evacuation routes and shelter areas shall be prominently posted in all areas;
(D) Fire alarm systems shall have visual signals suitable for the deaf and hearing-impaired;
(E) There shall be emergency power to supply lighting to pre-selected areas of the facility; and
(F) The maintenance of facility grounds to provide a safe environment for participants, staff and visitors.
(4) There shall be a written plan for the protection and preservation of participant records in the event of a disaster.

450:22-1-18. Hygiene and sanitation, assessors and assessment agencies

Regarding lavatory facilities, sewage, solid waste disposal, water and pest inspection, assessors and assessment agencies offering ADSAC assessments shall comply with all local and state rules, regulations, codes and building codes, providing proof to ODMHSAS of such compliance upon audit or request.

450:22-1-19. State and federal statutes and regulations

All assessors and assessment agencies shall comply with all applicable federal, state and local statutes and regulations.

450:22-1-20. Inactive status and closure

(a) An active ADSAC assessor certification may be placed on inactive status by written request:
(1) An inactive certification forfeits all rights and privileges granted by the certification;
(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;
(3) When certification is placed on inactive status, it shall remain inactive for at least twelve (12) months from the date of inactivation;
(4) Active status may be re-established upon payment of a prorated renewal fee and submission of prorated continuing education hours required during the renewal year if there are no other impediments to certification;
(5) When an ADSAC assessor must cease operation for less than twelve (12) months all ADSAC assessment records must be secured as defined in 450:22-1-8;
(6) During such a temporary closure ADSAC assessment records shall remain accessible as defined in 450:22-1-22;
(7) Participants having received assessments shall be given written notification of the temporary closure with contact information for completing the ADSAC assessment process, in the event all recommendations are completed during the temporary closure; and
(8) ODMHSAS shall be notified in writing within thirty (30) days of any temporary closure of any office providing ADSAC assessments. The written notification shall contain:
(A) The reason for closing;
(B) Contact information for participant assessment records; and
(C) A projected date for resumption of business.
(b) An active ADSAC assessment agency certification may be placed on inactive status by written request:
(1) An inactive certification forfeits all rights and privileges granted by the certification;
(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;
(3) When certification is placed on inactive status, it must remain inactive for a minimum of one (1) year and no more than (3) years from the date of inactivation;
(4) Active status may be re-established upon request;

(5) When an assessment agency must cease operation for less than twelve (12) months, all participant records must be secured as defined in 450:22-1-22 and 450:22-1-25;
(6) During such a temporary closure, participant records shall remain accessible as defined in 450:22-1-22;
(7) Participants having received assessments shall be given written notification of the temporary closure with contact information for completing the ADSAC assessment process, in the event all recommendations are completed during the temporary closure; and
(8) ODMHSAS shall be notified in writing of any permanent closure of any assessment agency providing ADSAC assessments. The written notification shall contain:
(A) The reason for closing; and
(B) Contact information for patticipant assessment records.

450:22-1-21. Participant rights and grievance policy

All certified assessment agencies and ADSAC assessors conducting ADSAC assessments shall comply with applicable rules in Title 450, Chapter 15, Consumer Rights. Those programs which are providing services within a correctional facility should detail the following due to circumstance:
(1) The provider shall document provisions of 450:15-3-2 (a), (b) and (d);
(2) The provider must provide written grievance policy and procedure including time frames for the grievance process;
(3) The provider must describe the procedure used when the grievance is against a staff. This policy may refer to DOC mandated policy and procedure; and
(4) The provider must describe the facility's responsibility for evaluation, review, and resolution should the allegation be substantiated.
All certified ADSAC assessors and assessment agencies shall comply with applicable rules in Title 450, Chapter 15, Consumer Rights. Those programs which are providing services within a correctional facility should detail the following due to circumstance:
(A) provide written grievance policy and procedure including time frames for the grievance process;
(B) describe the procedure used when the grievance is against a staff. This policy may refer to Department of Corrections mandated policy and procedure; and
(C) describe the facility's responsibility for evaluation, review, and resolution should the allegation be substantiated.

450:22-1-22. ODMHSAS advocate general

The ODMHSAS Advocate General, in any investigation regarding consumer rights, shall have access to participant, assessment agencies and ADSAC assessors, ADSAC assessments records and facility staff as set forth in Title 450, Chapter 15.

[OAR Docket #08-736; filed 4-25-08]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 23. STANDARDS AND CRITERIA FOR COMMUNITY-BASED STRUCTURED CRISIS CENTERS

[OAR Docket #08-737]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:23-1-2. Definitions [AMENDED]
Subchapter 3. CBSCC Services
450:23-3-2. Crisis stabilization [AMENDED]
450:23-3-3. Crisis stabilization, triage response [AMENDED]
450:23-3-4. Crisis stabilization services, psychiatric services [REVOKED]
450:23-3-5. Crisis stabilization, ~~drug and alcohol~~psychiatric, substance abuse, and co-occurring services [AMENDED]
450:23-3-6. Mechanical restraints for adult consumers only [AMENDED]
450:23-3-6.1. Mechanical restraints will not be used for minors in treatment [NEW]
450:23-3-7. ~~Referrals to inpatient psychiatric hospitals~~ Linkage Services to higher or lower levels of care, or longer term placement [AMENDED]
450:23-3-8. Services to homeless individuals [AMENDED]
Subchapter 5. CBSCC Clinical Records
450:23-5-4. Clinical record content, intake and assessment [AMENDED]
450:23-5-5. Health, mental health, substance abuse, and drug history [AMENDED]
450:23-5-8. Aftercare and discharge summary [AMENDED]
Subchapter 7. Confidentiality
450:23-7-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information [AMENDED]
Subchapter 19. Staff Development and Training
450:23-19-3. Inservice [AMENDED]
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Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 2-202, 3-306 and 3-317.
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N/A
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N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 23 are part of the Department's review of Title 450. These actions are intended to amend or revoke rules, clarify certification mandates, delete redundant or superfluous language, and correct scrivener's errors.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

450:23-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a staff responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a resident.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by O.S. 43A 3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Consumer" means an individual, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnoses in a client.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

~~**"Creating A Positive Environment"** or **"CAPE"** means a specific curriculum designed by ODMHSAS to train staff in verbal and non-verbal communication techniques in the management of selected and potentially problematic behaviors and to foster attitudes that promote the consumer's dignity and self-esteem in facility treatment settings.~~

"Crisis intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health and/or substance abuse crisis.

"Crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and referral.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Emergency detention" For adults: means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes. For minors: means the detention of a minor who appears to be a minor in need of treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detainment after the completion on an initial assessment and determination that emergency detention is warranted for a period not to exceed five (5) days excluding weekends and holidays, except upon a court order authorizing detention pending a hearing requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" For adults: means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Homeless" a homeless person is a person who; a) lacks a fixed, regular and adequate night time residence AND b) has a primary nighttime residence that is a supervised publicly or privately operated shelter designated to provide temporary living accommodations including welfare hotels, congregate shelters, half way houses, and transitional housing for the mentally ill; or an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, not limited to people living on the streets. Individuals are considered homeless if they have lost their permanent residence, and are temporarily living in a shelter to avoid being on the street.

"Initial Assessment" means examination of current and recent behaviors and symptoms of a person or minor who appears to be mentally ill or substance dependent.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Intervention plan" means a description of services to be provided in response to the presenting crisis situation that incorporates the identified problem(s), strengths, abilities, needs and preferences of the individual served.

"Licensed mental health professional" or **"LMHP"** means:

(A) psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;

(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(C) a licensed clinical psychologist;

(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;

(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;

(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;

(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or

(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.

"Linkage services" means the communication and coordination with other service providers that assure timely appropriate referrals between the CBSCC and other providers.

"Minor" means any person under eighteen (18) years of age.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

"Persons with special needs" means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness and/or substance abuse disorders. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

"~~Psychosocial~~ Psychsocial evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body. For minors: mechanical restraints shall not be used.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Triage" means a dynamic process of evaluating and prioritizing the urgency of crisis intervention needed based on the nature and severity of consumers' presenting situations.

"Trauma Informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of all consumers.

SUBCHAPTER 3. CBSCC SERVICES

450:23-3-2. Crisis stabilization

(a) The CBSCC shall provide crisis stabilization to individuals who are in crisis as a result of a mental health and/or substance abuse related problem. Each crisis stabilization program must be specifically accessible to individuals who present with co-occurring disorders. The CBSCC must have the capability of providing services to individuals who are in emergency detention status.

(b) Crisis stabilization services shall be provided in the least restrictive setting possible~~, and be accessible to within the community in which they reside~~. Services should be provided within, or as close to the community in which they reside as possible.

(c) A physician shall be available at all times for the crisis unit, either on-duty or on call. If the physician is on call, he or she shall respond by telephone or in person to the licensed staff on duty at the crisis unit within 20 minutes.

(d) Crisis stabilization services shall include, but not be limited to, the following service components and each shall have written policy and procedures and each shall be co-occurring disorder capable and trauma informed, with policies and procedures that support this capability:

(1) Triage crisis response;

(2) Co-occurring capable Psychiatric crisis stabilization; and

(3) Co-occurring capable Drug/alcohol crisis stabilization.

(e) The CBSCC shall have written policy and procedures addressing mechanical restraints for adults only, and these shall be in compliance with 450:23-3-6.

(f) Compliance with 450:23-3-2 shall be determined by on-site observation, and a review of the following: clinical records; ICIS information; and the CBSCC policy and procedures.

450:23-3-3. Crisis stabilization, triage response

(a) Crisis stabilization services shall include twenty-four (24) hour triage response and emergency examination.

(b) Qualified staff providing triage crisis response services shall be:

(1) Clinically privileged pursuant to the CBSCC's privileging requirements for crisis stabilization services; and

(1) Knowledgeable about applicable laws, ODMHSAS rules, facility policy and procedures, and referral sources.

(c) Components of this service shall minimally include the capacity to provide:

(1) Immediate response, on-site and by telephone;

(2) Integrated screening for the presence of co-occurring disorders;

(3) On-site emergency integrated mental health and/or substance abuse examination; and

(4) Referral, linkage, or a combination of the two services.

(d) The CBSCC shall have written policy and procedures minimally:

(1) Providing twenty-four (24) hour, seven (7) days per week, triage crisis response services; and

(2) Defining methods and required content for documentation of each triage crisis response service provided.

(3) Ensuring that individuals who present in crisis with co-occurring disorders are identified, and that there are no barriers to access triage crisis response based on arbitrary alcohol or drug levels, types of diagnosis or medications.

(e) Compliance with 450:23-3-3 shall be determined by a review of the following: clinical privileging records; personnel files and job descriptions; policy and procedures, program description; on-site observation; and clinical documentation of services provided.

450:23-3-4. Crisis stabilization services, psychiatric services [REVOKED]

~~(a) Psychiatric crisis stabilization services shall provide continuous twenty-four (24) hour evaluation, crisis stabilization, and social services intervention for consumers in need of assistance for emotional or mental distress, including those who present with co-occurring substance abuse disorders seven (7) days per week.~~

~~(b) Licensed registered nurses and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day, seven (7) days per week.~~

~~(c) Crisis stabilization services shall be provided by a co-occurring disorder capable multidisciplinary team of medical, nursing, social services, substance abuse, and administrative staff adequate to meet the clinical needs of the individuals served.~~

~~(d) Services shall minimally include:~~

~~(1) Psychiatric observation and evaluation;~~

~~(2) Substance abuse screening, observation, and evaluation;~~

~~(3) Intensive care and intervention during acute periods of crisis stabilization;~~

~~(4) Initiation and medical supervision of rapid stabilization regimen as prescribed by a physician including medically monitored detoxification where indicated;~~

~~(5) Motivational strategies to facilitate further treatment participation for mental health and/or substance abuse needs; and~~

~~(6) Providing a referral or placement, as indicated by consumer needs.~~

~~(e) Psychiatric crisis stabilization services shall be utilized only after less restrictive community resources have been determined to be inadequate to meet the current psychiatric needs of the consumer.~~

~~(f) Compliance with 450:23-3-4 shall be determined by on-site observation; a review of the following: staff personnel files and clinical privileges records; ICIS information; clinical~~

~~records; critical incident reports; staffing; census; and by on-site observation.~~

450:23-3-5. Crisis stabilization, ~~drug and alcohol~~ psychiatric, substance abuse and co-occurring services

(a) ~~Drug and alcohol crisis~~ Crisis stabilization services shall provide continuous twenty-four (24) hour evaluation, crisis stabilization, and social services intervention seven (7) days per week for consumers experiencing substance abuse related crises; consumers in need of assistance for emotional or mental distress; or those who present with co-occurring disorders ~~including those with co-occurring mental health disorders who do not require mental health crisis stabilization services seven (7) days per week~~.

(b) Licensed registered nurses and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day seven (7) days per week.

(c) Crisis stabilization services ~~Services~~ shall be provided by a co-occurring disorder capable multidisciplinary team of medical, nursing, social services, ~~mental health~~, clinical, administrative, and other staff adequate to meet the clinical needs of the individuals served.

(d) Staff members assigned to a medical supervised detoxification component shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs and the implication of those vital signs, and emergency procedures as well as demonstrating core competencies in addressing the needs of individuals receiving detoxification services who may have co-occurring mental health disorders and be on psychotropic medication.

(e) Services shall minimally include:

(1) Medically-supervised substance abuse and mental health screening, observation and evaluation;

(2) ~~Care and intervention during acute periods of crisis stabilization;~~ Initiation and medical supervision of rapid stabilization regimen as prescribed by a physician, including medically monitored detoxification where indicated;

(3) Medically-supervised and co-occurring disorder capable detoxification, in compliance with procedures outlined in OAC Title 450, Subchapter 18;

(4) ~~On-site access to community organizations providing help for substance abuse related problems and availability of linkage and coordination with agencies providing mental health care;~~ Intensive care and intervention during acute periods of crisis stabilization;

(5) Motivational strategies to facilitate further treatment participation for mental health and/or substance abuse needs; and,

(6) Providing ~~a~~ referral, linkage or placement, as indicated by consumer needs.

(f) ~~Drug and alcohol crisis~~ Crisis stabilization services, whether psychiatric, substance abuse, or co-occurring, shall be utilized only after less restrictive community resources have been determined to be inadequate to meet the current needs~~, related to the use of substances,~~ of the consumer.

(g) Compliance with 450:23-3-5 shall be determined by a review of the following: personnel files and clinical privileges records; clinical records; ICIS information; policy and procedures; critical incident reports; staffing; census; and by on-site observation.

450:23-3-6. Mechanical restraints for adult consumers only

(a) Mechanical restraints shall not be used on a non-consenting individual unless a licensed CBSCC physician personally examines the individual and determines their use to be required for the safety and protection of the consumer or other persons. This shall not prohibit the emergency use of restraint pending notification of the physician.

(b) The CBSCC shall have a written protocol for the use of mechanical restraints which includes, but is not limited to:

(1) Criteria to be met prior to authorizing the use of mechanical restraints;

(2) Signature of the licensed physician authorizing use is required;

(3) Time limit of said authorizations;

(4) Circumstances which automatically terminate an authorization;

(5) Setting a time period, not to exceed every fifteen (15) minutes, an individual in mechanical restraints shall be observed and checked by a designated staff under the on-site supervision of a registered nurse;

(6) Requiring in every use of mechanical restraints documentation the specific reason for such use, the actual start and stop times of use, authorizing licensed CBSCC physician signature, and record of times the consumer was observed and checked and by whom;

(7) A chronological log including the name of every consumer placed in mechanical restraints, and the occurrence date. In accordance with 43 A O.S. § 4-106, the CBSCC director, or designee shall be responsible for insuring compliance with record keeping mandates;

(8) A process of peer review to evaluate use of mechanical restraints; and

(9) The items listed in (1) through (6) of this rule shall be made a part of the consumer record.

(c) Compliance with 450:23-3-6 shall be determined by on-site observation and a review of the following: CBSCC policy and procedures; the mechanical restraint log; seclusion and restraint logs; clinical record; critical incident reports; and any other supporting CBSCC documentation.

450:23-3-6.1. Mechanical restraints will not be used for minors in treatment

(a) Mechanical restraints will not be used on minors

(b) Seclusion and restraint policy and procedures for minors should at the minimum meet federal, state, and accrediting guidelines and standards

450:23-3-7. ~~Referrals to inpatient psychiatric hospitals~~ Linkage Services to higher or lower levels of care, or longer term placement

(a) Persons needing mental health services shall be treated with the least restrictive clinically appropriate methods.

(b) ~~Therefore, all persons referred by CBSCCs to inpatient psychiatric hospitals shall be evaluated by the CBSCC prior to referral; such referral shall involve the following:~~ In cases where consumers are not able to stabilize in or are not appropriate for the CBSCC unit, linkage services shall be provided, including the following steps:

(1) Qualified CBSCC staff shall perform the crisis intervention and referral process to the ~~hospital.~~ appropriate treatment facility.

(2) The referral process ~~to the hospital by the CBSCC~~ shall occur only after all other less restrictive community resources have been discussed with the ~~individual and the individual's family as indicated and upon written authorization by the individual.~~ consumer, the consumer's legal guardian, or both the consumer and legal guardian as applicable. If an adult consumer wishes to include family members in the decision making process, appropriate releases should be obtained.

(3) ~~The CBSCC shall notify referral hospital(s) prior to referring non-emergency consumers.~~ Staff shall make referral to an appropriate treatment facility to include demographic and clinical information and documentation. Appropriate releases should be obtained as indicated.

(c) If the CBSCC is referring ~~the consumer~~ an adult to a state-operated inpatient facility, the consumer must meet the criteria in OAC 450:30-9-3 and the CBSCC must comply with OAC 450:30-9-4.

(d) Compliance with 450:23-3-7 shall be determined by a review of the following: clinical records; psychiatric hospital information and admission records as applicable; ICIS consumer data; and PI monitoring information as available from both the CBSCC and the psychiatric inpatient hospital.

450:23-3-8. Services to homeless individuals

(a) The CBSCC shall provide linkage services ~~pursuant to a valid written authorization to adults who are homeless and have a serious mental illness or are experiencing a substance abuse related crisis.~~ to individuals and families who meet the ODMHSAS definition of homeless.

(b) The CBSCC shall provide the following ~~referral~~ services to such homeless individuals:

(1) Linkage and contacts for housing placement,

(2) If housing placement can not be obtained, then linkage and contacts with local emergency services including shelters and homeless project coordinators at designated community mental health centers.

(3 ~~2~~) Referrals to income benefit programs, local housing authorities, community food banks, among other services;

(4) For Unaccompanied minors, ensure appropriate guardianship prior to discharge.

(c) The CBSCC shall have policy and procedures for guidelines to these ~~referral~~ services.

(d) Compliance with 450:23-3-8 shall be determined by on-site observation and review of the following: documentation of linkage activities and agreements; clinical records; ICIS reporting data; and, CBSCC policy and procedures.

SUBCHAPTER 5. CBSCC CLINICAL RECORDS

450:23-5-4. Clinical record content, intake and assessment

(a) The CBSCC shall assess each individual to determine appropriateness of admission. Initial assessments by an LMHP are to be completed on all minors voluntary or involuntary prior to admission

(b) Consumer intake information shall contain, but not be limited to the following identification data:

(1) Consumer name;

(2) Name and identifying information of the legal guardian(s)

(~~2~~ 3) Home address;

(~~3~~4) Telephone number;

(~~4~~5) Referral source;

(~~5~~6) Reason for referral;

(~~6~~7) Significant other to be notified in case of emergency;

(~~7~~8) ICIS intake data core content; ~~and~~

(~~8~~9) Presenting problem and disposition~~.~~;

(~~9~~10) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities shall be obtained during intake and kept in a highly visible location in or on the record~~.~~; and

(~~10~~11) Screening for co-occurring disorders, trauma, and homelessness, medical and legal issues.

(c) Consumer assessment information for admitted consumers shall be completed within 72 hours of admission to the CBSCC and shall contain, but not be limited to, the following:

(1) Integrated mental health and substance abuse psychosocial evaluation that minimally addresses:

(A) The consumer's strengths and abilities to be considered during community re-entry;

(B) Economic, vocational, educational, social, family and spiritual issues as indicated; and

(C) An initial discharge plan.

(2) Interpretive summary of relevant assessment findings that results in the development of an intervention plan addressing mental health, substance abuse, and other related issues contributing to the crisis;

(3) An integrated intervention plan that minimally addresses the consumer's:

(A) Presenting crisis situation that incorporates the identified problem(s);

(B) Strengths and abilities;

(C) Needs and preferences; and

(D) Goals and objectives.

(d) Compliance with 450:23-5-4 shall be determined by a review of the following: intake assessment instruments and other

intake documents of the CBSCC; clinical records; and, other agency documentation of intake materials or requirements.

450:23-5-5. Health, mental health, substance abuse, and drug history

(a) A health and drug history shall be completed for each consumer at the time of admission. The ~~drug~~ medical history shall include obtainable information regarding:

(1) Name of medication;

(2) Strength and dosage of current medication;

(3) Length of time patient was on the ~~drug~~ medication if known;

(4) Benefit(s) of medication;

(5) Side effects; ~~and~~

(6) The prescribing medical professional if known; and

(7) Relevant drug history of family members.

(b) A mental health history, including symptoms and safety screening, shall be completed for each consumer at the time of admission.

(c) A substance abuse history, including checklist for use, abuse, and dependence for common substances (including nicotine and caffeine) and screening for withdrawal risk and IV use shall be completed for each consumer at the time of admission

(d) Compliance with 450:23-5-5 shall be determined by a review of clinical records.

450:23-5-8. Aftercare and discharge summary

(a) An aftercare plan shall be entered into each consumer's record upon discharge from the CBSCC. A copy of the plan shall be given to the consumer, the consumer's legal guardian, or both the consumer and legal guardian as applicable, as well as to any facility designated to provide follow-up with a valid written authorization by the consumer, the consumer's legal guardian, or both the consumer and legal guardian as applicable. An aftercare plan shall include a summary of progress made toward meeting the goals and objectives of the intervention plan, as well as an overview of psychosocial considerations at discharge, and recommendations for continued follow-up after release from the CBSCC.

(b) The aftercare plan shall minimally include:

(1) Presenting problem at intake;

(2) Any co-occurring disorders or issues, and recommended interventions for each;

(3) Physical status and ongoing physical problems;

(4) Medications prescribed at discharge;

(5) Medication and lab summary, when applicable;

(6) Names of family and significant other contacts;

(7) Any other considerations pertinent to the consumer's successful functioning in the community;

(8) The Consumer's, the consumer's legal guardian, or as indicated both the consumer's and legal guardian's comments on participation in his or her crisis resolution efforts; and

(9) The credentials of the staff members treating the consumer and their dated signatures.

(d) Compliance with 450:23-5-8 shall be determined by a review of closed consumer records.

SUBCHAPTER 7. CONFIDENTIALITY

450:23-7-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards, and with department rules as outlined in 450:15-3-20.1.

~~(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:~~

~~(1) an acknowledgment that all mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(2) an acknowledgment that the identity of a consumer who has received or is receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged and will not be released without the written consent of the consumer or the consumer's legally authorized representative;~~

~~(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and~~

~~(6) a procedure by which to notify a consumer of his or her right to confidentiality.~~

~~(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:~~

~~(1) the name of the person or program permitted to make the disclosure;~~
~~(2) the name or title of the person or the name of the organization to which disclosure is to be made;~~
~~(3) the name of the consumer whose records are to be released;~~
~~(4) a description of the information to be disclosed;~~
~~(5) the specific reason for the disclosure;~~
~~(6) the signature of the consumer or the consumer's legally authorized representative;~~
~~(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;~~
~~(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;~~
~~(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;~~
~~(10) a confidentiality notice which complies with state and federal law; and~~
~~(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."~~

~~(d) Compliance with 450:19-5-10 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.~~

SUBCHAPTER 19. STAFF DEVELOPMENT AND TRAINING

450:23-19-3. Inservice

(a) Inservice trainings are required annually for all employees who provide clinical services within the CBSCC program on the following topics:

(1) Fire and safety;
(2) Infection Control and universal precautions;
(3) Consumer's rights and the constraints of the Mental Health Consumer's Bill of Rights;
(4) Confidentiality;
(5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101 et seq., and Protective Services for the Elderly and for Incapacitated Adults Act, 43A O.S. §§ 10-101 et seq.;
(6) Facility policy and procedures; ~~and~~
(7) Cultural diversity~~.~~ ;
(8) Co-occurring disorder competency and treatment principles~~.~~ ; and
(9) Trauma informed and age and developmental specific trainings.

(b) All staff providing clinical services shall have a current certification in basic first aid and in Cardiopulmonary Resuscitation (CPR).

(c) All clinical staff shall have training in ~~Creating A Positive Environment (CAPE)~~ non-physical intervention techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within ~~three (3) months~~ 30 days of being hired with annual updates thereafter.

(d) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. The employee shall successfully complete this training within 30 days of being hired, with annual updated thereafter.

~~(d) In lieu of CAPE, a CBSCC may petition DMHSAS Provider Certification for approval to substitute CAPE with a different~~

(e) The training curriculum for 450:23-19-3 (c) and (d) ~~that~~ must be ~~published, have similar learning objectives, and incorporate similar number of hours required for staff training. Such petition will have to be~~ approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.

(~~e~~f) Compliance with 450:23-19-3 shall be determined by a review of the following: inservice training records; personnel records; and other supporting written information provided.

[OAR Docket #08-737; filed 4-25-08]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION
CHAPTER 20. TEMPORARY LICENSE PLATES

[OAR Docket #08-687]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
465:20-1-2. [NEW]
Subchapter 3. Design and Placement [NEW]
465:20-3-1. [NEW]
465:20-3-2. [NEW]
465:20-3-3. [NEW]
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465:20-1-2. [NEW]
Subchapter 3. Design and Placement [NEW]
465:20-3-1. [NEW]
465:20-3-2. [NEW]
465:20-3-3. [NEW]
Gubernatorial Approval:
October 2, 2007
Register publication:
25 Ok Reg 286
Docket number:
07-1423
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Title 47, Section 1137.3 required that new motor vehicle dealers begin using a new weatherproof temporary license plate approved by the Oklahoma Motor Vehicle Commission, November 1, 2007. The Commission adopted Emergency Rules, effective October 2, 2007, relating to the design and content of these temporary plates. These Rules develop requirements and parameters to discourage or prevent illegal use of the temporary license plates and duplication. Must initiate permanent rulemaking procedures to supercede emergency rules, as mandated by Title 47, Section 1137.3.
CONTACT PERSON:
Marilyn Maxwell, Deputy Director, Oklahoma Motor Vehicle Commission, 4334 N.W. Expressway, Suite 183, Oklahoma City, OK 73116, (405) 607-8227, ext 101

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

465:20-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et. seq. and 47 O.S. Section 1137.3, as amended. This chapter will provide a description of the design and use of the temporary license plate for dealers who sell new motor vehicles, travel trailers, or commercial trailers.

SUBCHAPTER 3. DESIGN AND PLACEMENT

465:20-3-1. Form and substance of the temporary license plate

(a) **Plate size.** The temporary license plate for all new motor vehicles, travel trailers, and commercial trailers, except motorcycles and scooters, shall be 11 $\frac{1}{2}$ inches in length and 6 inches in height.
(b) **Cycle plate size.** A temporary license plate for new motorcycles and scooters shall be 7 inches in length and 4 inches in height.
(c) **Substance.** The temporary license plate shall be of a weatherproof non-glare plastic-impregnated white substance with ink absorbing characteristics capable of withstanding continual exposure to the natural elements such as water, mud and wind, without the loss of form or content for a period in excess of thirty (30) days.
(d) **Fastening.** Fastener holes for placing the temporary license plate to the vehicle shall be at an appropriate location for use of the factory installed mounting holes on the vehicle on which the temporary license plate shall be placed.

465:20-3-2. Content of the temporary license plate

(a) **Format.** There shall be two rectangular shaped blocks for the month, two rectangular shaped blocks for the day of the month, and two rectangular shaped blocks for the year indicating the date of the sale of the vehicle. The blocks shall be of a size of at least 1 $\frac{3}{4}$ inches in height and 1 $\frac{1}{2}$ inches in width and pale or light toned green in color. The rectangular blocks for the motorcycle and scooter temporary license plates shall be 1 inch in height and $\frac{3}{4}$ inch in width. Preprinted below the two blocks on the left shall be the words "SOLD MONTH"; below the middle two blocks shall be the words "SOLD DAY"; and below the two blocks on the right shall be the words "SOLD YEAR".
(b) **Ink type.** Any writing on the temporary license plate not preprinted shall be applied by an instrument using indelible black ink. The ink marker for writing in the date blocks should be capable of making a mark of at least $\frac{1}{4}$ inch in width.
(c) **Required verbiage.** The temporary license plate shall have the following preprinted language: The selling dealer's company name, the selling dealer's license number which is issued by the Oklahoma Tax Commission, the word "Oklahoma" or "Okla", and the words "30 Day Temporary Tag", and a line with the words "Vehicle Year, Make, Model" below the line.
(d) **Unique sequential number.** In addition to the preprinted information recited in paragraphs (a) and (c), the temporary license plate shall have a preprinted unique sequential number of no fewer than six digits approximately one inch in height. The height of the preprinted unique sequential number for a motorcycle temporary license plate shall be no less than $\frac{1}{2}$ inch. The dealer shall record the temporary license plate's unique sequential number on the front of the vehicle's bill of sale in a conspicuous location. A dealer shall not issue more than one sequentially numbered temporary license plate for the same vehicle sale.
(e) **Purchaser information.** The name of the purchaser shall be written on the temporary license plate; or, in lieu of the name of the purchaser, the words "see bill of sale" may be used. If the term "see bill of sale" is used, the purchaser

shall retain the bill of sale in the vehicle at all times until the vehicle has been registered in the purchaser's name.

(f) **Recordkeeping.** The dealer shall maintain a record of temporary license plates issued for a minimum of three years from the date of sale. The record shall include the unique sequential number, the date issued, the name of the purchaser and the year, make, model and vehicle identification number, for which the temporary license plate was issued. The record shall be available to Commission and law enforcement personnel upon request.

465:20-3-3. Location of the temporary license plate

Upon the sale of a new motor vehicle, the temporary license plate shall be placed on the vehicle at the location provided for the permanent license plate, and shall be securely fastened so that all of the required information remains visible while the vehicle is in motion on streets and highways.

[OAR Docket #08-687; filed 4-21-08]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 1. ADMINISTRATION

[OAR Docket #08-679]

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ANALYSIS:
The revision simplifies current language in the rules and reflects correct statute citation. The revision helps to ensure that rule language is clear and concise and that statute citations are correct.
CONTACT PERSON:
Gayle McNish, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106 (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

485:1-1-1. Functions

The Board is authorized to:

(1) *adopt and~~, from time to time,~~ revise ~~such~~ rules*, ~~*and regulations*~~ *not inconsistent with* . . . the Oklahoma Nursing Practice Act; [59 O.S. Section 567.4(~~E~~ F)]

(2) prescribe standards for educational programs preparing persons for licensure to practice practical nursing, registered nursing, or preparing individuals for advanced practice nursing;

(3) provide for surveys of such educational programs;

(4) approve such educational programs for the preparation of practitioners of practical nursing, registered nursing, or advanced practice nursing as shall meet the requirements of this statute and of the Board;

(5) deny, or withdraw approval of educational programs for failure to meet or maintain prescribed standards required by this statute and by the Board;

(6) examine, license and renew the licenses of duly qualified applicants;

(7) recognize Advanced Practitioners in accordance with the Rules and Regulations;

(8) conduct hearings upon charges calling for disciplinary action~~ of a licensee~~; and

(9) provide consultation, conduct conferences, forums, studies and research on nursing education and practice.

[OAR Docket #08-679; filed 4-21-08]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #08-678]

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ANALYSIS:
The rule changes update language in the section on renewal fees, clarify requirements for supervising physician change fees, add fees for survey visits to nursing education programs, and clarify language regarding submission of fees. In the section on renewal fees, although the current renewal fee remains unchanged, information on the old fee is removed and the statement "effective January 1, 2006" is deleted. The fee for supervising physician changes will stay the same, but the revision will allow the advanced practice nurse with prescriptive authority to submit more than one change on the same form for one fee. The revised fee information for supervising physician changes will decrease confusion regarding the amount of money to be submitted, by making it clear that only one fee per form is required. Fees are added for full survey visits and consultative visits to nursing education programs, effective July 1, 2009. New fees for survey and consultative visits to nursing education programs will support the costs incurred by these visits, so that these costs are paid by the programs rather than by the licensure fees provided by nurses.
CONTACT PERSON:
Gayle McNish, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106 (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

485:10-1-3. Fees

(a) **Fee schedule.**

(1) **Initial applications.** The following fees shall be charged by the Board of Nursing for initial applications:

(A) Registered Nurse/Licensed Practical Nurse

(i) Licensure examination fee - $85.00

(ii) Endorsement fee - $85.00

(iii) Education equivalence evaluation fee - $40.00

(iv) Cost of national examination

(v) R.N. examination challenge of results fee - $200.00

(vi) LPN examination challenge of results fee - $125.00

(vii) Examination review fee - $90.00

(viii) Temporary license fee - $10.00

(B) Advanced Unlicensed Assistive person

(i) Certification examination fee - $20.00

(ii) Cost of examination

(C) Advanced Practice Nurses

(i) Recognition fee - $70.00

(ii) Temporary recognition fee - $10.00

(iii) Prescriptive authority fee - $85.00

(iv) Authority to order, select, obtain and administer drugs - $85.00

(2) **Renewal.** The following fees shall be charged in accordance to the biennial licensure/certificate/recognition renewal schedule established by the Board:

(A) Registered Nurse/Licensed Practical Nurse license - ~~$60.00;~~ $75.00 ~~effective January 1, 2006~~

(B) Advanced Unlicensed Assistive Person certificate - ~~$20.00;~~ $25.00 ~~effective January 1, 2006~~

(C) Advanced Practice Nurse recognition - $40.00

(D) Prescriptive authority - $40.00

(E) Authority to order, select, obtain and administer drugs - $40.00

(F) Reinstatement of lapsed license/certificate/recognition - renewal fee(s) + $40.00

(G) Return to active - renewal fee(s) + $40.00

(3) **Miscellaneous fees.** The following miscellaneous fees shall be charged by the Board:

(A) Transcripts from closed schools of nursing - $15.00

(B) Duplication or modification of license/certificate/recognition - $25.00

(C) Certified verification of license/certificate/recognition - $40.00

(D) Written verification of status of license/certificate/recognition - $10.00 per name

(E) Supervisory Physician - $10.00 ~~per name change~~

(F) Requested review of contact hours for Prescriptive Authority - $70.00

(G) Corporation certificate - $15.00

(H) Certificate for framing - $15.00

(I) Insufficient funds processing fee - $25.00

(J) Facsimile (Fax) fee (per page) - $1.00

(K) Oklahoma Nursing Practice Act, Rules - $15.00

(L) Full survey visit to a nursing education program - $500.00 effective July 1, 2009

(M) Consultative visit to a nursing education program - $250.00 effective July 1, 2009

(4) **Public access, open records.** The following public access, open record fees shall be charged by the Board:

(A) Certification of public records (per page) - $1.00

(B) Duplication of public records (per page) - $0.25

(C) Computer address list - $0.01/record + $4.50/1000 labels + postage, $40.00 minimum charge

(D) Staff research time, when available (per hour) - $20.00

(E) Computer research time, when available (per hour) - $100.00

(b) **Submission of fees.**

(1) All fees assessed by the Board as set out in the fee schedule in (a) of this section shall be received prior to processing an application for licensure, certification or recognition or providing the requested service.

(2) All fees are non-refundable.

[OAR Docket #08-678; filed 4-21-08]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #08-681]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2. [AMENDED]
485:10-3-5. [AMENDED]
485:10-3-6. [AMENDED]
Subchapter 5. Minimum Standards for Approved Nursing Education Programs
485:10-5-3.2. [AMENDED]
Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse
485:10-7-1. [AMENDED]
485:10-7-2. [AMENDED]
485:10-7-3. [AMENDED]
485:10-7-4. [AMENDED]
485:10-7-5. [AMENDED]
485:10-7-6. [AMENDED]
Subchapter 9. Requirements for Registration and Licensure as a Licensed Practical Nurse
485:10-9-1. [AMENDED]
485:10-9-2. [AMENDED]
485:10-9-3. [AMENDED]
485:10-9-4. [AMENDED]
485:10-9-5. [AMENDED]
485:10-9-6. [AMENDED]
Subchapter 10. Advanced Unlicensed Assistive Personnel
485:10-10-7. [AMENDED]
485:10-10-8. [AMENDED]
485:10-10-8.1. [AMENDED]
485:10-10-10. [AMENDED]
Subchapter 15. Requirements for Practice as an Advanced Practice Nurse
485:10-15-4. [AMENDED]
485:10-15-4.1. [AMENDED]
485:10-15-5. [AMENDED]
485:10-15-6. [AMENDED]
485:10-15-7. [AMENDED]
485:10-15-8. [AMENDED]
485:10-15-9. [AMENDED]
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Nurses
485:10-16-1. [AMENDED]
485:10-16-3. [AMENDED]
485:10-16-4. [AMENDED]
485:10-16-6. [AMENDED]
485:10-16-7. [AMENDED]
Subchapter 18. Prescriptive Authority for C.R.N.A.
485:10-18-2. [AMENDED]
485:10-18-3. [AMENDED]
485:10-18-4. [AMENDED]
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ANALYSIS:

In Subchapter 3, a requirement for a consultative visit prior to submission of a Step II application for a nursing education program is added. Materials that must be submitted in the Step II application are revised to add a survey of existing nursing education programs in the area with evidence to support availability of clinical experience. The consultative visit and additional materials are necessary to provide the Board with objective information regarding facilities, clinical access, and resources available to support the program. Requirements for reports to the Board are revised to include significant changes in instructional format. Other language in this section is clarified.

Subchapter 5 addresses minimum standards for approved nursing education programs. Language regarding the requirements for the nurse administrator is clarified to reflect updated wording in initial requirements for nursing faculty members. Other language in this section is clarified.

In Subchapter 7, 9, and 10, there are revisions that clarify current requirements, as well as substantive changes. The requirements for practical nurse equivalency are being revised to delete Air Force medics at the 4N051 or 4N071 level from the list of those eligible for practical nurse licensure through equivalency. The deletion of Air Force medics at the 4N051 or 4N071 level from the list of those eligible for practical nurse licensure through equivalency is needed because of changes made in the Air Force training program that led to a different curriculum from that provided to practical nursing students. The U.S. Army medic (91WM6) is also deleted from this section; however, because the U.S. Army provides a board-approved practical nursing education program for the 91WM6, an equivalency evaluation is not necessary. The decrease in the number of hours of additional clinical required for an individual who graduated from a nursing education program more than two years ago to establish continuing qualifications to apply for licensure by examination is to be consistent with what is currently required in Board-approved refresher courses. Because the graduate can either attend a refresher course or obtain the hours in a nursing education program, it is essential that the length of the additional training be similar.

In Subchapter 15, revisions clarify requirements for recognition as an advanced practice nurse. In addition, the names of national nursing accrediting agencies that accredit educational programs for advanced registered nurse practitioners and clinical nurse specialists are specified to ensure that potential students in these programs and applicants for recognition are clear on the accrediting agencies accepted by the Board. Revisions to requirements for certified nurse midwives and certified registered nurse anesthetists update organizational names and clarify requirements.

Subchapter 16 addresses requirements for prescriptive authority for advanced practice nurses. Continuing education categories are revised to ensure appropriate education has been completed. For initial application, the revisions limit the category of education to Category A or Category B, which will ensure that applicants for initial prescriptive authority have opportunity for contact with faculty members and other students. For renewal, the revisions allow the advanced practice nurse to submit Category A, B, or C continuing education for up to 100% of the requirements. This allows advanced practice nurses who are renewing prescriptive authority to take full advantage of continuing education available online, as well as onsite and academic training.

In Subchapter 18, an organizational name is updated, current requirements are clarified, and requirements for reinstatement are added. Requirements for reinstatement of CRNA prescriptive authority provide a mechanism for CRNAs to reinstate, consistent with requirements for other advanced practice nurses with prescriptive authority.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. REGULATIONS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-3-2. Establishment of new nursing education programs

(a) **Step I. Initial application.**

(1) An institution wishing to establish a new nursing education program shall advise the Board of its intent in writing, and shall seek Board consultation in the initial planning.

(2) The institution shall submit the Step I Initial Application to the Board office at least four weeks prior to a regularly-scheduled Board meeting, which provides the following information for the Board's consideration:

(A) mission and organization of the educational institution;

(B) accreditation status of the educational institution;

(C) type of nursing program to be established;

(D) relationship of nursing program to the educational institution;

(E) documentation of the rationale for the establishment of the nursing program in Oklahoma;

(F) potential effect on other nursing programs in the area;

(G) tentative time-table for program development and implementation;

(H) source of potential qualified Nurse Administrator and faculty, with projected times of employment;

(I) tentative budget plans including evidence of financial resources adequate for developing, implementing, and continuing the nursing program;

(J) source of anticipated student population;

(K) description of support staff for the proposed program;

(L) description of physical facilities;

(M) description of available clinical resources with letters from clinical resources supporting development of a new program in nursing.

(3) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer educational programs in Oklahoma. Regional accreditation is recommended for institutions offering programs in nursing education.

(4) The Board shall advise the institution in writing of its decision to:

(A) approve proceeding with development of the program-Step II; or

(B) defer approval pending a visit to the institution and/or receipt of further information; or

(C) deny approval specifying reasons for denial.

(b) **Step II. Application for Provisional Approval.**

(1) The institution shall employ a qualified Nurse Administrator ensuring adequate time is provided to develop Step II. ~~It is recommended that consultation be sought with the Board staff during the planning stage~~. A consultative visit will be conducted by Board staff at least one month prior to submission of the Step II application. A report of the findings from this visit will be submitted to the Board with the Step II application.

(2) The Nurse Administrator shall prepare the following materials following the Guidelines for Provisional Approval for the Board's consideration:

(A) philosophy, program and course objectives;

(B) curriculum plan;

(C) policy statements;

(D) survey of clinical facilities and existing nursing education programs in the service area, with evidence that a sufficient amount and variety of clinical experience is available to support an additional nursing education program in the service area;

(E) faculty qualifications, criteria and job descriptions;

(F) budget plan projected for a three (3) year period;

(G) learning resources; and

(H) institutional and program organizational plans.

(3) At least four months prior to the anticipated admission of students and at least four weeks prior to a regularly-scheduled Board meeting, the Nurse Administrator shall submit the "Application for Provisional Approval" for Board review.

(4) Nursing education and institutional representatives may be present during the Board meeting. The Board shall advise the institution in writing of its decision to:

(A) grant Provisional Approval, authorizing the institution to proceed with implementation of the nursing education program and admission of students; or

(B) defer Provisional Approval and program implementation pending further development; or

(C) deny Provisional Approval.

(5) The program cannot admit students until Provisional Approval is granted.

(6) Faculty qualification forms must be submitted to the Board and qualified faculty employed at least thirty days prior to the admission of students.

(7) Progress reports shall be made by the Nurse Administrator as requested by the Board while on Provisional Approval.

485:10-3-5. Reports to the Board

The Board shall take action on all reports as appropriate.

(1) **Faculty qualification report.**

(A) A faculty qualification record shall be submitted for all instructional staff (full-time, part-time, classroom, or clinical), and shall include educational preparation and employment experience.

(B) The faculty qualification record shall be submitted within two weeks following the appointment by the Nurse Administrator on a form provided by the Board.

(2) **Enrollment and annual reports.** Enrollment and annual reports shall be submitted in formats requested by the Board.

(3) **Special reports.** Special reports to the Board shall include but not be limited to:

(A) notifying in writing of administrative changes relating to and affecting the program;

(B) requesting approval prior to implementation for:

(i) major curriculum changes that alter the length of the program, substantially change the objectives, reorganize the course offerings, or reflect a significant philosophical or conceptual shift;

(ii) extended, distance learning, or off-campus offerings, when any nursing course is offered;

(iii) ~~part-time or pilot programs.~~ a significant change in instructional format;

(iv) a pilot or experimental program.

(4) **Pass Rate Reports.** Pass Rate Reports are required when the first-time NCLEX writer pass rate falls ten (10) percentage points or more below the national average and at least ten candidates wrote the examination (based on a calendar year.)

485:10-3-6. Nursing education program visits

(a) **Survey visit.**

(1) Each nursing education program shall be surveyed:

(A) prior to receiving Full Approval;

(B) within three (3) years after receiving initial Full Approval; and

(C) at least every five (5) years thereafter unless otherwise notified.

(D) Special and focused survey visits may be directed by the Board.

(2) A self evaluation report shall be completed by the nursing education program and submitted with the applicable fee thirty days prior to the survey visit.

(3) A draft of the survey visit report shall be available to the nursing education program for additions and corrections.

(4) The final report of the survey visit including commendations, recommendations and the decision of the Board shall be provided to the institution.

(b) **Consultation visit.** Consultation visits are available to the nursing education programs upon written request giving the purpose for the visit and are mandatory as indicated in 485:10-3-2 (b-1).

SUBCHAPTER 5. MINIMUM STANDARDS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-5-3.2. Nursing administrator for nursing education programs

(a) The nursing education program leading to registered nurse licensure shall be administered by a Registered Nurse currently licensed in Oklahoma with the following qualifications:

(1) a minimum of a master's degree in nursing, preferably an earned doctorate from a regionally accredited institution;

(2) present evidence of current practice with a minimum of two (2) years full-time equivalent practice as a Registered Nurse in a clinical setting preceding the first date of first employment as a nursing faculty member ~~two years full-time equivalent experience in clinical nursing as a Registered Nurse, within five years of first teaching position~~; and

(3) one year ~~full-time~~ teaching experience as a full-time nursing faculty member in a nursing education program leading to licensure.

(b) The administrator of the nursing education program, with institutional input, shall have the authority and responsibility for:

(1) the administration of the nursing program;

(2) preparation and administration of the budget for the nursing program;

(3) implementation of faculty development and performance review;

(4) recommendation of qualified faculty for appointment, promotion, tenure (if applicable), and retention;

(5) notification to the Board of faculty appointments, changes in the program or its administration, and reports as directed by the Board.

(c) If the Nurse Administrator has teaching or other responsibilities, adequate time will be provided to fulfill administrative duties for the nursing education program.

(d) An acting Nurse Administrator may be appointed, after Board approval, to fill the position of the Nurse Administrator, for a period of time not to exceed one (1) calendar year.

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE

485:10-7-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Registered Nurse must meet the following qualifications:

(1) Submits an application containing such information as the Board may prescribe.

(2) Submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic professional curricula of a state Board-approved registered

nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6 (d-1, 2, and 3), and holds or is entitled to hold a diploma or degree therefrom.

(b) **Applications.**

(1) Applications for licensure by examination must be completed, notarized, and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

(2) One (1) photograph signed by the applicant must be filed with the application.

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit the required fee. An authorization to test will be issued by the testing service allowing the candidate to schedule the examination.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for Registered Nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for Registered Nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

(2) Applicants who fail the NCLEX-RN may be eligible to repeat the examination upon filing an application and fee, and upon meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-RN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least ~~160~~ 80 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two ~~additional~~ years from the completion date of the additional education to take and pass the NCLEX-RN.

485:10-7-2. Licensure by endorsement

(a) **Qualifications.**

(1) The applicant must submit an application containing such information as the Board may prescribe.

(~~1~~ 2) An applicant for licensure by endorsement as a Registered Nurse must meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(~~2~~ 3) An applicant licensed in another state or U.S. territory since January 1, 1952 must have written the licensing examination adopted by the Board with a passing score as established by the Board. A license to practice nursing in Oklahoma will not be issued until this requirement is met.

(~~3~~ 4) An applicant must submit evidence of either:

(A) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(B) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.

(~~4~~ 5) In addition to meeting other requirements for endorsement established by the Board in these rules, effective January 1, 2005, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Registered Nurses;

(C) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(D) Present evidence of licensure as a registered nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years.

(~~5~~ 6) Applicants for endorsement who took the National Council Licensure Examination for Registered Nurses for initial licensure within the last two years must:

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) ~~Have~~ Provide evidence of at least six months work experience as a registered nurse in the state, U.S. territory, or country of original licensure.

(b) **Applications.**

(1) Applications must be completed, notarized and accompanied by a photograph signed by the applicant and filed with the Board.

(2) Endorsement may be accepted from the original state or U.S. territory of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.

(1) The applicant must present evidence of:

(A) graduation from a government-approved nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);

(B) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, maternal-infant nursing, psychiatric-mental health nursing as evidenced by:

(i) a translated transcript with certified proof of translation received directly from the nursing education program in the original country of licensure, or

(ii) a certified copy of original transcript obtained directly from the Commission of Graduates of Foreign Nursing Schools (CGFNS)

(C) licensure in country of graduation as evidenced by official verification received directly from the Commission of Graduates of Foreign Nursing Schools;

(D) current competence in oral and written English as evidenced by receipt of current, valid scores directly from the approved testing service verifying successful completion of:

(i) Test of English as a Foreign Language (TOEFL) and Test of Spoken English (TSE) and Test of Written English (TWE) of the Educational Testing Service, or

(ii) Test of English for International Communication (TOEIC) and Test of Spoken English and Test of Written English of the Educational Testing Service, or

(iii) International English Language Testing System (IELTS), or

(iv) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service.

(E) An evaluation of educational credentials as evidenced by:

(i) CGFNS Certificate Status or

(ii) CGFNS Healthcare Profession and Science Course-by-Course Report;

(iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(F) Evidence of either:

(i) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(ii) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1981;

(2) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States.

(B) Licensed in another US State or Territory, have successfully completed the licensure examination approved by the Board and ~~have~~ provide evidence of at least one year full-time equivalent work experience in a clinical setting as a registered nurse in the state of licensure.

(3) Applicants must submit a completed application and the required fee.

(e) **Temporary license for endorsement applicants.**

(1) A temporary license may be issued to the applicant on proof of

(A) Current unrestricted licensure in another state;

(B) Evidence of having successfully passed the licensure examination;

(C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program, or an evaluation of educational credentials and nursing licensure in country of origin for the foreign-educated nurse as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status, ~~and~~ accompanied by a verification of graduation from a government approved nursing education program, the translated ~~transcripts~~ transcript, and verification of unrestricted nursing licensure in country of graduation;

(D) Payment of the fee for licensure by endorsement and temporary license; and

(E) Foreign-educated applicants must provide evidence of current competence in oral and written English by meeting the requirements of 485: 10-7-2(d)(1)(D)(i-iv).

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.

485:10-7-3. Renewal of license

(a) All Registered Nurse licenses issued may be renewed in accordance with the schedule published by the Board.

(b) The applicant must submit an application containing such information as the Board may prescribe.

(c) The application for renewal of license must be completed~~, signed~~ and accompanied by the established fee before a new license is issued.

(~~c~~d) The fee for renewal of license shall be established by the Board in accordance with statutory guidelines.

485:10-7-4. Reinstatement of license

(a) The Registered Nurse license is lapsed if not renewed by expiration date thereof.

(b) The applicant must submit an application containing such information as the Board may prescribe.

(c) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(~~c~~d) The fee for reinstatement of license shall be established by the Board.

(~~d~~e) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.

(~~e~~f) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.

(~~f~~g) An application for reinstatement for a license not previously revoked, suspended or surrendered may be granted on such terms and conditions as the Board may require.

(~~g~~h) In addition to meeting other reinstatement requirements established by the Board in these rules, effective January 1, 2005, if the Oklahoma nursing license has not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Registered Nurses;

(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(4) Present evidence of licensure as a registered nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-7-5. Inactive status

(a) Any Registered Nurse licensee who desires to retire from the practice of nursing shall submit a written request to be placed on the Inactive List.

(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.

(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active fee shall be due when the licensee desires to return to active practice. The applicant must submit an application containing such information as the Board may prescribe.

(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, effective January 1, 2005, if the nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Registered Nurses;

(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(4) Present evidence of licensure as a nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

485:10-7-6. Duplicate license card

(a) One duplicate Registered Nurse license card may be issued per renewal cycle.

(b) If a license card is lost, stolen or destroyed, the licensee must submit written evidence of the situation and a duplicate license may be issued for a fee as established by the Board. A duplicate license card will be issued upon notification by the licensee of a name change.

(c) If a license card is not received and the Board office receives written notification within ninety (90) days of date of issuance, a duplicate license may be issued without fee.

SUBCHAPTER 9. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A LICENSED PRACTICAL NURSE

485:10-9-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Licensed Practical Nurse must meet the following qualifications:

(1) has received a high school diploma or a high school equivalency certificate (GED), or meets criteria for an Adult High School Diploma;

(2) submits an application containing such information as the Board may prescribe;

(3) submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic curricula of a state Board-approved practical nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6 (e-1, 2), and holds or is entitled to hold a diploma or degree therefrom;

(4) has completed equivalent courses through one of the following methods:

(A) in a state approved program of nursing with a minimum overall grade point average of 2.0, and a grade of a "C" or higher in all nursing courses. Evidence must be provided that verifies successful completion of a minimum of one academic year of instruction in a registered nursing education program, including classroom instruction and clinical practice in nursing care of the adult, nursing care of children, and maternal-infant nursing. Course content in anatomy and physiology, growth and development, mental health, pharmacology and nutrition also must have been successfully completed. Courses in external degree programs or completed by challenge examination are not acceptable for PN equivalency; or

(B) ~~has completed an equivalent level of training as a military medic. The following levels of training have been evaluated and determined to be equivalent training:~~

~~(i) U.S. Army 91WM6 (previously known as 91C)~~

~~(ii) Air Force Medical Service Specialist 4NO51 (previously known as 90250) or 4NO71 (previously known as 90270), with further evaluation to verify that training included content on mental health, and classroom instruction and clinical experience in care of the adult, care of the child, and maternal-newborn nursing; or~~

~~(C)~~ has completed a registered nursing education program in a foreign country and meets the requirements of 485:10-7-2(d).

(5) Board-approved role transition learning packet related to legal and ethical aspects of practical nursing must be successfully completed by all PN equivalency applicants prior to approval to write the examination for licensure.

(b) **Applications.**

(1) Applications for licensure by examination must be completed, notarized and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

(2) One (1) photograph signed by the applicant must be filed with the application.

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit required fee. An authorization to test will be mailed to the candidate by the testing service allowing them to schedule the exam.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for practical nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for practical nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination (first time and rewrite) is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the National Council Licensure Examination for Practical Nurses (NCLEX-PN).

(2) Applicants who fail the NCLEX-PN may be eligible to repeat the examination upon filing an application and fee meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-PN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program or the equivalent coursework and/or related experience. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least ~~160~~ 80 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two ~~additional~~ years from the completion of the additional education to take and pass the NCLEX-PN.

485:10-9-2. Licensure by endorsement

(a) **Qualifications.**

(1) The applicant must submit an application containing such information as the Board may prescribe.

(~~1~~2) An applicant for licensure by endorsement as a Licensed Practical Nurse shall meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(~~2~~3) An applicant licensed in another state or U.S. territory since June 30, 1954 must have passed the licensing examination adopted by the Board. A license to practice practical nursing in Oklahoma will not be issued until this requirement is met.

(~~3~~4) In addition to meeting other requirements for endorsement established by the Board in these rules, effective January 1, 2005, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Practical Nurses;

(C) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(D) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years.

(~~4~~5) Applicants for endorsement who took the National Council Licensure Examination for Practical Nurses for initial licensure within the last two years must

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) ~~Have~~ Provide evidence of at least six months work experience as a practical nurse in the state, U.S. territory, or country of original licensure.

(b) **Applications.**

(1) Applications must be completed, certified and accompanied by a photograph signed by the applicant and filed with the Board.

(2) Endorsement may be accepted from the original state of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.

(1) The applicant must present evidence of:

(A) completion of a high school diploma or high school equivalency certificate (GED), or meet criteria for an Adult High School Diploma;

(B) current competence in oral and written English as evidenced by receipt of current, valid scores directly from the testing service verifying successful completion of:

(i) Test of English as a Foreign Language (TOEFL), Test of Written English (TWE), and Test of Spoken English (TSE) of the Educational Testing Service; or

(ii) Test of English for International Communication (TOEIC) and Test of Spoken English and Test of Written English of the Educational Testing Service; or

(iii) International English Language Testing System (IELTS); or

(iv) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service.

(C) graduation from a government approved practical nursing education program or equivalent courses in a government approved nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);

(D) licensure in country of graduation as evidenced by official verification completed within the last 12 months immediately preceding the date of application for licensure by endorsement received directly from~~:~~

~~(i)~~ the Commission of Graduates of Foreign Nursing Schools,

(E) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, and maternal-infant nursing in a government-approved school of nursing as evidenced by:

(i) a translated transcript received directly from the nursing education program in the original country of licensure with certified proof of translation; or

(ii) a certified copy of the transcript received directly from the Commission on Graduates of Foreign Nursing Schools (CGFNS).

(F) An evaluation of educational credentials as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status;

(iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(2) The applicant must successfully complete the licensing examination adopted by the Oklahoma Board of Nursing.

(3) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States or

(B) Licensed in another US State or Territory, have successfully completed the licensure examination approved by the Board and ~~have~~ provide evidence of at least one year full-time equivalent work experience in a clinical setting as a practical nurse in the state of licensure.

(4) Applicants must submit a completed application with the required application and evaluation fees.

(e) **Temporary license for endorsement applicants.**

(1) A temporary license may be issued to the applicant on proof of

(A) Current unrestricted licensure in another state;

(B) Evidence of having successfully passed the licensure examination;

(C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program, or an evaluation of educational credentials and nursing licensure in country of origin for the foreign-educated nurse as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure in country of graduation; and

(D) Payment of the fee for licensure by endorsement and temporary license; and

(E) Foreign-educated applicants must provide evidence of current competence in oral and written English by meeting the requirements of 485:10-9-2(d)(1)(B)(i-iv).

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year.

485:10-9-3. Renewal of license

(a) All licenses issued may be renewed in accordance with a schedule published by the Board.

(b) The applicant must submit an application containing such information as the Board may prescribe.

(c) The application for renewal of license must be completed and ~~signed~~ accompanied by the established fee before a new license is issued.

(~~c~~d) The fee for renewal of license shall be established by the Board in accordance with statutory guidelines.

485:10-9-4. Reinstatement of license

(a) The Licensed Practical Nurse license is lapsed if not renewed by expiration date thereof.

(b) The applicant must submit an application containing such information as the Board may prescribe.

(c) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(~~c~~d) The fee for reinstatement of license shall be established by the Board.

(~~d~~e) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.

(~~e~~f) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.

(~~f~~g) An application for reinstatement for a license not previously revoked, suspended or surrendered may be granted on such terms and conditions as the Board may require.

(~~g~~h) In addition to meeting other reinstatement requirements established by the Board in these rules, effective January 1, 2005, if the Oklahoma practical nursing license has not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Practical nurses;

(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester

credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-9-5. Inactive status

(a) Any licensee who desires to retire from the practice of practical nursing shall submit a written request to be placed on the inactive list.

(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.

(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active fee shall be due when the licensee desires to return to active practice. The applicant must submit an application containing such information as the Board may prescribe.

(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, effective January 1, 2005, if the practical nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Practical Nurses;

(3) Submission of an official transcript verifying successful completion of at least seven (7) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with certification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

485:10-9-6. Duplicate license card

(a) One duplicate Licensed Practical Nurse license card may be issued per renewal cycle.

(b) If a license card is lost, stolen or destroyed, the licensee must submit written evidence of the situation and a duplicate license may be issued for a fee as established by the Board. A duplicate license card will be issued upon notification by the licensee of a name change.

(c) If a license card is not received and the Board office receives written notification within ninety (90) days of date of issuance, a duplicate license may be issued without fee.

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTIVE PERSONNEL

485:10-10-7. Certification

(a) The Board shall establish and maintain a listing (registry) of persons authorized to function as an "advanced unlicensed assistive person".

(b) An applicant for certification by examination as an advanced unlicensed assistive person must meet the following requirements:

(1) has successfully completed a certification training course for advanced unlicensed assistive personnel approved by the Board; or

(2) has successfully completed an equivalent course approved by the Board; or

(3) has completed classroom/laboratory instruction and supervised clinical experience in an equivalent structured course in a health-care facility or an educational institution. Evidence must be provided that verifies ability to safely and accurately perform each core skill included in Board-approved advanced unlicensed assistive personnel course.

(c) Application for certification:

(1) Applications for certification must be filed with the Board in accordance with the procedure designated by the Board. The application must be complete, signed and notarized. The required fee and one (1) photograph signed by the applicant must be filed with the application.

(2) The candidate must register with the authorized testing service and submit the required fee.

(3) The applicant must submit an application containing such information as the Board may prescribe.

(d) Fee for certification:

(1) The fees for certification and writing the certification examination adopted by the Board shall accompany the applications.

(2) The fee for rewriting the certification examination adopted by the Board shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

485:10-10-8. Recertification

(a) Certification as an advanced unlicensed assistive person shall be renewed every two years in accordance with the schedule published by the Board.

(b) The application for recertification must be completed~~, signed~~ and accompanied by the established fee before a new certificate is issued.

(c) The applicant must submit an application containing such information as the Board may prescribe.

(~~c~~ d) The application for recertification must be accompanied by one of the following:

(1) notarized verification of employment as an AUA in an acute care setting for a minimum of 12 months within the previous 24 months immediately prior to renewal of AUA certification; or

(2) documentation verifying successful completion of twelve hours of clinical inservice appropriate to the AUA role within the previous 24 months; or

(3) rewriting the certification examination with a passing score, both the written and core skills portions of the exam, within the 24 months immediately preceding renewal of AUA certification; or

(4) documentation verifying initial certification as an AUA within the 24 months immediately prior to renewal of AUA certification.

(~~d~~ e) The fee for renewal of the certificate shall be established by the Board.

485:10-10-8.1. Reinstatement of certification

(a) The certification of the advanced unlicensed assistive person is lapsed if not renewed by expiration date thereof.

(b) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(c) The applicant must submit an application containing such information as the Board may prescribe.

(d) The application for reinstatement must be accompanied by one of the following:

(1) notarized verification of employment as an AUA in an acute care setting for a minimum of 12 months within the previous 24 months; or

(2) documentation verifying successful completion of twelve hours of clinical inservice appropriate to the AUA role within the previous 24 months; or

(3) rewriting the certification examination with a passing score, both the written and core skills portions of the exam; or

(4) documentation verifying initial certification as an AUA within the 24 months immediately prior to reinstatement of AUA certification.

(~~d~~ e) An application for reinstatement for a certification that has been revoked, suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the revocation, suspension or surrender and shall be considered by the Board.

485:10-10-10. Disciplinary action

(a) The Board may deny, revoke, suspend the certificate to practice as an advanced unlicensed assistive person and/or otherwise discipline the holder of a certificate upon proof that the individual is guilty of any offense prohibited in 59 O.S. §567.8.

(b) Nothing contained in these rules shall require a licensed nurse to delegate to an Advanced Unlicensed Assistive Person the performance of any core skill.

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE NURSE

485:10-15-4. Application

(a) An applicant for recognition as an advanced practice nurse must:

(1) hold a current license to practice as a Registered Nurse in Oklahoma;

(2) submit an official transcript verifying completion of a formal educational program accepted by the Board;

(3) submit evidence of current national certification recognized by the Board; and

(4) submit a completed application for recognition containing such information as the Board may prescribe and the required fee.

(b) Changing certifications

(1) An advanced practice nurse who wishes to change or add an area of specialty and national certification must meet initial requirements for advanced practice recognition, as identified in 485:10-15-4(a).

(2) An advanced practice nurse who changes their national certification and certifying body within the same specialty area must notify the Board in writing within thirty (30) days of the change and submit a copy of a current national certification recognized by the Board within the same specialty area ~~and recognized by the Board~~.

(3) An advanced practice nurse holding more than one certification who does not renew or maintain one of their national certifications must notify the Board in writing within 30 days of the change. The recognition for which the national certification has expired will be placed on inactive status. The advanced practice nurse shall not work in the specialty area upon expiration of their national certification.

485:10-15-4.1. Temporary recognition

Temporary recognition may be granted under the following conditions:

(1) hold a current license to practice as a Registered Nurse in Oklahoma,

(2) submit documentary evidence of registration for a Board-approved national certifying examination applicable to the level and clinical specialty,

(3) submit a completed application for temporary recognition and the required fee,

(4) submit an official transcript verifying successful completion of the advanced practice educational program.

485:10-15-5. Recognition, renewal, reinstatement and inactive status

(a) **Recognition.**

(1) A certificate of recognition shall be issued by the Board.

(2) The pocket license card will have an advanced practice designation code.

(3) A list of all Board recognized advanced practice nurses shall be maintained by the Board.

(b) **Renewal.**

(1) Renewal shall be concurrent with the two-year licensure renewal for Registered Nurse.

(2) The renewal form shall include a statement that the nurse's national certification is current and that certification will be maintained during the period of licensure renewal.

(3) Each advanced practice nurse shall submit a copy of a current national certification document to the Board with the renewal form, if requested.

(4) The applicant must submit an application containing such information as the Board may prescribe.

(c) **Reinstatement.**

(1) If an advanced practice nurse fails to renew recognition prior to the expiration date of that authority, the advanced practice recognition shall lapse.

(2) The applicant may request reinstatement of advanced practice recognition by submitting a completed application and the required fee. If the reinstatement is not approved within two years of the expiration date of recognition, the applicant must meet current requirements for initial advanced practice recognition.

(3) The applicant must submit an application containing such information as the Board may prescribe.

(d) **Inactive Status.**

(1) An advanced practice nurse may submit a written request to place advanced practice recognition on inactive status.

(2) Advanced practice recognition will be placed on inactive status upon notification to the Board office the advanced practice nurse does not have current national certification from a national certifying body approved by the Board.

(3) The date of inactive status will be the date of approval by the Board.

(4) The Board may delegate approval to place advanced practice recognition on inactive status to Board staff.

(5) The applicant may request return-to-active status of advanced practice recognition by submitting a completed application containing such information as the Board may prescribe and the required fee. If the advanced practice recognition has been on inactive status for two or more years, the applicant must meet current requirements for initial advanced practice recognition.

485:10-15-6. Practice as an Advanced Registered Nurse Practitioner

(a) **Educational programs.** Successful completion of an educational program shall establish eligibility to take the recognized advanced practice nurse certification examination in a specialty area. The educational program shall:

(1) Prepare advanced practice nurses as a part of a Master's level or higher preparation in nursing in a program accredited by or holding preliminary approval or candidacy status with the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education ~~an approved national nursing accrediting agency~~; or

(2) Meet the following requirements:

(A) be based on measurable objectives that relate directly to the scope of practice for the specialty area;

(B) include theoretical and clinical content directed to the objectives;

(C) be equivalent to at least one academic year. A preceptorship which is part of the formal program shall be included as part of the academic year;

(D) be university-based or university-affiliated with oversight by a nursing program accredited by an approved national nursing accrediting agency.

(b) **National Certification.** National certification in the specialty area at an advanced practice level is required for recognition. The Board shall identify and keep on file the current list of recognized certifications and certifying bodies approved by the Board. A licensee may request that a certification program be considered by the Board for inclusion on the list. A certifying body examination shall meet the following requirements:

(1) require applicants for the certification examination to have completed a formal program of study consistent with the area of certification;

(2) offer an examination in the area of certification which shall:

(A) measure the theoretical and clinical content based on the scope of practice in the specialty area;

(B) be developed in accordance with generally accepted standards of validity and reliability; and

(C) be open only to Registered Nurses who have successfully completed the appropriate formal program of study as defined in these Rules and Regulations.

(c) **Scope of practice for ARNP.** The Advanced Registered Nurse Practitioner's scope of practice includes the full scope of nursing practice and practice in an expanded role as follows:

(1) The Advanced Registered Nurse Practitioner (ARNP) provides comprehensive health care to clients across the life span.

(2) The ARNP is responsible and accountable for the continuous and comprehensive management of a broad range of health services, which include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) diagnosis and prescription of medications, treatments, and devices for acute and chronic conditions and diseases;

(D) management of health care during acute and chronic phases of illness;

(E) guidance and counseling services;

(F) consultation and/or collaboration with other health care providers and community resources;

(G) referral to other health care providers and community resources.

(3) The ARNP will provide services based upon education, experience, and national certification. It is the responsibility of the licensee to document competency of any act, based upon education, experience and certification.

(4) The scope of practice as previously defined is incorporated into the following specialty categories and further delineates the population served:

(A) Adult ARNP provides health care to adolescents and adults.

(B) Family ARNP provides health care to persons across the lifespan.

(C) Geriatric ARNP provides health care to older adults.

(D) Neonatal ARNP provides health care to neonates and infants.

(E) Pediatric ARNP provides health care to persons from newborn to young adulthood.

(F) Women's Health Care ARNP provides health care to adolescent and adult females. Care may also be provided to males with reproductive health needs or problems.

(G) Acute Care ARNP provides health care to adults who are acutely or critically ill.

(H) The Adult Psychiatric and Mental Health ARNP provides acute and chronic psychiatric and mental health care to persons age 13 or older.

(I) The Family Psychiatric and Mental Health ARNP provides acute and chronic psychiatric and mental health care to persons across the lifespan.

(J) The Acute Care Pediatric ARNP provides health care to persons from newborn to young adulthood with complex acute, critical and chronic health conditions.

485:10-15-7. Practice as a Clinical Nurse Specialist

(a) **Education.**

(1) Any nurse graduating prior to September 1, 1991, may apply for recognition as a Clinical Nurse Specialist by submitting a transcript which verifies conferral of a Master's Degree in Nursing and documentation verifying the completion of a minimum of two semesters of course work in supervised advanced clinical practice.

(2) Any nurse graduating with a Master's Degree in Nursing after September 1, 1991, may apply for recognition as a Clinical Nurse Specialist by submitting ~~a~~ an official transcript verifying conferral of a Master's Degree in Nursing from a nursing program accredited by or holding preliminary approval or candidacy status with the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education ~~an approved national nursing accrediting agency~~ and documentation verifying the completion of a minimum of two semesters of course work in which the major focus of study was a clinical nurse specialist track or pathway.

(3) Successful completion of the educational program shall establish an academic preparation consistent with the recognized certification examination in the specialty area.

(b) **National certification.**

(1) National certification in the specialty area at an advanced practice level or the highest level available in lieu of the availability of an advanced practice level examination in that specialty is required for recognition.

(2) The Board shall identify and keep on file the current list of recognized certifications and certifying bodies approved by the Board. A licensee may request that a certification program be considered for inclusion on the list. A certifying body examination shall meet the following requirements:

(A) Approved or accredited by a certification credentialing body approved by the Board. The certification credentialing body shall verify the certification examination meets the following requirements:

(i) measures theoretical and clinical content based on the scope of practice in the specialty area;

(ii) is developed in accordance with generally accepted standards of validity and reliability;

(B) Open only to licensed or credentialed health care professionals;

(C) Based upon national standards of practice for the specialty area.

485:10-15-8. Practice as a Certified Nurse-Midwife

(a) **Qualifications.** Applicants for recognition as a Certified Nurse-Midwife must meet the following qualifications:

(1) Hold a current license to practice as a Registered Nurse in Oklahoma~~;~~

(2) Successful completion of a nurse midwifery program accredited by the American College of Nurse Midwives Division of Accreditation

(3) Hold current certification for the practice of nurse-midwifery from the American Midwifery Certification Board (AMCB) ~~American College of Nurse Midwives (ACNM) or American College of Nurse Midwives Certification Council Incorporated (ACC, Inc.);~~

(~~3~~ 4) Proof of enrollment in a current cycle of continuing competency assessment (CCA) or Certificate Maintenance Program as maintained by the American Midwifery Certification Board ~~ACC, Inc.~~

(b) **Applications.**

(1) Applications must be completed and filed with the Board~~.~~

(2) The credentials of the applicant must be verified by the American College of Nurse-Midwives or American Midwifery Certification Board ~~College of Nurse Midwives Certification Council Incorporated.~~

(c) **Recognition for practice of Certified Nurse Midwifery.** Upon receipt of a valid application as established by the Board, the Board may recognize for practice of Certified Nurse-Midwifery and approve for inclusion on its official listing, the name so recognized.

485:10-15-9. Practice as a Certified Registered Nurse Anesthetist

(a) **Educational preparation.** Successful completion of a nurse anesthesia educational program ~~the educational program of a school of nurse anesthetist~~ accredited by the American Association of Nurse Anesthetists' Council on ~~Certification of Nurse Anesthetists~~ Accreditation of Nurse Anesthesia Educational Programs.

(b) **Maintenance.** Maintenance of recertification through American Association of Nurse Anesthetists' Council on Re-certification of Nurse Anesthetists.

SUBCHAPTER 16. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE NURSES

485:10-16-1. Definitions

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

"Continuing education categories" are defined in the following categories and represent and define methods for meeting initial and renewal contact and academic credit hours requirement for prescriptive authority:

(A) Category A: Academic credit. See continuing education equivalencies table for semester/quarter hour conversion to contact hours.

(B) Category B: Onsite Seminar or lecture or workshop or course~~, either on-site or online,~~ approved for contact hours, continuing education units or continuing medical education units through a recognized approver of continuing education.

(C) Category C: Online seminars or workshops, or ~~Articles~~ articles in professional journals or other professional references approved for contact hours, continuing education units or continuing medical education units through a recognized approver of continuing education.

(D) Category D: Published article in refereed journal/book/research project. Evidence of publication of one article related to pharmacotherapy appropriate for advanced practice nurses. These will be evaluated on a case-by-case review.

(E) Category E: Presenter/lecturer. Evidence of providing content related to pharmacotherapeutics at an advanced practice level. The presentation/lecture must be approved for contact hours or offered as part of an academic course with a target audience of advanced practice nurses.

"Continuing education equivalences" means:

(A) 1 Continuing Education Unit (CEU) = 10 contact hours

(B) 1 contact hour = .1 CEU

(C) 1 contact hour = 50 minutes

(D) 1 academic semester hour = 15 contact hours

(E) 1 academic quarter hour = 12.5 contact hours

(F) 1 Continuing Medical Education Unit (CME) = 60 minutes or 1.2 contact hours

(G) 1 clock hour = 60 minutes

(H) 1 CE credit = 1 contact hour or 50 minutes

"Course in pharmacotherapeutic management" means a course in which the content must include pharmacodynamic and kinetic principles, classifications of medications relevant to the scope of practice, sources for and methods of evaluating drug information, legal and ethical implications of prescribing, clinical application and use of pharmacological agents in the prevention of illness, restoration and maintenance of health.

"Qualified preceptor" means an advanced practice nurse with a current unrestricted license who has a scope of practice which includes prescribing and has met the requirements for prescriptive authority; a licensed practitioner of medicine or osteopathy with unrestricted prescriptive authority.

485:10-16-3. Initial application

The advanced practice nurse applicant for prescriptive authority shall:

(1) hold a current R.N. license and recognition as an A.R.N.P., C.N.M. or C.N.S. in Oklahoma;

(2) submit a completed application ~~approved by the Board for prescriptive authority~~ containing such information as the Board may prescribe and the required fee;

(3) submit a written statement from ~~a~~ an Oklahoma-licensed physician supervising prescriptive authority which identifies a mechanism for:

(A) appropriate referral, consultation, and collaboration between the advanced practice nurse and physician supervising prescriptive authority;

(B) availability of communication between the advanced practice nurse and physician supervising prescriptive authority through direct contact, telecommunications, or other appropriate electronic means for consultation, assistance with medical emergencies or patient referral;

(4) submit documentation verifying completion of forty-five contact hours of Category B continuing education or three academic credit hours of education, as required by law and defined in the rules and regulations, which are applicable to the scope of practice, in pharmacotherapeutics, clinical application, and use of pharmacological agents in the prevention of illness, and in the restoration and maintenance of health in a program beyond basic nursing preparation. Such contact hours or academic credits shall be obtained within a time period of three (3) years immediately preceding the date of receipt of application for prescriptive authority. The three (3) year time period may be waived if the applicant has graduated from their advanced practice educational program within a time period of three years immediately preceding the date of application for prescriptive authority and submits the following official documentation from the advanced practice program:

(A) Course descriptions with course objectives verifying the integration of didactic and clinical hours in

pharmacotherapeutic management content throughout the advanced practice program curriculum; and

(B) Credentials of the faculty teaching the courses verifying the faculty's scope of practice includes prescribing.

(C) Verification of the total number of contact hours completed in pharmacotherapeutics. ~~The following categories identify how this requirement may be met. No more than the identified percentage for each category may apply toward the contact hour/academic hour or the equivalent requirements for initial application:~~

~~(i) Category A: Up to 100% of requirement (3 credit hours)~~

~~(ii) Category B: Up to 100% of requirement (45 contact hours)~~

~~(iii) Category C: Up to 50% of requirement (22.5 contact hours)~~

~~(iv) Category D: Up to 20% of requirement (9 contact hours)~~

~~(v) Category E: Up to 20% of requirement (9 contact hours)~~

(5) Submit documentation verifying successful completion of a graduate degree at an advanced practice level or post-master's certificate at an advanced practice level, if the Master's degree is in nursing.

485:10-16-4. Clinical Nurse Specialist pharmacology requirements

In addition to meeting the requirements in 485: 10-16-3, ~~The~~ the Clinical Nurse Specialist who submits an initial application for prescriptive authority shall also submit ~~include~~:

(1) Documentation verifying completion of a course in pharmacotherapeutic management applicable to the Clinical Nurse Specialist's ~~scope of practice~~ specialty area which must be a minimum of two credit hours or 30 contact hours of Categories A or B continuing education categories.

(2) Documentation verifying satisfactory completion of a minimum of 320 clock hours preceptorial experience with a qualified preceptor whereby the Clinical Nurse Specialist is providing direct care including demonstrating competence in prescribing drugs and medicines. This preceptorial experience must be developed and overseen by an academic program that prepares Clinical Nurse Specialists. ~~The~~ All didactic coursework in ~~pharmacotherapeutic~~ pharmacotherapeutics ~~course~~ must be a prerequisite or corequisite to the preceptorial experience verified by official documentation of approval by the academic program that offers the preceptorial experience.

485:10-16-6. Renewal

The application for renewal of prescriptive authority shall:

(1) be concurrent with the two-year RN licensure renewal and renewal of advanced practice recognition;

(2) include:

(A) a completed application ~~approved by the Board~~ containing such information as the Board may prescribe and required fee;

(B) documentation approved by the Board verifying a minimum of 15 contact hours, or one academic credit hour of education, or the equivalent, in pharmacotherapeutics, clinical application and use of pharmacological agents in the prevention of illness, and in the restoration and maintenance of health, in a program beyond basic registered nurse preparation, approved by the Board, within the two-year period immediately preceding the effective date of application for renewal of prescriptive authority, which is applicable to the scope of practice. This documentation requirement does not apply to individuals renewing within 24 months of initial prescriptive authority approval.

(i) The following categories identify how this requirement may be met. No more than the identified percentage for each category may apply towards the contact hour/academic hour or the equivalent requirements for renewal of prescriptive authority;

(ii) Maximum number of units acceptable in continuing education categories:

(I) Category A: up to 100% of requirement (1 credit hour)

(II) Category B: up to 100% of requirement (15 contact hours)

(III) Category C: up to ~~50~~ 100% of requirement (~~7.5~~ 15 contact hours)

(IV) Category D: up to 20% of requirement (3 contact hours)

(V) Category E: up to 20% of requirement (3 contact hours)

(C) A written statement signed by the physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral. Applicants for renewal who have submitted a written statement signed by the physician supervising prescriptive authority prior to renewal but within 90 days of the expiration date are not required to submit another written statement for renewal.

485:10-16-7. Reinstatement/Inactive Status

(a) **Reinstatement.**

(1) If an advanced practice nurse fails to renew prescriptive authority prior to the expiration date of that authority, the advanced practice nurse's prescriptive authority shall expire and the advanced practice nurse shall cease prescribing.

(2) The advanced practice nurse may reinstate the prescriptive authority renewal by submitting:

(A) a completed application ~~approved by the Board~~ containing such information as the Board may prescribe and required fee;

(B) evidence of having met requirements for renewal of prescriptive authority as listed in 485:10-16-6 (2)(B)(i)(ii).

(C) A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral.

(3) If reinstatement is not approved within three years of the expiration of prescriptive authority, the applicant will be required to meet initial application criteria.

(b) **Inactive Status.**

(1) An advanced practice nurse may submit a written request to place prescriptive authority on inactive status.

(2) An advanced practice nurse's prescriptive authority will be placed on inactive status upon notification to the Board office that the nurse does not have a current physician supervising prescriptive authority.

(3) The date of inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to Board staff.

(4) The advanced practice nurse may return to active status the prescriptive authority renewal by submitting:

(A) a completed application containing such information as the Board may prescribe ~~approved by the Board~~ and required fee;

(B) evidence of having met requirements for renewal of prescriptive authority as listed in 485:10-16-6 (2)(B)(i)(ii).

(C) A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral.

(5) If return to active status of prescriptive authority is not approved within three years of the date of approval of inactive status, the applicant will be required to meet initial application criteria.

SUBCHAPTER 18. PRESCRIPTIVE AUTHORITY FOR C.R.N.A.

485:10-18-2. Initial application

The Certified Registered Nurse Anesthetist (C.R.N.A.) who applies for authority to order, select, obtain and administer drugs shall:

(1) hold a current R.N. license and recognition as a C.R.N.A. in Oklahoma;

(2) submit the following:

(A) a completed application ~~approved by the Board~~ containing such information as the Board may prescribe for authority to order, select, obtain and administer drugs and the required fee;

(B) evidence of satisfactory completion of a minimum of fifteen (15) units of continuing education in advanced pharmacology related to the administration of anesthesia as recognized by the ~~Council on Certification~~ American Association of Nurse Anesthetists ~~or the Council on Recertification of Nurse Anesthetists~~ within the two-year period immediately preceding the date of application;

(C) evidence of professional liability insurance.

(D) official transcript of C.R.N.A. education, if not on file with Board office.

(E) legible copy of current national certification.

485:10-18-3. Renewal

The application for renewal of authority to order, select, obtain and administer drugs shall:

(1) be concurrent with the two-year R.N. licensure renewal and renewal of advanced practice recognition;

(2) include:

(A) a completed application ~~approved by the Board~~ containing such information as the Board may prescribe and required fee;

(B) documentation verifying satisfactory completion of a minimum of eight (8) units of continuing education in advanced pharmacology relating to the administration of anesthesia, as recognized by the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists, completed during the two (2) years immediately preceding renewal.

485:10-18-4. Reinstatement

(a) If a C.R.N.A. fails to renew authority to order, select, obtain and administer drugs prior to the expiration date of that authority, the C.R.N.A.'s authority to order, select, obtain and administer drugs shall expire. If reinstatement is not approved within two years of the expiration of authority to order, select, obtain and administer, the applicant will be required to meet initial application criteria.

(b) The C.R.N.A. may reinstate the authority to order, select, obtain and administer drugs by submitting

(1) a completed application containing such information as the Board may prescribe and required fee;

(2) documentation verifying satisfactory completion of a minimum of eight (8) units of continuing education in advanced pharmacology relating to the administration of anesthesia, as recognized by the American Association of Nurse Anesthetists, completed during the two (2) years immediately preceding renewal.

[OAR Docket #08-681; filed 4-21-08]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #08-680]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Nurses
485:10-16-5. [AMENDED]
AUTHORITY:
Oklahoma Board of Nursing 59 O.S. §567.2A.3, §567.3a.6, §567.3a.7, §567.3a.8, §567.4.F, §567.4a.7.
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
This rule impacts advanced practice nurses with prescriptive authority who prescribe Schedule III-V drugs. The revision allows a maximum of a 30 day supply of Schedule III-V drugs to be prescribed, instead of the current maximum of 7 days. This rule change benefits patients cared for by advanced practice nurses with prescriptive authority, as under the new rule, those patients will be required to make fewer office visits and pay fewer insurance co-pays on their prescriptions.
CONTACT PERSON:
Gayle McNish, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106 (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 16. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE NURSES

485:10-16-5. Maintenance

(a) The advanced practice nurse may prescribe in writing, orally, or by other means of telecommunication, drugs or medical supplies which are not listed on the exclusionary formulary approved by the Board, and which are within the scope of practice for the advanced practice nurse, and that are not otherwise prohibited by law.

(b) The advanced practice nurse must have a supervising physician on file with the Board prior to prescribing drugs or medical supplies. Changes to the written statement between the advanced practice nurse and supervising physician shall be filed with the Board within 30 days of the change and shall be effective upon filing.

(c) The advanced practice nurse with prescriptive authority who prescribes Schedule III-V drugs will comply with state and Federal Drug Enforcement Administration (DEA) requirements prior to prescribing controlled substances.

(1) The advanced practice nurse with prescriptive authority will submit in writing the assigned DEA number to the Board of Nursing within fourteen (14) days of receipt.

(2) No more than a ~~7-day~~ 30-day supply for Schedule III-V drugs shall be prescribed by the advanced practice nurse with prescriptive authority.

[OAR Docket #08-680; filed 4-21-08]

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

[OAR Docket #08-675]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:10-1-8. Course approval requirements [AMENDED]
600:10-1-12. Inactive status - annual fee payment [AMENDED]
600:10-1-14. Reinstatement of license or certification [AMENDED]
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ANALYSIS:
The proposed amendment to rule 600:10-1-8 adds language that assists in compliance with the existing rule. The proposed amendments to rule 600:10-1-12 and 600:10-1-14 add instructions for those applying for reinstatement as required by the Appraiser Qualification Criteria.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107 (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2008:

600:10-1-8. Course approval requirements

(a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Board. All providers shall provide to the Board:

(1) Name and address of the provider;

(2) Contact person and his or her address and telephone number;

(3) The location of the courses or programs, if known;

(4) The number and type of education credit hours requested for each course;

(5) Topic outlines which list the summarized topics covered in each course and upon request, a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes.

(6) The names and qualifications of instructors. An instructor shall have a minimum of one (1) of the following qualifications:

(A) directly related to the subject matter to be taught; seven (7) years of real estate appraisal experience directly related to the subject matter to be taught; or

(B) Possess other educational, teaching, or professional qualifications determined by the Board to constitute an equivalent to one or more of the qualifications in the previously stated paragraphs (A), (B), or (C) of this paragraph.

(b) Approval of courses and instructors shall be for a three year period. Courses and instructors may be renewed for an additional period on application to the Board.

(c) Applications for course approvals and instructor approvals shall be accompanied by application fees as provided for below:

(1) Applications for approval of qualifying education courses that have not been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Two Hundred Dollar ($200.00) non-refundable application fee.

(2) Applications for approval of qualifying education courses that have been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Fifty Dollar ($50.00) non-refundable application fee.

(3) Applications for approval of continuing education courses that have not been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Fifty Dollar ($50.00) non-refundable application fee.

(4) Applications for approval of continuing education courses that have been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Twenty Dollar ($20.00) non-refundable application fee.

(5) Applications for approval of instructors shall be accompanied by a Fifty Dollar ($50.00) non-refundable application fee.

(6) Applications for renewal of any course or instructor shall be accompanied by a Twenty Dollar ($20.00) non-refundable application fee.

(d) Course providers shall provide written notice of date, time, place, and title of courses to be presented not less than seven (7) days in advance of the beginning date of the course. Courses presented shall be subject to unannounced compliance inspection by a representative of the Board.

(e) In addition to accepting courses approved as described in this section, qualifying and continuing education credits may be granted to an individual in such case that said individual supplies acceptable documentation showing that the offering meets applicable Board requirements for the category of credit applied for, including proof that said individual attended and successfully completed the offering. Said individual shall make application and submit documents, statements and forms as may reasonably be required by the Board.

(1) Applications by individuals for qualifying or continuing education credits must be submitted on a form prescribed by the Board at least seven (7) days in advance of the beginning date of the course except as provided in 600:10-1-8(e)(3) below and must be accompanied by a non-refundable application fee of $50.00.

(2) All applications shall include:

(A) Name and address of the provider;

(B) Contact person and his or her address and telephone number;

(C) The location of the courses or programs, if known;

(D) Time schedule (brochure, course outline, course description);

(E) Total minutes of instruction, not including breaks, meals or introductions

(F) Faculty name(s) and credentials (if not in brochure or description);

(G) The number and type of education credit hours requested for each course;

(H) Credit will not be finally approved until the Board receives a certificate of course completion or

equivalent proof that said individual attended and successfully completed the course. The Board may also request additional information, including, but not limited to, a copy of the complete set of course materials, before finally approving credit.

(3) Applications by individuals for qualifying or continuing education credits not submitted at least seven (7) days in advance of the beginning date of the course must be submitted no later than sixty (60) days after the ending date of the course and must be accompanied by a non-refundable application fee of $50.00. In addition to the requirements in OAC 600:10-1-8(e)(2) above, applications submitted pursuant to this subsection must include:

(A) Whether there has been approval by another Oklahoma state agency, agency of another state, or federal agency, and hours of credit approved by any such agency(ies);

(B) A specific statement detailing the manner in which each hour and/or topic of instruction of the course satisfies the standards of the Appraisal Qualifications Board regarding acceptable continuing or qualifying education;

(C) A copy of the complete set of course materials.

(D) A certificate of course completion or equivalent proof that said individual attended and successfully completed the course.

(f) The Board may automatically accept without further review, courses pre-approved by the Appraiser Qualifications Board of the Appraisal Foundation.

(g) The Board may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this chapter.

(h) No person or entity sponsoring, conducting, or teaching a course of study shall advertise that it is endorsed, recommended or accredited by the Board. Such person or entity may indicate that a course of study has been approved by the Board if that course of study has been pre-approved by the Board before it is advertised or held. Any such statement regarding Board approval shall specify the number of classroom hours approved, and whether the course is approved for qualifying education hours, continuing education hours, or both.

(i) At the completion of each course, the provider shall provide to the Board a list of all licensees and those attending qualifying courses who completed the course on a Course Completion Form approved by the Board.

(j) Providers shall maintain course records for at least five (5) years. The Board may order an examination of a provider for good cause shown.

600:10-1-12. Inactive status - annual fee payment

(a) If an appraiser no longer wishes to pay the annual fee payment and registry fee to retain the license or certification, prior to the expiration date printed on the certificate, the appraiser must surrender his/her license or certification by returning his/her certificate and pocket card to the Oklahoma Real Estate Appraiser Board.

(b) If an appraiser wishes to reinstate a surrendered credential, the appraiser may do so by applying for reinstatement, remitting any required fees, and complying with any applicable continuing education requirements as set forth in 600:10-1-14.

600:10-1-14. Reinstatement of license or certification

(a) An appraiser may reactivate his/her license or certification within ninety (90) days following its expiration date by paying required fees in addition to a late fee. With the application for a renewal, the trainee, the state licensed, state certified residential or state certified general real estate appraiser shall present evidence of having completed the continuing education requirements for renewal.

(b) Ninety-one (91) days to twenty-four (24) months after expiration, an appraiser may reinstate his/her license or certification, upon approval by the Oklahoma Real Estate Appraisal Board, by applying for reinstatement of licensure or certification, paying the annual fee, registry fee and a reinstatement fee. In addition, the appraiser must complete the continuing education requirements for renewal and the continuing education requirements for reinstatement as described by the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of The Appraisal Foundation.

(c) Once an appraiser has been expired for twenty-four (24) months, he/she must re-apply by completing Board education, experience and testing requirements in addition to paying all applicable fees.

[OAR Docket #08-675; filed 4-18-08]

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

[OAR Docket #08-676]

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PERMANENT final adoption
RULES:
600:15-1-2. Definitions [AMENDED]
600:15-1-4. Grievance procedure [AMENDED]
600:15-1-12. Failure to appear [AMENDED]
600:15-1-19. Record of hearing [AMENDED]
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600:15-1-2. Definitions [AMENDED]
600:15-1-4. Grievance procedure [AMENDED]
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07-1391
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ANALYSIS:
The proposed amendment to rule 600:15-1-2 brings the rule into compliance with case law, as do the amendments to 600:15-1-4. Changes to 600:15-1-2 and 600:15-1-4 make permanent emergency rules adopted by the Board effective November 1, 2007. The proposed amendments to 600:15:1-12 clarify actions to be taken in the case of failure of a party to appear at a disciplinary hearing. The proposed amendment to 600:15-1-19 aligns the rule with requirements of current technology.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107, (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2008:

600:15-1-2. Definitions

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

"Act" means the Oklahoma Certified Real Estate Appraisers Act, cited as 59 Oklahoma Statutes, Sections 858-700 et seq.

"Administrator" means the Commissioner of the State Insurance Department.

"Board" means the Oklahoma Real Estate Appraiser Board.

"Certified Real Estate Appraiser" means those persons meeting the requirements for certification as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Clear and convincing evidence" means that considering all the evidence in the case, the proposition in question is highly probable and free from serious doubt.

"Department" means the State Insurance Department.

"Director" means the person designated by the Administrator as Director of the Real Estate Appraiser Division of the Oklahoma Insurance Department.

"Geographic area" means the county of an individual appraiser as determined by the mailing address most recently reported to the Board.

"Hearing Panel" means the three member panel selected by the Board to conduct a disciplinary hearing. Hearing Panel is selected from the Standards and Disciplinary Procedures Committee.

"Licensed Real Estate Appraiser" means those persons meeting the requirements for licensure as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Person" means an individual, company, association, organization, society, partnership, trust, corporation or estate.

"Probable Cause Committee" will be Board selected and will be comprised of four (4)~~three (3)~~ members: ~~a past member of the Board,~~ a current member of the Board, and three (3) members selected by the Board ~~a Certified Appraiser~~ from past members of the Board and the members of the Standards and Disciplinary Procedures Committee. Provided, at all times, at least two (2) members of the Committee shall be certified appraisers, of the two (2) certified appraisers, at least one (1) shall be a certified general appraiser. Provided further, that members shall be selected from four (4) different geographic areas.

"Respondent" means a Trainee, State Licensed, Certified Residential, or Certified General Real Estate Appraiser against whom a complaint has been received and not been finally resolved.

"Trainee Appraiser" means those persons meeting the requirements for licensure as a Trainee Appraiser as set forth in the Oklahoma Certified Real Estate Appraisers Act.

"Uniform standards" means the Uniform Standards of Professional Appraisal Practice, as authorized by the Appraisal Subcommittee pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which are the standards rules that meet the minimum requirements adopted by the Appraisal Foundation, and which are incorporated by reference.

600:15-1-4. Grievance procedure

(a) A grievance may be filed with the Board against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser on a form prepared by the Board. In addition, where reasonable cause exists, a grievance may be brought against a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser directly by the Board.

(b) All complaints will be deemed grievances until the Board votes it a formal complaint.

(c) The Probable Cause Committee will review all grievances.

(d) The Probable Cause Committee will be selected by the Board, to serve, at the pleasure of the Board for a minimum of one quarter. The Board selected Prosecuting Attorney may be advisor to the Probable Cause Committee.

(e) The Probable Cause Committee is an advisory body to the Board whose function is to summarize the grievance and to make an informed recommendation regarding disposition of the grievance.

(f) The Probable Cause Committee will meet as needed depending on the volume of grievances to be reviewed. Any Board member acting as a member of the Probable Cause Committee shall be recused from all Board decisions relating to the grievance.

(g) The Board may direct the Department to turn over any or all grievances to the Probable Cause Committee for disposition in accordance with procedures found in 600:15-1-4 and 600:15-1-5.

(h) Probable Cause Committee members shall recuse from consideration, including both voice and vote, of any grievance concerning a Respondent from the same geographic area as the member.

(i) Board staff shall prepare and maintain records of attendance and individual votes on each matter presented to the PCC.

600:15-1-12. Failure to appear

If either the Respondent or ~~Department~~ the Board fails or refuses to appear without good cause, the Panel may ~~proceed and determine the matter in their absence~~, if no continuance is granted, either enter a default decision or proceed with the formal hearing and determine the matter in the absence of the party.

(1) Default decision.

(A) Any party may move for default against a party who has failed to appear after proper service.

(B) As a consequence of the default, the allegations against a non-appearing Respondent may be deemed admitted and an appropriate sanction recommended, within the Panel's discretion. If the non-appearing Party is the Board, the Panel may recommend that the complaint be dismissed with prejudice.

(C) A motion to vacate a default decision may be filed with the Board along with or in lieu of a request for oral argument before the Board within the time period specified for requests for oral argument in Board Rule 600:15-1-17.

(D) Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party.

(E) "Good cause" for the purpose of this rule means lack of notice in accordance with the Administrative Procedures Act, the Oklahoma Certified Real Estate Appraisers Act, or the rules promulgated pursuant thereto, excusable neglect or unavoidable casualty.

(F) A decision by the Board denying a motion to vacate and the Board's ground(s) therefor shall be included with its final order on the merits issued in accordance with 600:15-1-17 and is subject to review in accordance with the Administrative Procedures Act and Oklahoma Certified Real Estate Appraisers Act and the rules promulgated pursuant thereto.

(2) If the Panel decides to proceed with the formal hearing in the absence of any party, the Panel will make its decision based upon presentation and consideration of evidence and argument on all issues involved, and its recommendation shall not be considered a default decision.

(3) In lieu of personally appearing, a Respondent, unless issued a subpoena to appear at the hearing, may submit a written statement, subject to the following requirements:

(A) The statement must be filed in the administrative office of the Board at least (7) days prior to the hearing date;

(B) The statement must be notarized;

(C) The Respondent must acknowledge in the statement that Respondent received notice of the hearing and, that by not personally appearing, the Respondent is waiving the right to cross-examine witnesses, rehabilitate his or her statement, or present further evidence on his or her own behalf.

600:15-1-19. Record of hearing

(a) A record by means of electronic ~~tape~~ recording of the hearing will be made of all disciplinary hearings.

(b) A person affected by the hearing may cause, at such person's expense, a transcript of the proceedings to be prepared or a full stenographic record of the proceedings to be made by a competent court reporter.

(c) If transcribed such transcript shall be part of the record of the hearing and a copy shall be furnished to any third party having a direct interest therein at the request and expense of such party.

(d) The record of the hearing and the file containing the pleadings shall be maintained in a place designated by the Board. The tape recording of the proceedings shall be maintained until the time for appealing the final Board order has run.

(e) The record of an individual proceeding shall include:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the Panel presiding at the hearing;

(7) all disciplinary procedures, memoranda or data submitted to the Panel or members of the Board in connection with their consideration of the case.

[OAR Docket #08-676; filed 4-18-08]

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

[OAR Docket #08-724]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Organization, Meetings and Comprehensive Water Plan

785:1-3-2. Purpose of the Board [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 27A O.S. §1-1-204 and 82 O.S., §1085.2

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n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended OAC Section 785:1-3-2 by deleting ineffective or unnecessary language about the OWRB being able to reject or modify all local, state and federal water activities. The circumstances creating the need for the rule include staff's review of rules for consistency with statutes. The intended purpose of the rule is to remove obsolete or superfluous language from the rule.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 3. ORGANIZATION, MEETINGS AND COMPREHENSIVE WATER PLAN

785:1-3-2. Purpose of the Board

It is the purpose of the Board to determine and administer rights to the use of waters of the State; develop long-range plans to encourage the conservation, development and utilization of the water resources of the State; coordinate~~, review, reject, modify, or approve all~~ local, state, and federal water activities within the State; and to establish and administer standards of quality for the prevention, control, and abatement of pollution of the waters of the State.

[OAR Docket #08-724; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 4. RULES OF PRACTICE AND HEARINGS

[OAR Docket #08-725]

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PERMANENT final adoption
RULES:
Subchapter 5. Pre-Hearing Actions and Proceedings
785:4-5-1.1. Mediation [NEW]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., § 1085.2
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ANALYSIS:
The Oklahoma Water Resources Board ("Board") has adopted a new rule that would provide for a voluntary mediation process before a hearing is held in cases where water permit applications are protested. After receipt of a protest that meets the requirements of section 785:4-5-4(b), the Board staff may schedule a mediation meeting with the parties to attempt a compromise and settlement of the protest. A statement concerning the outcome of the mediation meeting if one is held will be prepared and placed into the record by the person conducting the mediation. If the protest is not settled, the person conducting the mediation for the Board should not be designated as hearing examiner for further proceedings on the matter unless the parties agree.
The rule is needed due to the increase in the number of protests filed that raise issues that may often be resolved by discussions among the parties. The intended purpose of the rule is to resolve issues before the formal hearing begins to reduce costs and time of citizens and the Board staff.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 5. PRE-HEARING ACTIONS AND PROCEEDINGS

785:4-5-1.1. Mediation

After receipt of a protest that meets the requirements of section 785:4-5-4(b), the Board staff may schedule a mediation meeting with the parties to attempt a compromise and settlement of the protest. A statement concerning the outcome of the mediation meeting if one is held will be prepared and placed into the record by the person conducting the mediation. If the protest is not settled, the person conducting the mediation for the Board should not be designated as hearing examiner for further proceedings on the matter unless the parties agree.

[OAR Docket #08-725; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #08-726]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:5-1-6. Stream water permit application and administration fees [AMENDED]
785:5-1-10. Groundwater application fees[AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., § 1085.2 and 82 O.S., § 1085.4.
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended two sections in Oklahoma Administrative Code ("OAC") 785, Chapter 5 as follows:

OAC 785:5-1-6, Stream water permit application and administration fees, has been amended. The one-time stream water permit application fees and stream water annual fees have been changed by doubling the application fees, eliminating the limit on application fees, and increasing the annual administration fee to a flat $100 per permit (with a maximum of $500 for any one water right holder). The newly-adopted stream water permit application fees and stream water annual fees are as follows:

1 to 320 a.f.- currently $125, now increased to $250
321 to 640 a.f.- currently $200, now increased to $400
641 to 1500 a.f.- currently $250, now increased to $500
For each 500 a.f. increment above 1500 a.f.- currently $100, now increased to $200
Maximum fee amount - current $2000 limit now has been eliminated entirely
Annual administration fee has been increased to a flat $100 per permit, but with a $500 limit for any one water right holder.

OAC 785:5-1-10, Groundwater application and administration fees, has also been amended. The one-time groundwater permit application fees will be doubled similar to the amendments for stream water permits. The groundwater permit application fee amendments are as follows:

1 to 320 a.f.- currently $125, now increased to $250
320 to 640 a.f.- currently $200, now increased to $400
640 a.f. to 1500 a.f.- currently $250, now increased to $500
For each 500 a.f. increment above 1500 a.f. - currently $100, now increased to $200
Maximum fee amount - current $2000 limit now has been eliminated entirely

These amendments are needed due to the lack of appropriated funding to meet the needs of the OWRB's Planning and Management Division to conduct technical studies and proceedings as required by the statutes relating to administration of water rights. The intended effect of these amendments is to make some additional funds available to conduct the required studies and proceedings.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-6. Stream water permit application and administration fees

(a) A filing fee based on amount requested in the application must be submitted with each application for a permit to appropriate stream water as follows:

(1) 1 through 320 acre-feet - ~~$125.00~~ $250.00
(2) 321 through 640 acre-feet - ~~$200.00~~ $400.00
(3) 641 through 1,500 acre-feet - ~~$250.00~~ $500.00
(4) More than 1,500 acre-feet - ~~$250.00~~ $500.00, plus an additional ~~$100.00~~ $200.00 for each increment of 500 acre-feet above 1,500 acre-feet requested.
(5) If the applicant proposes to divert or use stream water from a scenic river or an area designated as an outstanding water resource by the State, the applicant must submit an additional fee of ~~$100.00~~ $200.00 (see also Chapter 45 of this Title).
~~(6) The filing fee for any stream water permit application shall not exceed $2,000.00.~~

(b) Applications for provisional temporary permits to appropriate stream water except expedited applications require a fee of $150.00.

(c) Expedited applications for provisional temporary permits to appropriate stream water require a fee of $200.00.

(d) Annual ~~file maintenance~~ water right administration fee for the submittal of water use reports shall be ~~based on the total amount authorized to be used under the permit or water right as follows:~~

~~(1) 1 through 320 acre-feet - $10.00~~
~~(2) 321 through 640 acre-feet - $15.00~~
~~(3) 641 through 1500 acre-feet - $20.00~~
~~(4) More than 1500 acre-feet - $25.00~~ $100.00 for each permit or vested right, provided that the cumulative maximum water right administration fees imposed on any one permit or vested right holder shall not be more than $500.00 per year.

(e) If the annual water use report is filed later than 30 days after the due date as set forth in the report form mailed to the water right holder, an additional amount of $30.00 for each permit shall be due (see also 785:20-9-5).

785:5-1-10. Groundwater application fees

(a) A filing and application fee based on amount requested must be submitted with each application for a permit for the withdrawal of groundwater as follows:

(1) 1 through 320 acre-feet - ~~$125.00~~ $250.00
(2) 321 through 640 acre-feet - ~~$ 200.00~~ $400.00
(3) 641 through 1,500 acre-feet - ~~$ 250.00~~ $500.00
(4) More than 1,500 acre-feet - ~~$250.00~~ $500.00, plus an additional ~~$100.00~~ $200.00 for each increment of 500 acre-feet above 1,500 acre-feet requested~~, provided that the filing fee for any groundwater permit application shall not exceed $2,000.00~~.

(b) Applications for provisional temporary permits except expedited applications require a fee of $150.00.

(c) Expedited applications for provisional temporary permits require a fee of $200.00.

[OAR Docket #08-726; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

[OAR Docket #08-727]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:20-1-2. Definitions [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., § 105.1 et seq. and 82 O.S. § 1085.2
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended OAC Section 785:20-1-2, Definitions, to clarify that stream water used for fracturing is not considered to be enhanced production, which in turn would clarify that an applicant proposing to use stream water to fracture an oil or gas formation would not need to provide the additional information required by the substantive rules concerning enhanced recovery of oil and gas. This amendment is needed because a recent individual proceeding raised an issue whether the use of water for fracturing activities of an oil company triggered the additional requirement in the rule to present information about enhanced recovery of oil or gas. Additionally, there is significant oil and gas drilling in southeast Oklahoma in which fracturing the oil or gas bearing formations with water is a common practice, and the additional information required by existing rule for enhanced recovery would not be helpful in making the decision about use of the water.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

785:20-1-2. Definitions

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

"Agricultural use" means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Appropriation" means the process under 82 O.S. 1981, §§105 et seq., by which an appropriative stream water right is acquired. A completed appropriation results in an appropriative right.

"Appropriative right to stream water" means the right acquired under the procedure provided by law to take a specific quantity of public water, by direct diversion from a stream, an impoundment thereon, or a playa lake, and to apply such water to a specific beneficial use or uses.

"Beneficial use" means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial use" means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

"Consumptive use" means use of water which diverts it from a water supply.

"Definite stream" means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area.* [82:105.1(A)]

"Diffused surface water" means water that occurs, in its natural state, in places on the surface of the ground other than in a definite stream or lake or pond.

"Domestic use" *means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity* of the land whether or not the animals are actually owned by such natural individual or family, *and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns* [82:105.1(B)]. Domestic use also includes:(1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of stream water used for any such purposes does not exceed five acre-feet per year.

"Enhanced recovery of oil and gas" means ~~any~~ a long-term process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods or under short-term stimulation techniques. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

"Excess or surplus water" means water in excess of the appropriator's present and reasonable future need. For purposes of 82 O.S. 1981, §§1086.1 et seq., "excess or surplus water" shall mean that amount of water which is greater than the present or reasonable foreseeable future water requirements needed to satisfy all beneficial uses within an area of origin.

"Industrial use" means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

"Interested party" means party.

"Irrigation use" means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticultural services, and golf courses.

"Mining use" means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

"Municipal and rural water use" means the use of water by a municipality, rural water district, water corporations, or community for the promotion and protection of safety, health and comfort; distribution to natural persons for the maintenance of life and property; public and private business pursuits; and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with other uses.

"Notice by publication" means, unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

"Party" means *a person or agency named and participating, or properly seeking and entitled by law to participate* [75:250.3(7)], in hearings other than hearings on Board rules, regulations and standards.

"Permittee" means the person to whom a permit to use water has been issued by the Board or the person to whom such permit has been duly and properly transferred under Board rules.

"Permit to appropriate stream water" means the specific written authorization to construct works and make an appropriation of stream water which is issued to the one whose application for a permit has been approved by the Board. Types of stream water permits include regular, seasonal, temporary, term, and provisional temporary.

"Person" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Power use" means water used for power generation, including, but not limited to, fossil-fueled electric power generation and hydroelectric power generation.

"Priority" means an appropriative stream water right, which is governed by the time the right is filed, is the superiority of a right over all later appropriative rights that attach to the same water supply when the aggregate quantities of water available are not sufficient to satisfy the aggregate rights which attach to such a water supply. The date of priority is the date the right accrues.

"Public water supply" means use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal or rural water use".

"Recreation, fish and wildlife use" means the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

"Return water or return flow" means the portion of water diverted from a water supply which finds its way back into a watercourse.

"Reservoir" means any surface depression which contains or will contain the water impounded by a dam.

"Stream system" means the drainage area of a watercourse or series of watercourses which converge in a large

watercourse the boundaries of which have been defined and which has been designated by the Board as a stream system.

"Stream sub-system" means the drainage area of a portion of a stream system.

"Stream water" means water in a definite stream and includes but is not limited to water in ponds, lakes, reservoirs and playa lakes.

"Unappropriated water available" means water available for appropriation which is the amount of water within a particular stream system, stream sub-system, or watershed available for appropriation as determined by the Board at a proposed point of diversion and/or from a specific water supply which currently is not appropriated.

"Vested stream water right or vested right" means the right established by the beneficial use of stream water from a water supply prior to the enactment and pursuant to the provisions of 82 O.S. Supp. 1963, §1 et seq., and the rules and regulations of the Board.

"Waste" means use of water in such an inefficient manner that excessive losses occur or any manner that is not a beneficial use or use of water in excess of the amount which is authorized by the water right.

"Watershed" means the boundaries of a drainage area of a watercourse or series of watercourses which diverge above a designated location or diversion point, as determined by the Board.

[OAR Docket #08-727; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS

[OAR Docket #08-728]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Post Approval Actions
785:25-7-8. Certificate of completion [AMENDED]
Subchapter 9. Actions After Construction
785:25-9-1. Inspections of dams [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. § 105.27; 82 O.S. § 110.1 and following; and 82 O.S. § 1085.2.
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ANALYSIS:
The Oklahoma Water Resources Board ("Board") has amended various provisions of Oklahoma Administrative Code ("OAC") 785 Chapter 25 as follows:

OAC 785:25-7-8, Certificate of completion, has been amended to clarify that such a certificate will be issued only based on the certification from the registered professional engineer submitted with the notice of completion that the dam is safe to impound. The circumstances creating the need for the rule include staff's review of the rule for consistency with the statute and the need to ensure that the registered professional engineer for the owner of the dam takes responsibility for the safety of the dam. The intended effect of the rule is to clarify the Board's interpretation of the law that owners of dams, through the engineers the owners use, take responsibility for the safety of the dams. The Executive Director, Board and Board staff should not be put in a position to rely on personal judgment and engineering principles to make a statement as to the safety of the dam for purposes of impounding water. Instead, that judgment must be made by the registered professional engineer hired by the owner of the dam.

OAC 785:25-9-1, Inspections of dams, has been amended regarding post-event inspections. Specifically, the Board may require unscheduled inspections in response to complaints or in emergency situations, which shall be conducted by Board staff, or the Board may require the owner to conduct an unscheduled inspection at the owner's expense.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 7. POST APPROVAL ACTIONS

785:25-7-8. Certificate of completion

(a) **Issuance; revocation; amendments.** Certificates of completion shall be issued and may be revoked or amended as follows:

(1) Upon filing of notice of completion of works by the applicant, the Board shall, within sixty (60) days, inspect or cause the dam to be inspected. The Executive Director shall approve the issuance of a certificate of completion if ~~it is found that~~ , based on the certification from the engineer in the Notice of Completion, the dam or reservoir is safe to impound water within the limitations prescribed in the certificate. However, no certificate of completion shall be issued until receipt of fee for certificate and all invoiced filing and inspection fees.

(2) Every certificate of completion issued shall contain *the date of approval of plans and specifications for the dam, date construction was completed on said dam, and* [82:110.8] any such terms and conditions as the Board may prescribe. The Board may revoke any such certificate whenever it is determined that the dam constitutes a danger to life and property. Whenever such action is necessary

to safeguard life and property, the terms and conditions of any such certificate may be amended and a new certificate issued containing the revised terms and conditions.

(3) *Certificates of completion of works from the . . . Board shall be required before any water may be impounded by a new dam or before water may be impounded at an elevation higher than that previously authorized by the Board at an existing dam which has been modified* [82:110.8]

(b) ~~**Board decision binding.** The findings and orders of the Board and the certificate of completion of any dam or reservoir issued by the Board are final and conclusive and binding upon all state agencies, regulatory or otherwise, as to the safety of design, construction, maintenance, and operation of any dam or reservoir.~~

~~(c)~~ **Notice and action.** After the issuance of the certificate of completion, the Board shall provide notice to the owner, allowing opportunity for a hearing, prior to the issuance of any order revoking or modifying the previous Board certificate.

SUBCHAPTER 9. ACTIONS AFTER CONSTRUCTION

785:25-9-1. Inspections of dams

(a) **Oversight vested in Board.** Oversight of the maintenance and operation of constructed dams and reservoirs insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the Board.

(b) **Periodic inspections.** Except for low hazard dams, owners are required to have their dams inspected by qualified persons periodically according to a schedule prepared by the Board to meet the requirements of paragraphs (1) and (2) of this subsection. Periodic inspections of dams shall be scheduled according to hazard classifications as follows:

(1) **High hazard.** High hazard shall be inspected at least once annually.

(2) **Significant hazard.** Significant hazard shall be inspected at least once every three years.

(3) **Low hazard.** Low hazard shall be inspected at least once every five years, which inspection shall be conducted by the Board without charge to the owner and shall consist of a review of the hazard classification.

(c) **Expense of periodic inspections.** Periodic inspections shall be at the owner's expense (except for low hazard periodic inspections) and shall be conducted by a Registered Professional Engineer hired by the owner who shall have training and/or experience concerning the analysis, design, and/or construction of dams and reservoirs, or by an engineer of any United States governmental agency acting in his official capacity. Provided that inspections of low hazard classification dams may be conducted by persons who are not Registered Professional Engineers but who are trained in inspecting dams. If a periodic inspection is conducted by the owner or his representative, a written inspection report shall be submitted to the Board not later than 30 days after the inspection and shall contain, at a minimum, information as set forth in a Board's inspection report and in a format substantially similar to a Board's inspection report.

(d) **Unscheduled inspections.** Unscheduled (non-periodic) inspections, such as those conducted in response to complaints, after major heavy precipitation events or in emergency situations, shall be conducted by Board staff, or the Board may require the owner to conduct an unscheduled inspection at the owner's expense. No fee for such inspection shall be due, provided that a request for inspection by other parties and fees therefor shall be governed by 785:25-9-6.

(e) **United States dams not subject to inspection.** Any dam *constructed by the United States or its duly authorized agencies shall not be subject to inspection while under the supervision of officers or the United States.* [82:105.27]

(f) **Board to notify when inspection due; violation.** The Board shall notify persons shown by its records to own the dam of the date the periodic inspection of the dam is due. Such notice shall require the owner to advise the Board by a date specified when an engineer retained by the owner will conduct the inspection. Failure to so notify the Board or to have the inspection completed shall constitute a violation of Board rules.

[OAR Docket #08-728; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #08-729]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:30-1-2. Definitions [AMENDED]
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:

The Oklahoma Water Resources Board ("Board") has amended the definition of "enhanced recovery of oil and gas" in Oklahoma Administrative Code 785:30-1-2 to clarify that groundwater used for fracturing is not considered to be enhanced production, which in turn would clarify that an applicant proposing to use groundwater to fracture an oil or gas formation would not need to provide the additional information required by the substantive rules concerning enhanced recovery of oil and gas. This amendment is needed because a recent individual proceeding raised an issue whether the use of groundwater for fracturing activities of an oil company triggered the additional requirement in the rule to present information about enhanced recovery of oil or gas. Additionally, there is significant oil and gas drilling in southeast Oklahoma in which fracturing the oil or gas bearing formations with water is a common practice, and the additional information required by existing rule for enhanced recovery would not be helpful in making the decision about use of the water.

CONTACT PERSON:

Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

785:30-1-2. Definitions

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

"Agricultural use" means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S., §§301 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Artificial recharge" means any man-made process specifically designed for the primary purpose of increasing the amount of water entering into a groundwater basin or subbasin.

"Beneficial use" means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial use" means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

"Dedicated land" means the tract or tracts of land which the applicant owns, leases, or from which the applicant holds a valid right to withdraw groundwater and which is listed in the application and used to calculate the amount of groundwater requested.

"Definite stream" means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area.* [82:105.1(A)]

"Domestic use" means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:1020.1(2)]. Domestic use also includes:(1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

"Enhanced recovery of oil and gas" means ~~any~~ a long-term process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods or under short-term stimulation techniques. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

"Equal proportionate part or share" means the maximum annual yield of water from a groundwater basin or subbasin which shall be allocated to each acre of land overlying such basin or subbasin. It shall be that percentage of the maximum annual yield, determined as provided by 82 O.S., §1020.5 and 785:30-9-2 which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which is owned or leased by an applicant for a regular permit.

"Fresh water" means *water which has less than five thousand (5,000) parts per million total dissolved solids. All other water is salt water.* [82:1020.1(7)]

"Groundwater" means *fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream.* [82:1020.1(1)]

"Groundwater basin" means *a distinct underground body of water overlain by contiguous land having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(3)] The area boundaries of a major or minor basin can be determined by political boundaries, geological, hydrological, or other reasonable physical boundaries.

"Groundwater subbasin" means *a subdivision of a major or minor groundwater basin overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(4)] Examples are a lateral or vertical subdivision of a groundwater basin delineated by either physical or political boundaries. Physical boundaries would be different in geological, hydrological or

yield capabilities; bedrock; faults; low permeability zones or limits of pressure areas, etc. Political boundaries would be irrigation districts, planning districts, counties, city limits, etc.

"Industrial use" means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

"Irrigation use" means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.

"Life of a groundwater basin or subbasin" means that period of time during which at least fifty (50) percent of the total overlying land of the basin or subbasin will retain a saturated thickness allowing pumping of the maximum annual yield for a minimum twenty (20) year life of such basin or subbasin, provided that after July 1, 1994, the average saturated thickness will be calculated to be maintained at five feet (5') for alluvium and terrace aquifers and fifteen feet (15') for bedrock aquifers unless otherwise determined by the Board; provided further that after July 1, 1994, whether fifty (50) percent of the total overlying land of the basin or subbasin retains a saturated thickness allowing pumping for a minimum twenty (20) year life of the basin or subbasin need not be considered by the Board.

"Major groundwater basin" *means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and from which groundwater wells yield at least fifty (50) gallons per minute on the average basinwide if from a bedrock aquifer and at least one hundred fifty (150) gallons per minute on the average basinwide if from an alluvium and terrace aquifer, or as otherwise designated by the Board.* [82:1020.1(3)]

"Maximum annual yield" means a determination by the Board of the total amount of fresh groundwater that can be produced from each basin or subbasin allowing a minimum twenty (20) year life of such basin or subbasin.

"Mining use" means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

"Minor groundwater basin" *means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and which is not a major groundwater basin.* [82:1020.1(9)]

"Municipal and rural water use" means the use of water by a municipality, rural water district, water corporation, or community for the promotion and protection of safety, health and comfort, distribution to natural persons for the maintenance of life and property, public and private business pursuits, and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with other uses.

"Natural recharge" means all flow of water into a groundwater basin or subbasin by natural processes including percolation from irrigation.

"Notice by publication" means unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

"Party or interested party" means *a person or agency named and participating, or properly seeking and entitled by law to participate,* [75:250.3(7)] in hearings other than hearings on Board rules, regulations and standards.

"Permittee" means the person to whom a permit to use water has been issued by the Board or the person to whom such permit has been duly and properly transferred under Board rules.

"Person" means any individual, firm, partnership, association, corporation, business or public trust, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Power use" means water used for power generation, including, but not limited to, fossil-fueled electric power generation.

"Prior groundwater right" means the right to use ground water established by compliance with the laws in effect prior to July 1, 1973, the effective date of the Groundwater Act, and determined pursuant to 82 O.S., §1020.14 and Subchapter 11 of this Chapter.

"Public water supply" means the use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal and rural water use."

"Recreation, fish and wildlife use" means use which includes but is not limited to the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

"Salt water" means any water containing more than five thousand (5,000) parts per million total dissolved solids.

"Sensitive sole source groundwater basin or subbasin" *means a major groundwater basin or subbasin all or a portion of which has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency,* and includes *any portion of an contiguous aquifer located within five (5) miles of the known areal extent of the surface outcrop of the sensitive sole source groundwater basin* [82:1020.9A].

"Special use" means and includes but is not limited to the use of groundwater for groundwater heat pump systems or artificially recharging a groundwater basin or subbasin.

"Total discharge from the basin or subbasin" means and shall include but may not be limited to the amount of fresh groundwater withdrawn and placed to beneficial use prior to July 1, 1973, which amount shall be determined from the applicable final orders of the Board determining prior groundwater rights.

"Waste by depletion" means unauthorized use of wells or groundwater; *[d]rilling a well, taking, or using fresh groundwater without a permit, except for domestic use; [t]aking more fresh groundwater than is authorized by the permit; [t]aking or using fresh groundwater in any manner so that the water is lost for beneficial use; [t]ransporting fresh groundwater from a well to the place of use in such a manner than there is an excessive loss in transit; [u]sing fresh groundwater to reach*

a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well ... drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board; [82:1020.15(A)] or *[u]sing fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water* [82:1020.15(A)].

"Waste by pollution" means *[p]ermitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin ...* or *[f]ailure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof* [82:1020.15(A)].

"Water right" means a right to the use of stream or groundwater for beneficial purposes.

"Water supply" means a natural body of water, whether static or moving either on or under the surface of the ground, or in a man-made reservoir, available for beneficial use on a reasonably dependable basis.

"Well" means any type of excavation for the purpose of obtaining groundwater or to monitor or observe conditions under the surface of the earth but does not include oil and gas wells.

[OAR Docket #08-729; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #08-730]

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RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications
785:35-5-3. Requirements for multi-purpose completion report [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
785:35-7-1.1. Minimum standards for construction of heat exchange wells [AMENDED]
Subchapter 9. Minimum Standards for Pump Installation
785:35-9-1. Minimum standards for pump installation [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes [AMENDED]
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]
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ANALYSIS:
The Oklahoma Water Resources Board ("Board") has adopted amendments to various provisions of OAC 785:35 as follows:

The definition of "fresh water" has been added to the definition section 785:35-1-2 consistent with the statutory definition of "fresh water" which sets forth the scope of regulatory authority of the Board in the context of the Oklahoma Groundwater Law. The circumstances creating the need for this rule include staff's review of the rules for consistency with the statutes. The intended purpose of the rule is to clarify Board policy relating to the distinction between fresh water and other water that is needed in reviewing minimum standards for well construction, location, and plugging and the requirement that well drillers must plug a well drilled into salt water.

The rule on continuing education for licensing of well drillers has been amended by specifying that one unit of the four per year (eight units for the two-year license period) must include review of Board rules about well driller licensing and minimum standards of construction of wells. The circumstances creating the need for the rule include staff's experiences in discussing rule requirements with licensees who are not familiar with current amendments to rules. The intended purpose of the rule is to ensure that licensees review the rules at least once every two years before being able to renew the license.

The rule on grace periods for license renewal has been amended to allow an additional period based on a military service obligation. The circumstances for this rule include the longer obligations being imposed on National Guard and Reserve units and those soldiers who hold a well driller or pump installer license. The intended effect of the rule is to provide a grace period for renewal to include the extended service obligations being imposed.

The rule about multipurpose completion reports ("well logs") has been amended to require the submittal of global positioning system (GPS) coordinates regarding actual well locations beginning July 1, 2009. The circumstances creating the need for the rule include the database program requirements and number of well logs being submitted online. The intended purpose of the rule is to ensure more accurate data about well locations is being included in the database.

The general provision about minimum construction standards has been amended to recognize that more stringent standards apply in areas of known contamination as listed in Appendix H of Chapter 45, Oklahoma's Water Quality Standards. The circumstances creating the need for the rule include questions from drillers as to potential areas of contamination that may already be on record through the Appendix H descriptions in Oklahoma's Water Quality Standards. The intended purpose of the rule is to benefit well drillers to point out that there is already information about locations of known contamination for which more than minimum standards may be required.

The rule on minimum distance from pollution sources has been amended to include separation distances for aerobic (above ground) septic systems to include 15 feet from aerobic sprinkler spray, and 50 feet from an aerobic sprinkler head. The circumstances creating the need for this rule include information from the Well Drillers Advisory Council that there are more aerobic systems being installed in rural acreage subdivisions, and a provision

is needed to ensure proper placement of water wells. The intended purpose of the rule is to benefit well drillers and the public to ensure that wells are located at a consistent and safe distance from aerobic systems.

Amendments have been adopted to the rule that allows for automatic variances of minimum distance locations from pollution sources if the landowner approves and if the water is to be used for other than drinking water, to restrict the exemption if the potential pollution source is an underground septic system (tank and lateral lines). The circumstances creating the need for the rule include the lack of clarity of the rules and questions from well drillers about responsibility for pollution if contamination occurs by drilling too close to a septic system. The intended purpose of the rule is to provide clarification of the minimum distance rule and further review to request a specific variance.

The rule regarding minimum standards for casing of water wells has been amended to increase the height above ground level that the well casing must be installed from eight inches to twelve inches (8" to 12") above the natural ground level. The circumstances creating the need for the rule include incidents of surface flooding of wells if the casing is only eight inches above the natural ground level, and need to more easily identify the well from a distance, and removal of mere preference language. The intended purpose of the rule is to better protect the public health and well owners to avoid flooding or damages to wells.

The section on well sealing requirements has been amended to include an alternative sealing method that requires an additional amount of cement or bentonite grout installed in the area between the surface and production casings terminating within four feet (4') of land surface. The circumstances creating the need for the rule include incidents reported by the Well Drillers Advisory Council where insufficient sealing is installed if surface casing is used. The intended purpose of the rule is to provide guidance for the alternative construction using surface casing.

The rule on heat exchange minimum standards has been amended to clarify that the provisions apply to the drilling of the borehole, installation of casing, installation of heat loop pipe, and the filling and/or grouting of the well, but that the manifolding of a heat exchange well loop pipe to complete a heat exchange system is not a regulated activity. The circumstances creating the need for the rule include questions by the Well Drillers Advisory Council as to the regulatory authority of the Board over heat pump installation. The intended purpose of the rule is to provide clarity relating to the Board's regulatory authority.

The rule on well completions has been amended to address windmill driven pumps to clarify that construction of a cover plate designed to exclude pollution from the surface is required for windmill pumps. The circumstances creating the need for the rule include a review by staff and the Well Drillers Advisory Council noting that windmill wells are not addressed by the rules but that windmill installations still occur, but recognizing differing construction methods are used to complete such wells. The intended purpose of the rule is to address the gap about windmill well installations and the need to prevent pollution even with such wells.

The section on test hole drilling and plugging requirements has been amended to provide more flexibility and options, to allow temporary casing and capping for test holes to prevent cave-ins, and that if a written statement is received from the landowner acknowledging the landowner's responsibility to plug a test well, the well driller would be allowed to remove the drilling equipment after obtaining the written statement is submitted to the Board. The circumstances creating the need for the rule include statements by the Well Drillers Advisory Council that landowners sometimes want to wait after drilling a test hole before deciding whether to complete the well, and that plugging test holes requires the equipment on site, and leaving the well driller equipment on site is not acceptable for a cost standpoint, and that most landowners are willing to take the responsibility to plug a test hole if a later decision is made not to complete the well. The intended purpose of the rule is to shift the burden, responsibility and cost of plugging test holes to the landowner if the landowner wants to delay the decision to complete the test hole.

The rule on monitoring well plugging standards has been amended relating to the cement grout requirement to clarify the standard to ensure effective grouting a minimum of 95% of the original drilled borehole depth, and that if the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout is to be placed by pumping from the bottom of the hole to the land surface. The circumstances creating the need for the rule include recommendation by the Well Drillers Advisory Council that monitoring well plugging requirements need to be more stringent in some circumstances. The intended effect of the rule is to provide additional requirements about plugging requirements for monitoring well in certain circumstances.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-2. Definitions

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

"Abandoned well" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial drilling" means *drilling and installation as a business, trade, or occupation for compensation.* [82:1010.1]

"Commercial installation" means *installation as a business, trade or occupation for compensation.* [82:1020.1]

"Commercial plugging" means plugging wells or borings *as a business, trade or occupation for compensation.* [82:1020.1]

"Direct push geological boring" means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

"Drilling water" means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

"Firm" means an individual or any kind of legal entity, such as a sole proprietorship, partnership or corporation that holds a license to conduct any well drilling or pump installation activity.

"Fresh Water" means water which has less than five thousand (5000) parts per million total dissolved solids. All other water is salt water. [82:1020.1(7)]

"Fresh water observation well" means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

"Geotechnical boring" means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

"Geothermal well" means heat pump well.

"Groundwater well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"Heat exchange well" means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

"Heat pump well" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"Heat sink well" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"License" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in weather modification and control operations or the business of drilling or plugging wells or borings and installing water well pumps.

"Monitoring well" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Open-loop heat pump water supply well" means a well drilled to supply water for the purpose of heat transfer.

"Operator" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

"Piezometer" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"Pump" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, pipes from wells to pressure tanks, pressure switches, shut off valves for pressure tanks, related equipment and controls.

"Pump installer" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"Sand point well" means a groundwater well with a borehole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"Site assessment observation well" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"Sleeve" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit and is separate from surface casing and conductor pipe.

"Unsaturated zone monitoring well" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"Vertical closed-loop heat pump well" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"Water return well" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"Water well test hole" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"Well" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"Well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the test drilling of wells in the State of Oklahoma.

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-2. Expiration and renewal of licenses and certifications

(a) **Expiration.** All licenses and operator certifications issued by the Board shall expire on June 30 of the first or second year following issuance of the license or operators certification. New licenses or operator certifications shall be issued for a one or two year period, so that all odd license numbers and associated operators certifications shall expire in odd numbered years and all even numbered licenses and associated operator certifications shall expire in even numbered years.

(b) **Renewal.** All licenses and certifications may be renewed for a period of two years, subject to the rules in this

Chapter. On or before May 31 of the year the license or certification is to be renewed, except as specified in this subsection, each licensee and certified operator shall submit the following:

(1) A completed application for renewal on forms furnished by the Board with the affidavit executed by the listed contact person for the licensee, and

(2) The license or operator certification renewal fee as provided for in these rules, provided that renewal fees shall not be due for licenses and certifications issued after January 1 of the year in which the first renewal is due, and

(3) The indemnity fund fee for those activities for which the license or operator certification is valid, and

(4) The late fee if the renewal application is submitted after June 30.

(c) **Grace period.** Any licensee or operator who allows his or her license or certification to lapse will be given until July 31 of the year in which they are scheduled to renew their license or operator certification in which to renew his or her license or certification without an examination; provided however, a late fee shall be due after June 30 as set forth in 785:5-1-11. After the grace period, the application will be treated as a new application. Provided however, any licensee or operator fulfilling a military obligation shall be granted an indefinite grace period as determined by the Board.

(d) **Board action.** The Board may grant the renewal application or deny the application as provided in this subchapter of these rules.

(e) **Continuing education requirement.**

(1) Beginning July 1, 2004, completing annual continuing education shall be required before any license or operator certification will be renewed, unless otherwise specifically determined by the Board or as set forth in paragraph (8) of this subsection. Information concerning the continuing education attended must be submitted with the application for renewal form.

(2) All licensees and all certified operators shall be required to attend at least four (4) units of approved continuing education during each year period (from July 1 through June 30) or a total of eight (8) units for each two-year period of renewal of which one unit must be comprised of an approved Oklahoma Rules and Regulations unit.

(3) Continuing education shall be required during the first full year that the license or operator certification is active and during each year the license or operator certification is renewed.

(4) One unit of continuing education shall equal fifty (50) minutes of approved instruction.

(5) Approved trade shows and exhibitions attended shall be counted as one unit.

(6) Continuing education instruction relating to well drilling and plugging and pump installation which are provided by or approved by another state's well drilling program are pre-approved for the Oklahoma continuing education requirement.

(7) Other continuing education instruction and trade shows and exhibitions will be considered for approval by the Board after information concerning the continuing education or trade show and exhibition is submitted to the Board for review. Pre-approval of continuing education, trade shows and exhibitions may be requested for any licensee or certified operator.

(8) If a licensee or certified operator fails to attend four (4) or eight (8) units as the case may be during the renewal period, the application for renewal may be approved after payment of $250.00 in penalty and double the continuing education requirements (eight (8) or sixteen (16) units as the case may be).

SUBCHAPTER 5. GENERAL REQUIREMENTS TO MAINTAIN LICENSES AND OPERATOR CERTIFICATIONS

785:35-5-3. Requirements for multi-purpose completion report

Each licensee or certified operator as the case may be shall file a multi-purpose completion report for each groundwater well, water well test hole, fresh water observation well, monitoring well, site assessment well, geotechnical boring, or heat exchange well completed or plugged. The report shall be on forms provided by the Board and shall be filed within sixty (60) days after the date of completion or plugging. Information regarding multiple monitoring wells, geotechnical borings and heat exchange wells may be accumulated together in a single report if all of the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one boring or well is included on a multi-purpose completion report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. Provided, a report need not be filed for a geotechnical boring 20 feet deep or less in which groundwater or contamination is not present. Effective July 1, 2009, all multi-purpose completion reports shall be submitted with latitude and longitude data.

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person. More stringent construction standards may be required for areas of known contamination as identified in Chapter 45, Appendix H.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(b) **Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line, 15 feet from aerobic (above ground) sprinkler spray, and 50 feet from an aerobic sprinkler head,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) 50 feet from all other pollution sources, provided however, if the well is 50 feet to 75 feet and located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed, and

(D) 75 feet from all other pollution sources if the well is level with the pollution source and 100 feet from all other pollution sources if the well is located down-gradient from the pollution source.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon and not a subsurface septic system,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection.

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least ~~eight (8) inches above the natural ground level or preferably~~ twelve (12) inches above the natural ground level or eight (8) inches above the floor surface for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding.

(E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel, or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

(A) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and

(B) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, extend a minimum of eight feet (8') below ground level in the borehole, and the surface seal shall be a minimum of one and one-half inch ($1\frac{1}{2}$") thick.

(C) If the surface casing does not extend twelve inches (12") above natural ground level and a pitless cap or sanitary seal is not installed, then a ten foot (10') cement grout/bentonite surface seal shall be installed in the area between the surface and production casings terminating within four feet (4') of land surface.

(2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper than four feet (4') from the natural land surface for a minimum total length of ten feet (10') after all settling of the cement or bentonite/cement has occurred, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of twenty percent (20%) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency. Prehydration requires that the bentonite be properly mixed with the recommended amount of water before the mixture is installed.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout or cement/bentonite to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain a minimum, twenty percent (20%) solids by dry weight.

(9) It is not an acceptable installation method to install dry cement around the casing and then add water.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3) around surface casing, then the remaining bore hole can be installed then production casing installed.

785:35-7-1.1. Minimum standards for construction of heat exchange wells

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all heat exchange wells as defined in 785:35-1-2, whether constructed by a person having a valid license or by any other person. Minimum standards shall include regulation of the drilling of the borehole, installation of casing, installation of heat loop pipe, and the filling and/or grouting of the well. Manifolding of loop pipe to complete a heat exchange system is not regulated under this Section.

(2) **Prohibition against other uses.** Heat exchange wells cannot be used for any purpose other than heat exchange. After completion, heat exchange wells shall not be converted to any other type of well except by written approval by the Board. The licensee shall ensure that the heat exchange well is constructed according to the rules.

(3) **Maximum protection of groundwater required.** Construction of geothermal and heat exchange wells shall provide maximum protection to the groundwater from contamination and movement and migration of water from one zone or aquifer to another.

(b) **Location of heat exchange wells.**

(1) A vertical heat pump well shall be located on a site so that surface water will not pool or pond around or within ten (10) feet of the heat exchange well location.

(2) Placement of a heat exchange well must meet or exceed standards as set forth by section 785:35-7-1(b) relating to location requirements for groundwater wells except as set forth in paragraph 3 of this subsection.

(3) If not prohibited by the owner of the well or other federal or state agency requirements, heat exchange wells may be located closer to a possible source of pollution than the minimum distances specified in Section 785:35-7-1(b) if all of the following conditions are met:

(A) The possible pollution source is not a wastewater lagoon.

(B) The well annulus is completely sealed as described in paragraph 7 of subsection (c) of this section.

(c) **Construction standards for vertical closed-loop exchange wells.** Vertical closed-loop heat exchange wells shall be constructed in accordance with this subsection. Site specific conditions shall be assessed to determine the best method and materials to be used for sealing and filling the well annulus to protect the groundwater. In addition, but not as an alternative, to the requirements stated in (1) through (9) of this subsection, methods and materials for construction of heat exchange wells that meet or exceed recommendations specified in "Grouting for Vertical Geothermal Heat Pump Systems Engineering Design and Field Procedures Manual", International Ground Source Heat Pump Association, Oklahoma State University, First Ed. 2000, and in "Grouting Procedures for Ground Source Heat Pump Systems", International Ground Source Heat Pump Association, Oklahoma State University, 1991, may be used for construction of vertical closed-loop heat exchange wells.

(1) **Casing material.** If permanent casing is needed in a heat exchange well, it must meet standards set out in Section 785:35-7-1 for steel and for plastic.

(2) **Heat exchange loop material.** In a closed-loop heat exchange well, the material used to make up the heat exchange loop that is placed into the ground must be equal to or exceed PE3408, DR 11, 160 PSI high density polyethylene (HDPE) or ASTM D-3350.

(3) **Connecting closed-loop pipe.** All pipe joints and fittings installed and buried shall be socket, butt or thermally fused according to the pipe manufacturer's specifications. Glued or clamped joints shall not be used below ground unless the joint or connection serves as a service outlet and the joint or connection is not covered with earth material. Joints must not leak after assembly.

(4) **Heat transfer fluid.** The fluid used inside the closed-loop assembly must be non-toxic, food grade quality and approved for use by the U.S. Environmental Protection Agency and a release of the fluid to the groundwater must not violate Oklahoma Water Quality Standards set forth in Chapter 45, OAC 785.

(5) **Borehole size.** The hole size for heat exchange wells must be of sufficient size to allow placement of the material to surround all pipe, but in no case shall the borehole diameter be less than four (4) inches.

(6) **Grouting of vertical heat exchange wells.** Grouting and filling the annulus of a heat exchange well must be completed immediately after the well is drilled to avoid cave-in of the uncased hole.

(7) **Vertical heat exchange well sealing and filling materials and methods.** The well annulus must be completely sealed or filled the total length of the borehole with approved materials and methods as listed below.

(A) A bentonite, cementitious, or Portland cement grout seal shall be installed from a point thirty (30) feet below land surface up to the excavation trench that connects the closed loop to the heat exchange system. Spreading or expanding clips shall not be used within the top thirty (30) feet of the borehole.

(B) Approved annulus sealing and filling materials below thirty (30) feet shall include Portland cement, high solids bentonite grout (20-30% solids by weight),bentonite pellets or chips, water well filter pack sand or gravel, or approved high efficiency or thermally enhanced grouts designed for geothermal borehole.

(C) The annulus sealing or fill material shall be installed from the bottom of the borehole to a termination point of no less than thirty (30) feet from land surface.

(D) Bentonite chip or pellet fill material installed shall be hydrated immediately after installation if installed in the unsaturated zone.

(E) Fill material placed in the annulus shall be uncontaminated, provided that cuttings shall not be used as fill material.

(F) When non-slurry sealing and filling materials are used, only clean water well filter pack sand or

gravel or chipped or pelletized sodium bentonite varieties that are designed to fall through standing water are acceptable when sealing the annulus of a well that is below the water level in the saturated zone. The borehole shall be flushed clean of all drilling mud and debris left over from the drilling operation so that the bentonite products designed for this type of installation will gravity feed without obstruction. Material shall be introduced in a manner to prevent bridging of the materials in the borehole annulus. A measuring device such as a tagline shall be used to measure and document placement of the materials installed.

(G) Slurry mixes of bentonite grout or Portland cement shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout or Portland cement. The tremie pipe will extend the full depth of the borehole before pumping begins. The borehole diameter shall be of adequate size to allow proper placement of materials using this method. Slurry volume used must equal the annulus volume of the borehole.

(H) For air drilled boreholes in which the borehole is completely dry and the normal static water level is deeper than the total depth of the heat exchange well, the bentonite slurry may be pumped from the surface without a tremie pipe.

(8) **Multiple formations, lost circulation zones, or zones of differing water quality.** When multiple formations, lost circulation zones, or zones of differing water quality are encountered within the same borehole, the listed sealing and filling materials set forth in paragraph (7) may be used, provided, that if sand or gravel material is used as the fill material, a solid plug of Portland grout, bentonite pellets, or bentonite chips must be installed to separate the formations or zones to prevent cross contamination. The total length of the plug must be a minimum of five (5) feet and installed in a consolidated area of the borehole. If no consolidated area or formation is present to install the plug (such as loose sand or gravel), sand and /or gravel shall not be acceptable annulus fill material.

(9) **Wells drilled in lost circulation conditions.** If caves or large fractures are encountered in drilling the borehole, grouting may not be possible and the Board must pre-approve completion of the heat pump well in such conditions based on plans to bridge and seal such areas. If completion is not approved, the well must be properly plugged. Chipped bentonite or clean fill (gravel, sand and other appropriate material) may be used to seal small fractures.

(d) **Construction standards for open-loop and return heat exchange wells.**

(1) Open-loop heat exchange wells must meet the minimum construction standards set forth in Section 785:35-7-1 relating to groundwater.

(2) Water return wells for domestic heat exchange systems must meet the minimum construction requirements set forth in Section 785:35-7-1, and the groundwater used in the system must be returned to the same aquifer from which the groundwater was withdrawn by the open-loop heat exchange well, provided that authorization from the Oklahoma Department of Environmental Quality may also be required.

SUBCHAPTER 9. MINIMUM STANDARDS FOR PUMP INSTALLATION

785:35-9-1. Minimum standards for pump installation

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to the installation of all water well pumps and pumping equipment, whether installed by a person having a valid license or by any other person.

(2) **Pump installation practices.** All pump installations shall be completed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the well from pumping equipment, casing connectors, fittings, piping, sanitary seals or caps.

(3) **Construction materials.** All materials used in the construction of the pumping system shall be of a type and strength to prevent waste or pollution of the groundwater of the state.

(4) **Temporary abandonment practices.** When a well is to be temporarily removed from service, the top of the well casing shall be properly sealed with a water-tight cap that cannot be easily removed.

(b) **Well casing connections.** Minimum standards for well casing connections are as follows:

(1) **Above-grade connection.** An above-grade connection into the top or side of a well casing shall be at least ~~eight inches (8"), but preferably~~ twelve inches (12"), above the land surface and shall be constructed so as to exclude dirt or other foreign matter by at least one of the following methods, as may be applicable:

(A) Threaded connection;

(B) Welded connection;

(C) Rubber expansion sealer;

(D) Bolted flanges with rubber gaskets;

(E) Overlapping well cap; or

(F) If a water well pump is mounted or sealed on a concrete pedestal, the casing shall extend at least one inch (1") into the base of the pedestal and at least eight inches (8") above the land surface.

(2) **Below-grade connection.** A connection to a well casing made below ground, or less than ~~eight inches (8")~~ above the land surface, shall be protected by a pitless adapter or pitless unit. Such pitless adapters shall be installed below the frost line. A below-ground connection shall not be submerged in water at the time of installation. Holes cut in the casing through which the pitless adapters are installed must be sized and constructed so as to guarantee a watertight seal with the pitless adapter in place.

(3) **Above-grade capping.** For water wells with pitless adapters, the portion of the well casing above the land surface shall be capped with a water-tight, vented pitless adapter cap that cannot be easily removed.

(c) **Pump installation.** The minimum standards for installation of pumps and pumping systems are as follows:

(1) **Pumps and pumping equipment.**

(A) **Priming requirements.** A pump shall be designed, installed, and maintained so that priming is not required for ordinary use. Pumps installed on irrigation systems may be primed, but the priming water shall contain a chlorine residual and be clear and free of contamination. An irrigation well equipped with a centrifugal pump may be primed without chlorination when the pump is filled with water taken directly from the well.

(B) **Cross connections prohibited.** Cross connections between water wells and other systems or equipment containing substances such as wastewater, pesticides or fertilizers are prohibited unless equipped with a protective device such as a break tank or backflow preventer, which the owner agrees to install, test and maintain to assure proper operation.

(2) **Pump discharge lines.** A buried discharge line between the well casing and the pressure tank in any installation, including a deep well turbine or a submersible pump, shall not be under negative pressure at any time.

(3) **Vents.** All wells shall be vented with watertight joints terminating at least two feet (2') above the 100 year flood elevation or ~~eight inches (8"), but preferably~~ twelve inches (12"), above the land surface. The casing vent shall be screened. Vents may be offset. All submersible pumps shall be installed with a vented cap on the top of the well casing or pitless unit to prevent drawing surface water, mud, sand, or other substances into the well. Where the well casing on small diameter wells is used as a suction pipe, the casing need not be equipped with a vented cap, provided the casing is properly sealed or capped. If toxic or flammable gases are present, they shall be vented from the well. The vent shall extend to the outside atmosphere at least six (6) feet above land surface or to a point where the gases will not present a hazard. Openings in pump bases shall be sealed watertight.

(4) **Disinfection.** The well and pumping equipment shall be disinfected with a chlorine concentration of at least one hundred (100) parts per million of chlorine throughout the well. The chlorine solution shall be introduced into the well in a manner to flush the well casing surfaces above the static water level. A minimum contact period of two (2) hours shall be provided before purging and flushing the chlorine solution from the distribution system. Disinfection in a well repair operation may be accomplished at the beginning of the operation with chlorine applied to obtain a concentration of two hundred (200) parts per million for the period of the well repair operation. The water shall be purged prior to taking of water samples or use being made of the water. The licensee or operator shall be responsible for disinfecting the well, pump or pumping equipment. The well owner may pump and flush the well following disinfection, provided the owner has been instructed regarding the proper procedures by the licensee or operator.

(d) **Windmill Driven Pumps.** Surface completion must be constructed with cover plate designed to exclude pollution.

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes

(a) **Temporary capping.** When a groundwater well or fresh water observation well is temporarily removed from service, the top of the well casing will be properly sealed with a pitless adapter cap, sanitary well seal, or well casing cap that cannot easily be removed. A new well shall be properly capped before the well driller leaves the drilling site.

(b) **Time for plugging or completing water well test holes.** Water well test holes shall be properly plugged as provided in this section by the well driller ~~within three (3) days after the completion of testing or such test holes must be completed as water wells~~ prior to removal of drilling equipment unless the test hole is completed as an observation well for aquifer testing, including the installation of surface casing and cement seals~~, within three (3) days after the completion of testing, unless an extension of time is granted by the Board. The three (3) day period for plugging or completion may be extended by the Board upon request from the well driller. Such request must be submitted prior to the end of the three (3) day period~~. In the alternative and prior to drilling equipment being removed from site, water well test holes may be temporarily cased with SDR 26 water well casing a minimum of 10 feet below ground and 12 inches above ground. Bentonite shall be installed from 10 feet to 2 feet below land surface and cement grout installed from 2 feet to land surface. The top of casing shall be properly sealed or capped. Permanent completion or plugging shall become the responsibility of the landowner and shall be completed within 60 days of drilling equipment being removed from the site. A written statement from the landowner acknowledging such responsibility shall be obtained and submitted to the Board with the multipurpose completion report. The multi-purpose completion report shall be submitted to the Board within sixty (60) days after plugging or temporary completion of each water well test hole.

(c) **Permanent abandonment.** The following plugging requirements apply if a groundwater well, fresh water observation well, heat exchange well or water well test hole is permanently abandoned, was drilled by a person not holding a valid license or operator certification from the Board, or if the Board determines that the well or test hole was not drilled or completed in compliance with the applicable minimum standards set forth in this Chapter or may otherwise allow pollution to groundwater.

(1) The well driller shall be responsible for plugging the well or test hole if the well drilling equipment is on the drilling site. If a well is abandoned after the well drilling equipment has been removed from the drilling site, the owner of the land where the well or test hole is located shall be responsible for plugging.

(2) If the well or test hole is uncontaminated and unless paragraph 3 or paragraph 5 below applies, fill such well or water well test hole with uncontaminated, compacted drill cuttings and/or uncontaminated surface clay, cement, bentonite pellets or granules, or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout to within fourteen (14) feet of the land surface, and a minimum of ten (10) feet of the annular space and interior of the well casing shall be filled with cement grout to at least four (4) feet below the land surface.

(3) To plug uncontaminated groundwater wells, fresh water observation wells, or heat exchange wells in the alluvium and terrace deposits of the Arkansas, Cimarron, Salt Fork of the Arkansas, North Canadian, Canadian, Washita, North Fork of the Red, Salt Fork of the Red River, Red River, and other streams or rivers authorized by the Board, fill the well with clean, uncontaminated silica sand to within sixteen (16) feet of the land surface, then two (2) feet of bentonite pellets or granules shall be placed on the uncontaminated silica sand, and finally, a minimum of ten (10) feet of cement grout shall be installed in the annular space and interior of the well casing to at least four (4) feet below the land surface.

(4) Hand dug water wells shall be filled with uncontaminated surface clay or grout to within six (6) feet of land surface. The lining of the well shall be removed from the top five (5) feet and a minimum of two (2) feet of cement grout shall be installed. The top four (4) feet shall be filled with compacted uncontaminated native soil, unless otherwise directed by the Board.

(5) If the well or water well test hole is contaminated, or if the well or test hole is located at an underground tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, the casing shall be removed or perforated from the bottom of the casing to twenty (20) feet below land surface. The casing shall be removed from twenty (20) feet below land surface to the surface, then the well or test hole shall be plugged with cement grout from the bottom to within four (4) feet below the land surface. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to the land surface.

785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings

(a) **Monitoring wells and site assessment observation wells.** Monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present or was previously present in the well and the top of the screen is less than 20 feet below land surface, overdrilling of the well is required. The casing shall be removed or drilled out and the same size auger used to drill the borehole or larger shall be used to drill out the casing and associated seals, annular space and filter pack. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface effectively grouting a minimum of 95% of the original drilled borehole depth. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to the land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface or to land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) **Geotechnical borings except direct push geotechnical borings.** Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings, uncontaminated surface clay, cement, and/or high solids (a minimum of twenty percent (20%) solids by dry weight)

bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) **Direct push geotechnical borings.** Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface, provided that no cement grout shall be required if the boring is less than ten feet (10') in total depth and no groundwater and no contaminated soil was encountered.

(d) **Cement grout requirements.** If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located.

[OAR Docket #08-730; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #08-734]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
785:45-1-2. Definitions [AMENDED]
Subchapter 5. Surface Water Quality Standards
Part 1. General Provisions
785:45-5-3. Beneficial uses: default designations [AMENDED]
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-13. Agriculture~~: livestock and irrigation~~ [AMENDED]
785:45-5-19. Aesthetics [AMENDED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [NEW]
Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 2, Lower Arkansas River Basin [NEW]
Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 3, Upper Red River Basin [NEW]
Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 4, Lower Red River [NEW]
Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 5, Canadian River [NEW]
Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 6, Upper Arkansas River [NEW]
Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 7, Panhandle Region [NEW]
Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [REVOKED]
Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]
Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except As Indicated) [REVOKED]
Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except As Indicated) [NEW]

AUTHORITY:
Oklahoma Water Resources Board, 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

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n/a

ANALYSIS:

Oklahoma Administrative Code ("OAC") Section 785:45-1-2, Definitions, has been amended. The definition of "background concentration" has been modified. The circumstance which created the need for this amendment is that the term "background concentration" is not actually used in OAC 785:45, while the term "background" is used frequently. The intended effect of this amendment is to clarify the use of the term "background" throughout OAC 785:45. In addition, the definition for "chronic test failure" has been modified. The circumstance which created the need for this amendment is that the U.S. Environmental Protection Agency ("EPA") has requested that OAC 785:45 also address the growth of test organisms to determine chronic test failure. The intended effect of this amendment is to consider growth among the sub-lethal effects evaluated for chronic test failure.

Several sections in OAC 785:45 have been amended to establish subcategories of the beneficial use of Agriculture and appropriate criteria for those subcategories. These sections include 785:45-5-3 and 785:45-5-13. The circumstance which created the need for these amendments is that naturally occurring mineral concentrations in many small streams may not meet the current criteria as a result of the manner in which they were derived. The intended effect of these amendments is to provide criteria more appropriate and site specific in these circumstances, while maintaining water quality, as permitted by EPA and federal law.

OAC 785:45-5-19, Aesthetics, has been amended in order to correct a citation error. The circumstance that created the need for this amendment is that when other language from this section was moved to OAC 785:45-5-9 in a previous rulemaking, the remaining language of this section was renumbered. The intended effect of this amendment is to correct the citation.

Appendix A, Designated Beneficial Uses for Surface Waters, has been reformatted into smaller appendices, including Appendix A (the introductory text) and then Appendices A.1 through A.7 (corresponding to the seven water quality management basins in the state). This reformatting is needed because the size of Appendix A has made rulemaking difficult and cumbersome. The intended effect of this reformatting and related changes is to make it easier and less complicated to change the contents of the former "Appendix A" in the future.

Also in the current rulemaking, several changes have been made which are now found in the new Appendix A.1, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 1, Middle Arkansas River; Appendix A.2, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 2, Lower Arkansas River Basin; Appendix A.3, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 3, Upper Red River Basin; Appendix A.4, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 4, Lower Red River; Appendix A.5, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 5, Canadian River; and Appendix A.6, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 6, Upper Arkansas River. First, the beneficial use of Public and Private Water Supply is being designated for several waterbodies in each of these Appendices. The circumstance which created the need for these amendments is that EPA has recently encouraged the OWRB staff to protect "source waters" in support of federal Safe Drinking Water Act guidelines. The intended effect of these amendments is to ensure that all drinking water supplies are protected. Second, a number of the lakes and one of the streams monitored in the OWRB's Beneficial Use Monitoring Program are being added to or otherwise revised in these Appendices. The circumstance which created the need for these amendments is that several lakes and one stream, the South Fork of Cavalry Creek, are not currently listed in these appendices, and therefore the prescribed "default uses" are assumed for such waterbodies. In contrast, Great Salt Plains Reservoir is listed in one of these appendices, with several use designations. However, in recent years and months OWRB staff have gathered monitoring data from these waterbodies which now enable informed designations of uses rather than the default uses. The monitoring has also shown that two of the uses currently designated for Great Salt Plains Reservoi are not existing nor appropriate, and should be deleted. The intended effect of these amendments is to ensure that the appropriate beneficial uses are assigned to and reported for all of these waterbodies.

In addition, a third set of changes has been adopted in Appendix A.1: several Waterbody Identification Numbers are being added or changed. The circumstance which created the need for these amendments is that the Department of Environmental Quality ("DEQ") has updated its Waterbody ID coverage. The intended effect of these amendments is to list all the proper Waterbody ID's for each segment.

Appendix E, Requirements for Development of Site-Specific Criteria for Certain Parameters, has been revoked and reenacted with site specific criteria added for (1) the Poteau River for cadmium, silver and lead, and (2) Ninemile Creek and the unnamed tributary of Ninemile Creek for total dissolved solids, chloride and sulfate. These amendments are needed because these affected dischargers have completed studies which indicate that criteria more appropriate and site specific than otherwise provided in OAC 785:45 can and should be applied in their respective circumstances. The intended effect of these amendments is to provide for increased specificity in the criteria and standards which apply to these receiving streams, while maintaining water quality, as permitted by EPA and federal law.

Appendix F, Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except As Indicated), has been revoked and reenacted with the deletion of several listings. The circumstance that created the need for these amendments was the discovery that nearly all the sites used to generate data for these listings were unduly influenced by old surface mines or mine reclamation activities. The intended effect of these amendments is to remove these inappropriate values and return to use of the segment average for the sub-basin.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S., §§ 1085.2 and 1085.30, and 27A O.S., §§ 1-1-202 and 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 46.

CONTACT PERSON:

Derek Smithee, Water Quality Programs Division Chief, (405) 530-8800

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA WATER RESOURCES BOARD, 3800 NORTH CLASSEN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

Please see the "**ANALYSIS**" above for a thorough explanation of the rules. The full text of the rules may be obtained by interested parties from the Oklahoma Water Resources Board, 3800 North Classen, Oklahoma City, Oklahoma 73118; phone 405/530-8800.

[OAR Docket #08-734; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #08-731]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
785:46-1-2. Definitions [AMENDED]
Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing
785:46-3-2. Dilutions for whole effluent toxicity testing [AMENDED]
Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation
785:46-11-3. Regulatory flows [AMENDED]
Subchapter 15. Use Support Assessment Protocols
785:46-15-1. Scope and applicability [AMENDED]
785:46-15-2. Definitions [AMENDED]
785:46-15-4. Default protocols [AMENDED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-6. Assessment of Primary Body Contact Recreation support [AMENDED]
785:46-15-7. Assessment of Public and Private Water Supply support [AMENDED]
785:46-15-8. Assessment of Agriculture support [AMENDED]

785:46-15-10. Nutrients [AMENDED]
785:46-15-14. Assessment of Aesthetics support [NEW]
Subchapter 17. OWRB Water Quality Standards Implementation Plan
785:46-17-2. Definitions [AMENDED]
785:46-17-3. Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses [AMENDED]
785:46-17-10. Evaluation of effectiveness [AMENDED]
Appendix D. Summary of Comments on OWRB's Water Quality Standards Implementation Plan [REVOKED]
Appendix D. Summary of Comments on OWRB's Water Quality Standards Implementation Plan [NEW]

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., § 1085.30; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

ANALYSIS:

Several sections throughout Oklahoma Administrative Code ("OAC") 785:46 have been amended to delete language dealing with the determination of "partial support". These sections include 785:46-15-4, 785:46-15-5, 785:46-15-6, 785:46-15-7 and 785:46-15-8. The circumstance which created the need for these amendments is that the U.S. Environmental Protection Agency ("EPA") has deemphasized and abandoned the concept of a beneficial use which is "partially supported". The language in OAC 785:46 dealing with "partial support" is now obsolete. The intended effect of these amendments is to delete these obsolete provisions.

OAC 785:46-1-2, Definitions, has been amended to modify the definition of "background concentration". This term "background concentration" is not actually used in OAC 785:46, while the term "background" is used frequently. The intended effect of this amendment is to clarify the use of the term "background" throughout OAC 785:46.

OAC 785:46-3-2, Dilutions for whole effluent toxicity testing, has been amended. Currently the acute whole effluent toxicity ("WET") testing language applies only to streams, while there is no language discussing how acute WET testing applies to lakes. The intended effect of the amendment is to make the acute WET testing language apply to both streams and lakes.

OAC 785:46-15-1, Scope and Applicability, has been amended. State environmental agencies have experienced several cases in which the employment of a single parameter in a use support assessment protocol indicated full support or non-support of the use, but other evidence convincingly contradicted that finding. The intended effect of this amendment is to allow assessing agencies to use data other than that specified for a given parameter in certain circumstances in order to make use support decisions.

OAC 785:46-15-2, Definitions, has been amended to add a definition for the term "Trophic State Index". The two references which OWRB staff have used for the determination of Trophic State Index ("TSI") are not specifically cited in OAC 785:45 or 785:46. The intended effect of this amendment is to add a definition of TSI that incorporates both these citations.

OAC 785:46-15-4, Default Protocols, has been amended regarding long term average parameters. It has been noted that a variety of averaging periods and techniques have been applied to those parameters not specifically addressed in the use support assessment protocols in OAC 785:46 Subchapter 15. The intended effect of this amendment is to revise the default rule to require the use of a mean of all data that meet the other data quality requirements.

OAC 785:46-15-5, Assessment of Fish and Wildlife Propagation support, has been amended in several ways. First, portions of this section have been reorganized. The circumstance which created the need for this amendment is that support tests are currently detailed in the paragraph entitled "screening levels" instead of the section entitled "support tests". The intended effect of this amendment is to reorganize the text to a more appropriate placement. Another change in this section is to change the language "natural causes" to "naturally occurring conditions". The circumstance which created the need for this amendment is this language does not match language found elsewhere in this Chapter. The intended effect of this amendment is to create consistent terminology throughout OAC 785:46. Next, amendments are proposed dealing with the assessment of metals criteria that depend upon the hardness of the water that is being assessed. The circumstance which created the need for these amendments is the lack of specificity in how to determine the representative hardness of the stream for purposes of use support determination. The intended effect of this amendment is to provide that specificity. Finally, in the protocol for pH, the term "screening level" has been modified to the more appropriate term "criteria range".

OAC 785:46-15-7, Assessment of Public and Private Water Supply support, has been amended for clarification and to delete language regarding "partial support". There has been some confusion in the interpretation of the current language. The intended effect of the amendment is to reduce or eliminate the confusion.

OAC 785:46-15-8, Assessment of Agriculture Support, has been amended. The entire section has been reorganized to clarify how assessment of the three different parameters of chlorides, sulfates and total dissolved solids ("TDS") should be performed. OWRB staff were requested to clarify this section by other state agencies. The intended effect of this amendment is to separate the parameters for a more clear application of the tests.

OAC 785:46-15-10, Nutrients, has been amended in several ways. First, in many instances the term "lake" is being replaced with "waterbody". These amendments are needed because some persons interpret that these assessment protocols apply to lakes and reservoirs only. The intended effect of these amendments is to allow the application of these protocols to all waterbodies as appropriate. Second, certain references to "impairment studies" have been amended to reinforce that it is beneficial uses which are impaired or threatened, rather than waterbodies. These amendments are needed in order to make the language in this Section consistent. The intended effect of these amendments is to bring these few references into line with the other references to "impairment" or "threatened". Third, language regarding Scenic Rivers has been deleted from this section and moved to a new Section 785:46-15-14, Aesthetics. The intended effect of this amendment is to create a new Section focusing on the beneficial use of Aesthetics.

Several Sections in Subchapter 17, OWRB Water Quality Standards Implementation Plan ("WQSIP"), have been amended to reflect changes in state law. The amended rules include 785:46-17-2, Definitions; 785:46-17-3, Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses; 785:46-17-10, Evaluation of effectiveness; and Appendix D. Summary of Comments on OWRB's Water Quality Standards Implementation Plan. These amendments are needed to implement program changes that allow Clean Water State Revolving Fund loans to be made for projects that implement the state's Nonpoint Source Management Program. The intended effect of these amendments is to update the WQSIP to reflect current OWRB policies.

The rules amendments adopted by the Oklahoma Water Resources Board in this rulemaking implement portions of 82 O.S., §§ 1085.2 and 1085.30, and 27A O.S., §§ 1-1-202 and 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 45.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

785:46-1-2. Definitions

In addition to definitions of terms found in OAC 785:45-1-2, which are incorporated herein by reference, the following words, terms and notations, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"7T2" means the seven-day maximum temperature likely to occur with a 50% probability each year. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m, is calculated based on the number of years of record, n, with a recurrence interval of 2 years, as m = (n+1)/2. The mth highest average temperature is the 7T2.

"A" means mean annual average flow.

"ACR" means acute to chronic ratio.

"Acute to chronic ratio" means LC50/NOEC. The NOEC is the highest concentration at which no effect on test organisms is observed over a relatively long period. Quarterly biomonitoring over the life of the permit is sufficient to determine the ACR if the NOEC and LC50 may be determined. If the ACR is unknown, a default value of 10 may be used for implementation purposes.

"Background ~~concentration~~" means the ambient ~~concentration of a given parameter~~ condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

"Beneficial use limitation" means a more stringent restriction than that required to protect the beneficial use. A prohibition on new point sources is an example of a beneficial use limitation.

"Board" means Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"C" means maximum concentration on the mixing zone boundary.

"C_{95}" means the 95th percentile maximum likelihood concentration.

"C_b" means background concentration.

"C_e" means effluent concentration.

"cfs" means cubic feet per second.

"C_{mean}" means the geometric mean of all effluent concentrations analyzed for the toxicant.

"Ct" means the appropriate criterion listed in OAC 785:45.

"CBOD" means carbonaceous biochemical oxygen demand.

"Coefficient of variation" means standard deviation divided by the mean.

"Continuing Planning Process (CPP)" means the most recent edition of the document produced annually by the Oklahoma Department of Environmental Quality which describes water quality programs implemented within the State.

"Continuing toxicity" means a tendency to be toxic.

"Control" means test organisms exposed to 0% effluent as part of the whole effluent toxicity testing procedure.

"Cooling water reservoir" means a privately owned reservoir used in the process of cooling water for industrial purposes.

"CPP" means the Continuing Planning Process document.

"CV" means coefficient of variation.

"D" means diameter of the discharge pipe in feet.

"df" means dilution factor.

"Dilution capacity" means a measure of the ability of the receiving stream to dilute effluent, defined as the ratio of the regulatory effluent flow to the regulatory receiving stream flow.

"Dilution factor" means a measure of the minimum dilution that occurs on the mixing zone boundary.

"Discharge to a lake" means a discharge within the lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, excluding discharges to lock and dam reservoirs.

"Discharge to a stream" means (1) any discharge outside the normal pool elevation of a lake as such elevation is listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, and (2) any discharge to a lock and dam reservoir, such as Webbers Falls Reservoir and Robert S. Kerr Reservoir.

"DO" means dissolved oxygen.

"Drainage area" means the area above the discharge drained by the receiving stream.

"Event mean concentration" means the flow-weighted average for a given storm event. The flow-weighted average is represented as the sum of the loads calculated for a series of storm samples divided by the sum of the discharges calculated for each of the storm samples.

"EPA" means the United States Environmental Protection Agency.

"HQW" means high quality waters as defined in OAC 785:45-3-2(b).

"Implementation Plan" means a Water Quality Standards Implementation Plan developed and promulgated by a state environmental agency as required by 27A O.S. § 1-1-202.

"Increased load" means the mass of pollutant discharged which is greater than the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the SWS, HQW, or ORW beneficial use limitation was assigned.

"Lake mixing zone" means a volume extending one hundred feet from the source for implementation purposes, unless otherwise specified in OAC 785:45.

"LC_{50}" means the lethal concentration as defined in OAC 785:45-1-2.

"LMFO" means licensed managed feeding operation as defined in 2 O.S. 9-202.

"Mean annual average flow" means the annual mean flow found in "Statistical Summaries", USGS publication no. 87-4205, or most recent version thereof, or other annual mean flow as approved by the Oklahoma Water Resources Board or the permitting authority.

"Monthly average level" means the concentration of a toxicant in the permit which may not be exceeded by the observed effluent concentration averaged over a calendar month.

"Naturally occurring condition" means any condition affecting water quality which is not caused by human influence, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations.

"NLW" means nutrient-limited watershed as defined in OAC 785:45-1-2.

"NOEC" means no observed effect concentration.

"NPDES" means National Pollutant Discharge Elimination System.

"Normal pool elevation" means the elevations listed in the "Oklahoma Water Atlas", Oklahoma Water Resources Board publication no. 135, or most recent version thereof.

"ORW" means Outstanding Resource Waters as defined in OAC 785:45-3-2(a).

"Outfall" means a point source which contains all the effluent being discharged to the receiving water.

"OWQS" means Oklahoma Water Quality Standards.

"Permitting authority" means state environmental agency as defined or provided in Title 27A of the Oklahoma Statutes having jurisdiction as provided by law.

"Persistent toxicity" means toxicity due to effluent constituents which are not subject to decay, degradation, transformation, volatilization, hydrolysis, or photolysis.

"Q*" means dilution capacity.

"Q_e" means the regulatory effluent flow.

"Q_{el}" means long term average effluent flow.

"Q_{es}" means short term average effluent flow.

"Q_n" means the regulatory receiving stream flow.

"Reach" means a continuous stretch or expanse of a stream or river.

"Regulatory mixing zone" means the volume of receiving water described in 785:45-5-26.

"Reasonable potential factor" means the 95th percentile maximum likelihood estimator for a lognormal distribution.

"SS" means sample standard as defined in OAC 785:45-1-2.

"Storm event" means precipitation, after a minimum of 72 hours has elapsed since cessation of previous precipitation, in the watershed of a stream segment that produces a 30 percent rise in stream flow over the average flow of the preceding 72 hours resulting from surface run-off.

"Stream order" means the numerical order of a stream as classified by using Strahler's stream order system as described in Strahler. 1952, "Dynamic basis of geomorphology", Geological Society of America bulletin, 63:923-938.

"SWS" means Sensitive Public and Private Water Supplies.

"T'" means maximum temperature difference at the edge of the mixing zone boundary.

"T_a" means regulatory ambient temperature.

"T_c" means the temperature criterion.

"T_f" means the 95th percentile maximum observed effluent temperature.

"TDS" means total dissolved solids at 180°C.

"TMDL" means total maximum daily load.

"Total maximum daily load" means the sum of individual wasteload allocations for point sources, safety reserves, and loads from nonpoint source and natural backgrounds.

"Trophic State Index" means a numerical quantification of lake productivity. The Trophic State Index shall be determined by TSI = 9.81 x Ln(chlorophyll-a) + 30.6.

"TSI" means Trophic State Index.

"TSS" means total suspended solids.

"USGS" means United States Geological Survey.

"W" means canal width in feet.

"WET" means whole effluent toxicity.

"YMS" means yearly mean standard as defined in OAC 785:45-1-2.

SUBCHAPTER 3. IMPLEMENTATION OF NARRATIVE TOXICS CRITERIA TO PROTECT AQUATIC LIFE USING WHOLE EFFLUENT TOXICITY (WET) TESTING

785:46-3-2. Dilutions for whole effluent toxicity testing

(a) **General.** Generally, two whole effluent toxicity tests shall be used to implement the narrative criteria to protect fish and wildlife propagation. The 48 hour acute test will be used to protect against acute toxicity in receiving water, and the 7 or 21 day chronic test will be used to protect against chronic toxicity outside the chronic regulatory mixing zone.

(b) **Differing requirements for WET tests.**

(1) Three different toxicity testing requirements exist. Each is based upon dilution capacity, represented by Q*.

(2) When Q* is less than 0.054, acute testing only shall be required.

(3) When Q* is greater than 0.33, chronic testing only shall be required.

(4) When Q* is greater than or equal to 0.054 and less than or equal to 0.33, both acute and chronic testing shall be required.

(5) For a discharge directly to a lake, acute testing only shall be required.

(c) **Dilutions for chronic WET tests for streams.** Whole effluent chronic toxicity testing requires that test organisms be subjected to various effluent dilutions. The dilution series for chronic toxicity testing is based on the critical dilution (CD). The chronic critical dilution equations are as follows: CD = (1.94Q*) / (1 + Q*) when Q* is less than or equal to 0.1823, or CD = 1 / (6.17 - 15.51Q*) when Q* is greater than 0.1823 and less than 0.3333, or CD = 1 when Q* is greater than or equal to 0.3333. $Q^* = Q_e/Q_u$. Q_e is the largest thirty day average flow for an industrial discharge, if known, and the design flow otherwise. Q_u is 1 cfs or the 7Q2 receiving stream flow, if known to be larger.

(d) **Dilutions for acute WET tests ~~for streams~~.** The acute critical dilution is 100%.

SUBCHAPTER 11. IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION

785:46-11-3. Regulatory flows

(a) Regulatory receiving stream flow to protect the Fish and Wildlife Propagation beneficial use, Q_u, is the greater of the 7Q2 or 1 cfs. Qu is assumed to be 1 cfs if the 7Q2 is unknown.

(b) The regulatory effluent flow, Q_e, is defined as the highest monthly averaged flow in cfs over the past two years for industrial discharges with adequate data. Q_e is the design flow in cfs for other dischargers.

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

785:46-15-1. Scope and applicability

(a) **General.** The rules in this Subchapter provide protocols which shall be used on and after October 1, 2000 to determine whether certain beneficial uses of waters of the state designated in OAC 785:45 are being supported. Such determinations shall be made only to the extent that pertinent provisions of OAC 785:45 apply to a waterbody or its designated uses. The rules in this Subchapter are not intended and should not be construed to limit any actions by federal or state agencies or citizens to prevent pollution or to limit remedies to abate pollution from a single incident or activity or series of incidents or activities.

(b) **Significance of assessment that a use is other than fully supported.** A determination based upon application of the rules in this Subchapter that a waterbody's beneficial use is not supported or is partially supported creates a presumption that the use is impaired or not attained for that waterbody and that the waterbody segment is a water quality limited segment.

(c) **Agency discretion to consider additional data.** An agency with jurisdiction may consider other relevant data meeting the requirements of this Subchapter in addition to that required by the rules in this Subchapter for any particular parameter to determine full support or non-support.

785:46-15-2. Definitions

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

"Ecoregion" means a geographical area within which ecosystems and the type, quality and quantity of environmental resources are generally similar, as more specifically described in EPA's 1997 revision of Omernick, "Ecoregions of the Conterminous United States", Annals of the Association of American Geographers.

"Impaired" means one or more designated beneficial uses are not being attained.

"MQL" means minimum quantification level.

"Non-wadable" means a stream which is not wadable.

"Rolling average" means the mathematical average of data values across a fixed length of time that incrementally changes its starting point but retains a fixed length of time by also incrementally changing its end point for each recalculation of the average. This term is also known as "moving average".

"Screening level" means an evaluation threshold based upon criteria prescribed in OAC 785:45 to protect a designated beneficial use.

"Seasonal base flow" means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

"303(d) List" means the list of waterbodies with uses that are either threatened or impaired, developed for the State of Oklahoma in accordance with Section 303(d) of the federal Clean Water Act.

"305(b) Report" means the report of water quality in the State of Oklahoma developed in accordance with Section 305(b) of the federal Clean Water Act.

"Trophic State Index" means the results of the calculation for chlorophyll-a concentration using both Carlson, R.E. 1977, A Trophic State Index For Lakes, Limnology and Oceanography, 22:361-369 and the methods outlined in the Board guidance document "Guidance For Determining Lake Trophic State For Determination Of Nutrient Limited Waters Status".

"Wadable" means a stream or segment thereof, at least 10 percent of which under seasonal base flow conditions is:

(1) less than 1.25 meters deep at its thalweg, and

(2) has an instantaneous discharge of less than 10 cubic feet per second, or has a velocity of less than 10 centimeters per second.

"Waterbody" means a body of waters of the state.

785:46-15-4. Default protocols

(a) **General.** The protocols prescribed in this Section shall apply whenever the more specific protocols prescribed elsewhere in this Subchapter do not apply.

(b) **Short term average numerical parameters.**

(1) Short term average numerical parameters are based upon exposure periods of less than seven days. Short term average parameters to which this Section applies include, but are not limited to, sample standards and turbidity.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a short term average if 10% or less of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) ~~A beneficial use shall be deemed to be partially supported for a given parameter whose criterion is based upon a short term average if greater than 10% but less than 25% of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.~~

~~(5)~~ A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a short term average if at least ~~25~~ 10% of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(c) **Long term average numerical parameters.**

(1) Long term average numerical parameters are based upon exposure periods of seven days or longer. ~~Long term average parameters to which this Section applies include, but are not limited to, fish consumption water column numerical criteria and yearly mean standards. For purposes of assessing use support, calculations of means shall be limited to a two year rolling average for those beneficial use applications requiring long term averages.~~ Assessment decisions shall be based upon the mean of all data meeting the temporal and spatial data requirements described elsewhere in this Subchapter.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a long term average if the mean of the sample results does not exceed the long term average.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) ~~Because means are compared with screening levels when addressing long term average numerical parameters, such parameters are not susceptible to an assessment that a use is partially supported.~~

~~(5)~~ A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a long term average if the mean of the sample results exceeds the criterion or screening level.

785:46-15-5. Assessment of Fish and Wildlife Propagation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish and Wildlife Propagation or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Dissolved oxygen.**

(1) **Screening levels for DO in streams.**

(A) Screening levels for DO in habitat limited aquatic communities shall be 4.0 mg/L from April 1 through June 15 each year and 3.0 mg/L for the remainder of the year.

(B) Screening levels for DO in warm water aquatic communities shall be 4.0 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(C) Screening levels for DO in cool water aquatic communities and trout fisheries shall be 5.0 mg/L from June 1 through October 15 each year and 6.0 mg/L for the remainder of the year.

(2) **Screening levels for DO in lakes.**

(A) ~~If greater than 70% of the water column at any given sample site in a lake or an arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.~~ The screening level for D.O. for the water column of a lake shall be 2 mg/L.

(B) ~~If 50% or more, but not greater than 70%, of the water column at any given sample site in a lake or arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be partially supported.~~

~~(C) If 50% or more, but not greater than 70%, of the water column at any given sample site in a lake or arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be partially supported.~~ The screening level for surface DO in a lake or arm of a lake shall be 4 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(3) **Support tests.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to the DO criterion if no more than 10% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or ~~(b)(2)(C)~~ (b)(2)(B) of this Section ~~and such result is~~ due to other than naturally occurring conditions.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be ~~partially~~ not supported with respect to the DO criterion if greater than 10% ~~but less than 25%~~ of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or ~~(b)(2)(C)~~ (b)(2)(B) of this Section due to other than naturally occurring conditions.

(C) The Fish and Wildlife Propagation beneficial use designated for a ~~waterbody~~ lake or reservoir or portion thereof shall be deemed to be not supported with respect to the DO criterion if ~~at least 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section~~ more than 50% of the water column at any given sample site has D.O. concentrations less than the screening level prescribed in (b)(2)(A) of this section due to other than naturally occurring conditions.

(c) **Toxicants.**

(1) ~~Test for Full Support~~ **Test for Full Support.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed

to be fully supported with respect to any individual toxicant parameter if no more than one of the sample concentrations from the waterbody exceeds the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if not more than 1 sample concentration or not more than 10% of the sample concentrations from the waterbody exceeds the chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and 785:45 Appendix G, Table 2.

(2) ~~Test for Non-Support~~ **Test for Non-Support.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than one of the sample concentrations from the waterbody exceed the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than 10 % of the sample concentrations from the waterbody exceed chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2

(d) **pH.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to pH occurring other than by ~~natural causes~~ naturally occurring conditions if no more than 10% of the sample concentrations from that waterbody fall outside the ~~screening interval~~ criteria range prescribed in 785:45-5-12(f)(3).

(2) ~~The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to pH occurring other than by natural causes if greater than 10% but less than 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).~~

~~(3)~~ The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to pH occurring other than by ~~natural causes~~ naturally occurring conditions if ~~at least 25~~ greater than 10% of the sample concentrations from that waterbody fall outside the ~~screening interval~~ criteria range prescribed in 785:45-5-12(f)(3).

(e) **Turbidity.** The criteria for turbidity stated in 785:45-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default protocol in 785:46-15-4(b).

(f) **Oil and grease.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations.

(g) **Suspended and Bedded Sediments.**

(1) If a stream is supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then that stream will be deemed to be supporting its assigned Fish and Wildlife Propagation beneficial use with respect to suspended and bedded sediments.

(2) If a stream is not supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then a habitat assessment must be conducted using the habitat assessment protocols found in OWRB Technical Report TRWQ2001-1, "Unified Protocols for Beneficial Use Assignment for Oklahoma Wadable Streams." The results of the habitat assessment shall then be compared to either historical conditions or regional reference conditions in order to determine attainment with respect to suspended and bedded sediments in that stream.

(3) The method for establishing reference conditions shall meet the following requirements:

(A) a minimum of five (5) reference streams or reaches shall be assessed;

(B) all of the reference streams or reaches must be within the same ecoregion as the test stream;

(C) all of the reference streams or reaches must be streams with similar flow regimes no more than two (2) stream orders removed from the test stream; and

(D) the reference streams shall be selected from the least impacted streams in the ecoregion whose watersheds contain soils, vegetation, land uses, and topography typical of the watershed of the test stream(s).

(4) The Fish and Wildlife Propagation beneficial use will be considered to be not supported with respect to suspended and bedded sediments if any of the following habitat parameters deviate from the reference conditions by the specified amount:

(A) The total percent of clay, silt, and loose sand in the pool bottom substrate of the test stream is increased by more than 30% over the reference condition;

(B) Cobble embeddedness in the test stream is increased by 15% or more over the reference condition;

(C) The percentage of the length of the reach containing fresh (non-vegetated) point bars and/or islands in the test stream is 20 or more percentage points above that of the reference condition; or

(D) The percentage of the length of the reach dominated by pools of a depth of 0.5 meters or more in the test stream is less than 70% of that of the reference condition.

(5) If all of the habitat parameters identified in (h)(4) of this section deviate from the reference conditions by less than the amounts specified in (h)(4) of this section, then the Fish and Wildlife Propagation beneficial use is not impaired due to suspended and bedded sediments.

(h) **Metals.** The Fish and Wildlife Propagation beneficial use designated for a waterbody may be assessed using either total recoverable or dissolved metals. When available, the concentrations of dissolved metals shall be compared following the provisions of (c) of this subsection to the criteria in OAC 785:45 Appendix G converted to dissolved criteria by multiplying the total metal criterion listed in table 2 by the appropriate conversion factor listed in Table 3. Preference shall be given to the beneficial use determinations based upon dissolved metals. For those metals criteria requiring a hardness component, individual assessment results may be calculated using the average of all hardness data meeting the requirements of OAC 785:46-15-3. The segment-averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site-specific data to determine stream hardness.

(i) **Biological criteria.**

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.

(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".

(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma, Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.

(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (i) through (o), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made. A finding of impairment for biocriteria due to any one of the parameters listed in this section shall trigger an evaluation of all likely causes, not precluding monitoring, assessment, and subsequent support determination of the Fish and Wildlife beneficial use for any of the other parameters in this section.

(j) **Special provisions for Ouachita Mountains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Ouachita Mountains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(k) **Special provisions for Arkansas Valley wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Arkansas Valley ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(l) **Special provisions for Boston Mountains and Ozark Highlands wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Boston Mountains and Ozark Highlands ecoregions shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 37 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 29 or less.

If a score is 30 to 36 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 31 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 30 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(m) **Special provisions for Central Irregular Plains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Central Irregular Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 28 or less. If a score is 29 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 30 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 29 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(3) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 25 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 16 or less. If a score is 17 to 24 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(n) **Special provisions for Central Oklahoma - Texas Plains wadable streams.** The determination of whether the Warm Water Aquatic Community subcategory of the Fish and Wildlife Propagation beneficial use is supported for wadable streams located in the Central Oklahoma - Texas Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Such subcategory shall be deemed fully supported if the application of Appendix C produces a score of 26 or more.

(2) Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 19 or less.

(3) If the application of Appendix C produces a score of 20 to 25 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(o) **Special provisions for Central Great Plains wadable streams.** The subcategory of Warm Water Aquatic Community of the beneficial use of Fish and Wildlife Propagation in the wadable streams located in the Central Great Plains ecoregion shall be deemed fully supported if the application of Appendix C of this Chapter produces a score of 22 or more. Such subcategory shall be deemed not supported for the streams in this ecoregion if the application of Appendix C produces a score of 18 or less. If the application of Appendix C produces a score of 19 to 21 inclusive, the issue of whether this subcategory is supported for the streams in this ecoregion shall be deemed undetermined. Provided, however, this subsection does not apply to the area bounded by State Highway 54 on the west, U.S. Highway 62 on the south, U.S. Highway 281 on the east and State Highway 19 on the north.

785:46-15-6. Assessment of Primary Body Contact Recreation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the subcategory of Primary Body Contact of the beneficial use of Recreation designated in OAC 785:45 for a waterbody is supported during the recreation season from May 1 through September 30 each year. Where data exist for multiple bacterial indicators on the same waterbody or waterbody segment, the determination of use support shall be based upon the use and application of all applicable tests and data.

(b) **Screening levels.**

(1) The screening level for fecal coliform shall be a density of 400 colonies per 100ml.

(2) The screening level for Escherichia coli shall be a density of 235 colonies per 100 ml in streams designated in OAC 785:45 as Scenic Rivers and in lakes, and 406 colonies per 100 ml in all other waters of the state designated as Primary Body Contact Recreation.

(3) The screening level for enterococci shall be a density of 61 colonies per 100 ml in streams designated in OAC 785:45 as Scenic Rivers and in lakes, and 406 colonies per 100 ml in all other waters of the state designated as Primary Body Contact Recreation.

(c) **Fecal coliform.**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to fecal coliform if the geometric mean of 400 colonies per 100 ml is met and no greater than 25% of the sample concentrations from that waterbody exceed the screening level prescribed in (b) of this Section.

(2) ~~The parameter of fecal coliform is not susceptible to an assessment that Primary Body Contact Recreation is partially supported.~~

~~(3)~~ The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to fecal coliform if the geometric mean of 400 colonies per 100 ml is not met, or greater than 25% of the sample concentrations from that waterbody exceed the screening level prescribed in (b) of this Section, or both such conditions exist.

(d) **Escherichia coli (*E.coli*).**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is met, or the sample concentrations from that waterbody taken during the recreation

season do not exceed the screening level prescribed in (b) of this Section, or both such conditions exist.

(2) ~~The parameter of *E. coli* is not susceptible to an assessment that Primary Body Contact Recreation is partially supported.~~

~~(3)~~ The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is not met and any of the sample concentrations from that waterbody taken during the recreation season exceed a screening level prescribed in (b) of this Section.

(e) **Enterococci.**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is met, or the sample concentrations from that waterbody taken during the recreation season do not exceed the screening level prescribed in (b) of this Section, or both such conditions exist.

(2) ~~The parameter of enterococci is not susceptible to an assessment that Primary Body Contact Recreation is partially supported.~~

~~(3)~~ The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is not met and any of the sample concentrations from that waterbody taken during the recreation season exceed a screening level prescribed in (b) of this Section.

785:46-15-7. Assessment of Public and Private Water Supply support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Public and Private Water Supply or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Toxicants.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody do not exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than 10% of the time, or drinking water use restrictions are not in effect~~, or both such conditions exist~~.

(2) ~~The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be partially supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than 10% but less than 25% of the time, or drinking water use restrictions imposed by an agency with jurisdiction in effect require more than conventional treatment, or both such conditions exist.~~

~~(3)~~ The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than ~~25~~ 10% of the time, or drinking water use restrictions imposed by an agency with jurisdiction in effect require closure of the water supply~~, or both such conditions exist~~.

(c) **Bacteria.** The screening level for fecal coliform bacteria shall be 5000 colonies per 100 ml. The tests for use support shall follow the default protocol in 785:46-15-4.

(d) **Threatened water supplies.** Waters of the state designated in OAC 785:45 as Public and Private Water Supply shall be presumed to be threatened when toxicants are detected but do not exceed the applicable criteria prescribed in OAC 785:45 Appendix G, or some drinking water use restrictions have been put into effect by an agency with jurisdiction, or the potential for adverse impacts to water quality exists, or more than one such conditions exist.

(e) **Oil and grease.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations, and drinking water use restrictions that require more than conventional treatment related to oil and grease have not been put into effect by an agency with jurisdiction.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations, or drinking water use restrictions that require more than conventional treatment related to oil and grease have been put into effect by an agency with jurisdiction.

785:46-15-8. Assessment of Agriculture support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Agriculture designated in OAC 785:45 for a waterbody is supported.

(b) **General support tests for chlorides, sulfates and TDS.**

(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to ~~chlorides, sulfates and TDS~~ chloride if the mean of all ~~chlorides, sulfates and TDS~~ chloride sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45. Provided, if the ~~TDS sample concentrations are less than 700 mg/L and the chlorides and sulfates~~ chloride sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to ~~those substances~~ chloride.

(2) ~~The Agriculture beneficial use designated for a waterbody shall be deemed to be partially supported with respect to chlorides, sulfates and TDS if the mean of all chlorides, sulfates and TDS sample concentrations from that waterbody does not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and more than 10% but less than 25% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45.~~

~~(3)~~ The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to ~~chlorides, sulfates and TDS~~ chloride if the mean of all ~~chlorides, sulfates and TDS~~ chloride sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F of OAC 785:45, or ~~at least 25~~ greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45~~, or both such conditions exist~~.

(3) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45. Provided, if the sulfate sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to sulfate.

(4) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F of OAC 785:45, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45.

(5) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45. Provided, if the TDS sample concentrations are each less than 700 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to TDS.

(6) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F of OAC 785:45, or at least 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45.

(c) **Use of site specific data.** If the appropriate state environmental agency determines that the stream segment averages prescribed in Appendix F of OAC 785:45 are not appropriate for the entirety of a given stream segment or there is no value listed in Appendix F for the stream segment average for the parameter of concern, then yearly mean standards and sample standards developed from site specific data may be used to assess whether the use of Agriculture is supported for that waterbody.

(d) **Use of data for lakes.**

(1) Lakes with one WBID segment. For support assessment in lakes with a single WBID segment, the segment averaged value prescribed in Appendix F to that same WQM segment shall be used.

(2) Lakes with multiple WBID segments. For support assessment in lakes with multiple WBID segments, each segment shall use the segment averaged value prescribed in Appendix F to that same WQM segment when available. If a WBID segment in a lake has no corresponding WQM segment data available in Appendix F, the segment averaged value prescribed in Appendix F to the WQM segment immediately downstream of the lake shall be used.

785:46-15-10. Nutrients

(a) **General.** OAC 785:45-3-2(c) prohibits water quality degradation by nutrients which will interfere with the attainment or maintenance of any existing or designated beneficial use. OAC 785:46-13-3(a)(1) requires maintenance of any existing or designated beneficial use. This Section provides a framework which shall be used in assessing threats or impairments to beneficial uses and waterbodies and watersheds caused by nutrients, and the consequences of such assessments.

(b) **Determining whether a stream is nutrient-threatened.** The dichotomous process stated in this subsection shall be used in the determination of whether a stream is nutrient-threatened.

(1) The stream order shall be identified. If the stream order is 1, 2 or 3, then proceed to paragraph (2). If the stream order is not 1, 2 or 3, then proceed to paragraph (9).

(2) The stream slope shall be identified. If the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (3). If the stream slope is less than 17 feet per mile, then proceed to paragraph (4).

(3) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.24 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 4.95 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(4) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.15 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 2.4 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(5) Subject to the application of the foregoing paragraphs of this subsection, if the percentage of canopy shading is greater than or equal to 80%, then the stream is not threatened by nutrients. If the percentage of canopy shading is less than 80%, then proceed to paragraph (6).

(6) Subject to the application of the foregoing paragraphs of this subsection, if the stream's turbidity is organic, then proceed to paragraph (7). If the stream's turbidity is inorganic, then proceed to paragraph (8).

(7) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is not threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is threatened by nutrients.

(8) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is not threatened by nutrients.

(9) Subject to the application of the foregoing paragraphs of this subsection, if the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (10). If the stream slope is less than 17 feet per mile, then proceed to paragraph (11).

(10) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 1.00 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 4.65 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(11) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.36 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 5.0 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(12) Subject to the application of the foregoing paragraphs of this subsection, if the stream's inorganic turbidity measured at seasonal base flow conditions is greater than or equal to 20 NTU, then the stream is not threatened by nutrients. If the stream's inorganic turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened.

(c) **Alternative to dichotomous process for streams.**

(1) A wadable stream shall be deemed threatened by nutrients if the arithmetic mean of benthic chlorophyll-a data exceeds 100 mg per square meter under seasonal base flow conditions, or if two or more benthic chlorophyll-a measurements exceed 200 mg per square meter under seasonal base flow conditions. A non-wadable stream shall be deemed threatened by nutrients if planktonic chlorophyll-a values in the water column indicate it has a ~~Carlson's~~ Trophic State Index of 62 or greater.

(2) If clear and convincing evidence indicates a result for a stream different from that obtained from application of the dichotomous process in (b) of this Section, then the appropriate state environmental agency may, after completing the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101, accordingly identify the stream as threatened or not threatened by nutrients.

(d) **Demonstration that nutrients may be adversely impacting a beneficial use ~~in a lake~~.** If it is demonstrated by the Trophic State Index or by other relevant data as provided in 785:46-15-1(c) that nutrient loading in a ~~lake~~ waterbody may be adversely impacting a beneficial use designated for that waterbody, then the Board may determine that the ~~lake~~ waterbody and its watershed is an NLW, and shall identify the ~~lake~~ waterbody and watershed as NLW in Appendix A of OAC 785:45.

(e) **Consequence of identification as NLW~~; results of study~~.** If a ~~lake~~ waterbody or its watershed is identified as NLW in Appendix A of OAC 785:45, then the Board or other appropriate state environmental agency may cause an ~~NLW Impairment Study~~ impairment study to be performed. ~~The beneficial uses designated for lakes identified in OAC 785:45 Appendix A as NLW shall be presumed to be fully supported but threatened, unless an NLW Impairment Study demonstrates that the uses are partially supported or not supported; provided~~ Provided, if an ~~NLW Impairment Study~~ impairment study demonstrates that the uses are not threatened, then the Board shall consider deleting the NLW identification.

(f) **Consequence of assessment that use is threatened by nutrients.** If it is determined that one or more beneficial uses designated for a waterbody are threatened by nutrients, then that waterbody shall be presumed to be nutrient-threatened. If it is determined or presumed, in accordance with this Section, that a waterbody is nutrient-threatened, then before the waterbody is determined to be nutrient-impaired, an ~~NLW Impairment Study if a lake or an~~ impairment study ~~if a stream~~ must be completed by the appropriate state environmental agency.

(g) **Result of impairment study.**

(1) **Impaired ~~or threatened~~.** If, independent of or in addition to the process set forth in ~~(b) of~~ this Section, an impairment study of a waterbody demonstrates that any beneficial use designated for a waterbody is impaired ~~or threatened~~ by nutrients, then the appropriate state environmental agency shall initiate the appropriate listing procedure developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101 for each such beneficial use.

(2) **Not ~~threatened nor~~ impaired.** If, independent of or in addition to the process set forth in ~~(b) of~~ this Section, an impairment study of a waterbody demonstrates that ~~a~~ all beneficial uses designated for that waterbody ~~is neither threatened nor~~ are not impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate de-listing procedure developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

~~(h)~~ **~~Special provisions for Scenic Rivers.~~**

~~(1) **Scope and applicability.** This subsection (h) shall be used to determine whether the beneficial use of Aesthetics designated for a segment of a Scenic River is supported with respect to the criterion of total phosphorus.~~

~~(2) **Data and procedure.**~~

~~(A) The data used shall satisfy all of the requirements of 785:46-15-3 except subsection (f) thereof. Notwithstanding such requirements, the data shall include samples collected from stream flow of at least six (6) storm events per calendar year or, if fewer than nine (9) storm events occurred in that year, then the majority of the storm events that occurred that year.~~

~~(B) Whenever multiple samples are taken from a single storm event, the event mean concentration shall be determined and used as representative of that storm event.~~

~~(C) A three-calendar-month geometric mean concentration shall be determined each month using the total phosphorus data from that month together with such data from the preceding two calendar months.~~

~~(3) **Support tests.**~~

~~(A) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be supported with respect to total phosphorus if less than 25% of the monthly determinations made in accordance with (h)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.~~

~~(B) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be not supported with respect to total phosphorus if 25% or greater of the monthly determinations made in accordance with (h)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.~~

785:46-15-14. Assessment of Aesthetics support

(a) **General provisions for all waterbodies other than Scenic Rivers.** The tests prescribed in OAC 785:46-15-4 may be used to determine whether the beneficial use of Aesthetics designated in OAC 785:45 for a waterbody other than the Scenic Rivers is supported.

(b) **Special provisions for Scenic Rivers.**

(1) **Scope and applicability.** This subsection shall be used to determine whether the beneficial use of Aesthetics designated in OAC 785:45 for a segment of a Scenic River is supported with respect to the criterion of total phosphorus.

(2) **Data and procedure.**

(A) The data used shall satisfy all of the requirements of 785:46-15-3 except subsection (f) thereof. Notwithstanding such requirements, the data shall include samples collected from stream flow of at least six (6) storm events per calendar year or, if fewer than nine (9) storm events occurred in that year, then the majority of the storm events that occurred that year.

(B) Whenever multiple samples are taken from a single storm event, the event mean concentration shall be determined and used as representative of that storm event.

(C) A three-calendar-month geometric mean concentration shall be determined each month using the total phosphorus data from that month together with such data from the preceding two calendar months.

(3) **Support tests.**

(A) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be supported with respect to total phosphorus if less than 25% of the monthly determinations made in accordance with (b)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

(B) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be not supported with respect to total phosphorus if 25% or greater of the monthly determinations made in accordance with (b)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

SUBCHAPTER 17. OWRB WATER QUALITY STANDARDS IMPLEMENTATION PLAN

785:46-17-2. Definitions

In addition to terms defined in Title 27A O.S. § 1-1-201 and Title 82 O.S. § 1084.2, the following words or terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"CWA" means Clean Water Act.

"DEQ" means the Department of Environmental Quality.

"NPDES" means National Pollutant Discharge Elimination System.

"NPS" means nonpoint source.

"OWRB" means the Oklahoma Water Resources Board.

"Plan" means the Water Quality Standards Implementation Plan, or portion thereof, promulgated by the Board in this Subchapter for the programs that affect water quality within the Board's jurisdictional areas of environmental responsibility.

"SRF" means a fund or program used for loans to eligible entities for qualified projects in accordance with Federal law, rules and guidelines administered by the U.S. Environmental Protection Agency and state law and rules administered by the Board. "SRF" is a Federal term referring to a state revolving fund. There are two separate SRF programs administered in Oklahoma: one is for the purpose of controlling water pollution (the Clean Water SRF) and the other is for the purpose of providing safe drinking water (the Drinking Water SRF).

"USAP" means use support assessment protocols promulgated by the Board and codified at OAC 785:46 Subchapter 15.

"WQS" means the water quality standards promulgated by the Board in OAC 785:45.

"WQSIP" means Water Quality Standards Implementation Plan.

785:46-17-3. Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses

(a) In the course of determining applications for stream water permits, the Board evaluates or calculates runoff data, available stream gauge data, lake storage volumes and dependable yield data for reservoirs, and the watershed above the proposed diversion point. The Board protects against degradation by appropriating no more than the mean annual flow of a stream. After July 1, 2000, the Board will also evaluate whether an application will cause a potential impact on beneficial uses.

(b) In the course of determining maximum annual yields of groundwater basins, the Board assumes 100 percent development within the basin; this ensures a longer basin life because current basin development is typically less than 20 percent of the entire basin. The maximum annual yield procedure also identifies potential sources of contamination within the basin. The basin studies will further determine the level of decline in storage in the basin which could impact historic low base flow discharge such that flow in that stream could potentially begin to be reduced due to groundwater withdrawals. In the course of determining applications for groundwater permits where the maximum annual yield has been determined, the Board protects against degradation by limiting the permitted withdrawal to the maximum annual yield allocated to the land covered by the permit, and avoiding withdrawal that would cause contaminated groundwater or surface water to be moved into groundwater that is not already contaminated.

(c) The Board's Clean Water SRF loans for ~~construction of~~ projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) In the course of determining eligibility of applications, the Board reviews the proposed project's consistency with water quality management plans developed under sections 205(j), 208, 303(e), 319 and 320 of the Clean Water Act. The Clean Water SRF Integrated Priority Ranking System ranks projects for funding based on human health protection, the "fishable/swimmable" goals of the Clean Water Act, the WQS, and Oklahoma's Nonpoint Source Management Program led by the Oklahoma Conservation Commission. All projects are placed on a five-year Clean Water SRF Project Priority List and funded in priority order. Proposed projects receive points based on the four major factors of project type, water quality restoration, water quality protection, and readiness to proceed, all as provided in 785:50-9-23.

(2) ~~The project is evaluated for its ability to meet discharge permit limits in satisfaction of water quality standards, and any mitigative measures necessary to~~ Wastewater projects under Section 212 of the Clean Water Act are reviewed by Board staff engineers for compliance with applicable DEQ rules, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656; and consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans, if required by DEQ, all designed to protect the beneficial uses of the receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ. Additional preventative measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction.

(3) ~~The funding recipients~~ Recipients of loans for Section 212 wastewater projects are required to construct the projects in accordance with plans and specifications approved by DEQ and the Board. The recipients are required to employ a full time resident inspector. The projects are periodically inspected by the Board staff during construction~~, and upon completion are subjected to a final Board inspection for compliance with construction and discharge standards~~ . Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(4) Recipients of loans for Section 319 NPS pollution control projects are required to implement the projects in accordance with State-approved BMP to control pollution for various NPS categories in accordance with TMDLs or other plans established to control NPS runoff.

(d) The Board's loans from revenue bond proceeds for construction of projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Sections 785:50-7-1 and 785:50-7-2 of the OAC provide general rules and criteria for review and approval of proposed bond loan projects. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626, and the Water Pollution Control Facility Construction rules in OAC 252:656; and for consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans issued by DEQ, all designed to protect the beneficial uses of receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ.

(2) **Procedures following approval.** After a revenue bond loan project is approved by the Board, it is monitored

to assure it is constructed in accordance with planning documents and plans and specifications approved by the Board and DEQ. Loan recipients are required to employ a full time resident inspector to ~~monitor and record~~ oversee construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(e) The Board's emergency grants for construction of projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Section 785:50-7-5 of the OAC provides a priority system which ranks proposed emergency grant projects for review and approval according to certain factors and criteria. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656; and for consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans issued by DEQ, all designed to protect the beneficial uses of receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ.

(2) **Procedures following approval.** After an emergency grant project is approved by the Board, it is monitored to assure it is constructed in accordance with plans and specifications approved by the Board and DEQ. Emergency grant recipients are required to employ a full time resident inspector to ~~monitor and record~~ oversee construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(f) The Board's Rural Economic Action Plan (REAP) Grant Program for construction of projects complies with antidegradation standards and leads to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Sections 785:50-8-3 and 785:50-8-4 of the OAC provide general rules and criteria for review and approval of proposed REAP projects, while Section 785:50-8-5 provides a priority system which ranks proposed REAP grant projects according to certain factors and criteria. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656; and for consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans issued by DEQ, all designed to protect the beneficial uses of receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ.

(2) **Procedures following approval.** After a REAP grant project is approved by the Board, it is monitored to assure it is constructed in accordance with plans and specifications approved by the Board and DEQ. REAP grant recipients are required to employ a full time resident inspector to ~~monitor and record~~ oversee construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(g) In carrying out its various clean lakes programs, the Board complies with antidegradation standards, and leads to maintenance of water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, in the following ways:

(1) The Board participates with municipalities and federal agencies in conducting lake water quality assessments and studying the problems causing impairment or pollution.

(2) The Board makes recommendations for removal of pollutants, watershed restoration and management activities, and controlling nonpoint source pollution through implementation of best management practices.

(3) In some instances the Board enters into contracts for implementation of pollution control measures on threatened or impaired waterbodies.

785:46-17-10. Evaluation of effectiveness

The Board ~~will~~ may utilize discharge monitoring reports submitted to DEQ, and may compare previous effluent limits with effluent produced after project completion and operation, to evaluate the effectiveness of wastewater projects constructed

with funding from the Board. The Board may also utilize pertinent data from its Beneficial Use Monitoring Program to evaluate the effectiveness of these projects.

APPENDIX D. SUMMARY OF COMMENTS ON OWRB'S WATER QUALITY STANDARDS IMPLEMENTATION PLAN [REVOKED]

APPENDIX D. SUMMARY OF COMMENTS ON OWRB'S WATER QUALITY STANDARDS IMPLEMENTATION PLAN [NEW]

Title 27A O.S. § 1-1-202(B)(3)(g) provides that *each Water Quality Standards Implementation Plan shall...include a brief summary of the written comments and testimony received pursuant to all public meetings held or sponsored by the...agency for the purpose of providing the public and other state environmental agencies an opportunity to comment on the plan.*

I. Summary of Comments Received During 2000-2001 Rulemaking

The OWRB proposed new rules prescribing its Water Quality Standards Implementation Plan as described in a notice of rulemaking intent published at 18 Ok Reg 333 on January 2, 2001. During the January 2 through February 5, 2001 comment period on those new rules, the OWRB received written comments which are summarized or quoted below.

Ron Suttles, Oklahoma Department of Wildlife Conservation, submitted written comments which stated:

> "Our last comment deals with language in Chapter 46 Subchapter 17-3. There is new wording specifying that, 'The Board protects against degradation by appropriating no more than the mean annual flow of a stream.' We believe that this will not provide sufficient protection for 'waters of the state' and baring [sic] clarification to the contrary must object to what appears to be an appropriation provision that will cause WQS to be violated."

Kelly Burch, Assistant Attorney General in the Oklahoma Attorney General's Office, submitted written comments which stated:

> "Senate Bill 549 requires the OWRB to promulgate an implementation plan which includes the 'processes, procedures and methodologies' that will be utilized to ensure that the surface water permitting program will comply with anti-degradation standards and lead to maintenance of water quality, removal of threats to water quality and restoration of water quality. Stream water appropriations can degrade water quality and impair beneficial uses if not managed properly. The OWRB is required to develop an implementation plan demonstrates [sic] how the standards will be used in the program to prevent these impacts.
> "The current proposal does not meet the requirements of Senate Bill 549. The proposal simply states that compliance with anti-degradation standards is already assured because the OWRB only appropriates the mean annual flow of a stream. As your recent study of the Baron Fork Creek demonstrates, the current system of appropriating the mean annual flow of a stream does not necessarily protect against degradation of water quality. There are several methods available to evaluating flow necessary to prevent degradation which you may want to consider using for permitting decisions.

"It is also insufficient to say that the OWRB will begin looking at impacts on beneficial uses without any clarification of which 'processes, procedures and methodologies' will be used to assess these impacts. It is already clear that the OWRB is required to ensure that beneficial uses are protected when issuing permits. The question is how is the agency going to comply with that requirement. The current proposal needs to be amended in order to meet the mandates of Senate Bill 549."

Margaret Ruff, Oklahoma Wildlife Federation, submitted written comments which stated:

"785-46-17. Overall, the OWF does not see that this language assures in any way that OWRB's implementation plans will uphold water quality standards. In (a), stating the Board 'protects against degradation by appropriating no more than the mean annual flow of a stream' is not necessarily protective of Oklahoma's water quality standards. Further, if a potential impact on beneficial uses is found, there is no language mandating any action taken to rectify the situation; this needs to be added. In (b), there needs to be language mandating that actual affects [sic] to water quality from groundwater allocation is assessed and specifying action is taken if such an assessment finds withdrawals are negatively affecting water quality. In (c), language states that the program complies with antidegradation standards but does not say how - this needs to be included.

"For does this section overall address antidegradation in High Quality Waters of Oklahoma. This is a higher standard than beneficial use attainment, and antidegradation should mean no backsliding is allowed in those waters.

"785-46-17-5. The list is missing language spelling out how these programs meet Water Quality Standards.

"785-46-17-7. Should spell out what links are there to assure the plan is integrated into management activities.

"785-46-17-8.(a) Such permits from other agencies have not assured compliance with water quality standards and OWF does not believe that OWRB should assume this. In fact, the Oklahoma Supreme Court has suggested that in at least some areas, the OWRB should <u>not</u> assume another agency's permit means compliance.

"785-46-17-10. OWF recommends changing the 'mays' to 'shalls'. Also, OWF recommends adding all the other sources as cited in 785-46-17-6." (Emphasis in original.)

Upon consideration of these comments, the OWRB staff concurred that the appropriate implementation of water quality standards into the process of stream water permitting is in its infancy. The staff expects to be working over the next several years to evolve all agency programs to assure that the Oklahoma Water Quality Standards are protected.

II. Summary of Comments Received During 2007-2008 Rulemaking

No comments on the OWRB's Water Quality Standards Implementation Plan were received during the 2007-2008 rulemaking.

[OAR Docket #08-731; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #08-732]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-5. REAP grant priority point system [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-9. Definitions [AMENDED]
Part 3. General Program Requirements
785:50-9-27. Types of assistance [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. §1085.2; 82 O.S. §§ 1085.31, et seq.; 62 O.S. § 2003.
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of Oklahoma Administrative Code 785:50 as follows:

Section 785:50-8-5 has been amended to restore language regarding priority formulas for school districts and counties that file applications for Rural Economic Action Plan ("REAP") grants. This amendment is needed because this language was inadvertently deleted when this Section was most recently amended. The intended effect of the amendment is to re-establish the priority system that has been used for several years for school district and county applicants for REAP grants.

Sections 785:50-9-9 and 785:50-9-27 have been amended to provide for greater flexibility in terms of loans for Clean Water State Revolving Fund ("SRF") projects. These amendments are needed because the current rules provide a maximum repayment period of 20 years. However, in certain circumstances, state and federal law and the U.S. Environmental Protection Agency now may allow the repayment period to exceed 20 years. The intended effect of the proposed amendments is to make the rules consistent with the flexibility in repayment and other loan terms allowed by state and federal law.

Section 785:50-9-9 has also been amended in the definition of "excessive infiltration/inflow" by changing the threshold from 140 to 120 gallons per capita per day. The circumstance which created the need for this amendment is that the U.S. Environmental Protection Agency has recommended that the standard be 120 gallons per day, which is also the normal standard used by engineers. The intended effect of this amendment is to use the most common measurement of excessive infiltration/inflow.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-5. REAP grant priority point system

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred fifteen (115). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority cots. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 39 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the latest federal decennial census than for any jurisdiction with a greater population according to the census; and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate

applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) **Priority formula for eligible entities other than school districts and counties.**

(1) **Formula.** The following formula has been devised to rank grant applications: T = P + WR + I + MHI + FP + N + AR + BP + PG, Where:

(A) T = Total of priority points
(B) P = Population
(C) WR = Water and sewer rate structure
(D) I = Indebtedness per customer
(E) MHI = Median household income
(F) FP = Applicant's ability to finance project
(G) N = Need
(H) AR = Amount of grant requested
(I) BP = Project benefit to other systems
(J) PG = Previous grant assistance

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest federal decennial census shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i).

(ii) For systems providing both water and sewer services, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii).

(iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(iii).

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is $15.00 or greater, the applicant will be given 10 points.

(ii) If the indebtedness per customer is $13.00 to $14.99, the applicant will be given 9 points.

(iii) If the indebtedness per customer is $11.00 to $12.99, the application will be given 8 points.

(iv) If the indebtedness per customer is $10.00 to $10.99, the application will be given 7 points.

(v) If the indebtedness per customer is $9.00 to $9.99, the applicant will be given 6 points.

(vi) If the indebtedness per customer is $8.00 to $8.99, the applicant will be given 5 points.

(vii) If the indebtedness per customer is $7.00 to $7.99, the applicant will be given 4 points.

(viii) If the indebtedness per customer is $6.00 to $6.99, the applicant will be given 3 points.

(ix) If the indebtedness per customer is $5.00 to $5.99, the applicant will be given 2 points.

(x) If the indebtedness per customer is $4.00 to $4.99, the applicant will be given 1 point

(xi) If the indebtedness per customer is $4.00, the applicant will be given 0 points.

(D) **Median household income (MHI).** The median household income is calculated according to the latest federal decennial census.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii).

(E) **Ability to finance project (FP).**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP = AR (0.1102)/(12)(C), Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.

(II) AR = Amount of grant requested.

(III 0.1102) = Annual rate factor for a 25 year loan at 10%

(IV 12) = Number of months per year.

(V C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

(I) If the FP is $10.00 or greater, the applicant shall be given 12 points.

(II) If the FP is $8.00 to $9.99, the applicant shall be given 11 points.

(III) If the FP is $6.00 to $7.99, the applicant shall be given 10 points

(IV) If the FP is $5.00 to $5.99, the applicant shall be given 9 points.

(V) If the FP is $4.00 to $4.99, the applicant shall be given 8 points.

(VI) If the FP is $3.00 to $3.99, the applicant shall be given 7 points.

(VII) If the FP is $2.00 to $2.99, the applicant shall be given 6 points.

(VIII) If the FP is $1.75 to $1.99, the applicant shall be given 5 points.

(IX) If the FP is $1.50 to $1.74, the applicant shall be given 4 points.

(X) If the FP is $1.25 to $1.49, the applicant shall be given 3 points.

(XI) If the FP is $1.00 to $1.24, the applicant shall be given 2 points.

(XII) If the FP is $0.75 to $0.99, the applicant shall be given 1 point.

(XIII) If the FP is less than $0.75, the applicant shall be given 0 points.

(F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arouse if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.

(G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:

(i) If the AR is $140,001 to $150,000, the applicant shall be given -5 points.

(ii) If the AR is $130,001 to $140,000, the applicant shall be given -4 points.

(iii) If the AR is $120,001 to $130,000, the applicant shall be given -3 points.

(iv) If the AR is $110,001 to $120,000, the applicant shall be given -2 points.

(v) If the AR is $100,001 to $110,000, the applicant shall be given -1 point.

(vi) If the AR is $100,000, the applicant shall be given 0 points.

(vii) If the AR is $80,000 to $99,999, the applicant shall be given 1 point.

(ix) If the AR is $60,000 to $79,999, the applicant shall be given 2 points.

(x) If the AR is $40,000 to $59,999, the applicant shall be given 3 points.

(xi) If the AR is $20,000 to $39,999, the applicant shall be given 5 points.

(xii) Any portion of an AR that is more than $150,000 shall be denied.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Previous grant assistance (PG).** No qualified entity shall receive more than $150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has been approved for or received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply:

(i) If the qualified entity has been approved for or received one (1) REAP grant in the preceding twelve (12) month period, the application will be given -8 points.

(ii) If the qualified entity has been approved for or received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given -10 points for each REAP grant so received.

(iii) If the qualified entity has been approved for or received one (1) REAP grant more than twelve (12) months in the past, the application will be given -5 points.

(iv) If the qualified entity has been approved for or received two (2) REAP grants more than twelve (12) months in the past, the application will be given -8 points.

(v) If the qualified entity has been approved for or received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.

(vi) If the qualified entity has been approved for or received four (4) REAP grants more than twelve (12) months in the past, application will be given -12 points.

(vii) If the qualified entity has been approved for or received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.

(viii) If the qualified entity has received a previous REAP grant that remains un-audited or for which any refund has not been paid as of August 31st, the application will be given -20 points for each such grant.

(c) **Priority formula for school districts and counties.**

(1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts: T = ADM + LT + BI + MHI + FP + N + AR + PG, Where:

(A) T = Total of priority points

(B) ADM = Average daily membership

(C) LT = Local tax levies

(D) BI = Bonded indebtedness

(E) MHI = Median household income of population within the school district or area of county to be served

(F) FP = Applicant's ability to finance project

(G) N = Need

(H) AR = Amount of grant requested

(I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

(i) If the mills are 95 to 100; the applicant shall be given 13 points.

(ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.

(iii) If the mills are 85 to 89.00, the applicant shall be given 10 points.

(iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.

(v) If the mills are 70 to 79.99, the applicant shall be given 6 points.

(vi) If the mills are 60 to $69.99, the applicant shall be given 4 points.

(vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.

(viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.

(ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.

(x) If the mills are 40 to 49.99, the applicant shall be given -1 point.

(xi) If the mills are less than 40, the applicant shall be given -2 points.

(C) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows:

(I) If the percentage is 95% to 100%, the applicant shall be given 10 points.

(II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.

(III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.

(IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.

(V) If the percentage is 65% to 69.99%, the applicant shall be given 5 points.

(VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.

(VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.

(VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.

(IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.

(X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.

(XI) If the percentage is 40% to 44.99%, the application shall be given -1 point.

(XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.

(XIII) If the percentage is less than 30%, the applicant shall be given -3 points.

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

PART 1. GENERAL PROVISIONS

785:50-9-9. Definitions

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

"303(d) List" means the list of impaired waters of the State, or most recent approved revision thereof, developed pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.

"Act" means The Federal Clean Water Act, as amended.

"Applicant" means any municipality, as defined, that submits a preapplication/application for financial assistance in accordance with this subchapter.

"Architectural or **engineering services"** means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"As a result of" means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

"Binding commitment" means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Brownfield" *means an abandoned, idled or underused industrial or commercial facility or other redevelopment of the real property is complicated by environmental contamination caused by regulated substances* [27A:2-15-103(2)].

"Brownfield assessment" means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

"Capitalization grant" means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

"Collector sewer" means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connected more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(B) Pumping units and small diameter lines serving individual structures or groups of structures.

"Combined sewer" means a sewer that is designed as a sanitary sewer and a storm sewer.

"Conservation Commission" means the Oklahoma Conservation Commission.

"Construction" means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

"Contingency section" means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

"Cross-cutting laws and orders" means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

"Department" means the Oklahoma Department of Environmental Quality.

"Enforceable requirements of the Act" means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

"Equivalency projects" means project cited by the Board as meeting the requirement of the capitalization grant.

"Excessive infiltration/inflow" means the quantities of infiltration/inflow above ~~140~~ 120 gallons per capita per day (GPCD), which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Fundable portion" means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

"Funding year" means the first year of the planning period represented by a project priority list.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

"In perpetuity" means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

"Intended Use Plan" means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

"Interceptor sewer" means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

"Loan" means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance ~~and the recipient promises to repay the principal sum to the Clean Water SRF over a period not to exceed 20 years at an interest rate established at or below market rates (may be interest free)~~ on terms consistent with the federal Water Quality Act of 1987 or otherwise approved by the Environmental Protection Agency.

"MBE" means Minority Business Enterprise.

"MBE/WBE participation" means the federal requirement for negotiation of a "fair share" objective for minority and women owned businesses (MBE/WBE) applies to assistance in an amount equal to the capitalization grant.

"MGD" means millions of gallons per day.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

"Nonexcessive infiltration" means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

"Nonexcessive inflow" means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

"Nonpoint source" means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

"Nonpoint source activities" means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Act.

"Operable treatment works" means a treatment works that, upon completion, will meet the enforceable requirements of the Act.

"Operation and maintenance" means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency ofequipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"OWQS" means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

"Planning" means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

"Planning portion" means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive funding during the five-year planning period represented by the list.

"Project" means the water quality project for which Clean Water SRF assistance is provided. Water quality projects include:

(A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned; ~~or~~

(B) urban storm water activities;

(C) nonpoint source activities; or

(D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

"Project completion" means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

"Project Priority List" means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

"Project priority points" means the total number of points assigned to a project by using the priority ranking formula.

"Reallotment" means allotment of previously allotted unused funds.

"Recipient" means a municipality or other entity which receives assistance under the Clean Water SRF program.

"Repayment" means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

"Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

"Responsible bidder" means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

"Revenue programs" means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

"Sewer System Evaluation Survey (SSES)" means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined source of infiltration/inflow.

"State match" means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

"State Revolving Fund" or **"SRF"** means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

"Storm sewer" means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

"Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition **"treatment works"** means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

"Urban storm water activities" means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

"User charge" means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

"WBE" means Women's Business Enterprise.

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-27. Types of assistance

The Fund may be used for the following purposes:

(1) To make loans on the condition that:

(A) Such loans are made at or below market interest rates, including interest free loans at terms ~~not to exceed 20 years~~ consistent with the federal Water Quality Act of 1987 or otherwise approved by the Environmental Protection Agency.

(B) Principal and interest payments will commence not later than one year after project completion and all loans will be fully amortized ~~not later than 20 years after project completion~~ consistent with the federal Water Quality Act of 1987 or otherwise as approved by the Environmental Protection Agency.

(C) The recipient of a loan will establish a dedicated source of revenue for repayment of loans.

(2) To buy or refinance the debt obligation of eligible applicants within the State at or below market rates, when such debt obligations were incurred and construction started after March 7, 1985, for the sole purpose of funding projects that meet the following requirements:

(A) The applicant is the approved designated management agency.

(B) The project is consistent with the water quality management plan.

(C) The project must be listed on the State priority list.

(D) The project has complied with requirements of these regulations and has been approved by the Board.

(E) The project must have approved plans and specifications and construction permit issued by the Department.

(3) For the reasonable costs of administering the fund and conducting activities under Title VI of the Act, not to exceed 4% of the federal capitalization grant awards.

[OAR Docket #08-732; filed 4-25-08]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 55. DEVELOPMENT ON STATE OWNED OR OPERATED PROPERTY WITHIN FLOODPLAINS AND FLOODPLAIN ADMINISTRATOR ACCREDITATION

[OAR Docket #08-733]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Floodplain Administrator Accreditation Program
785:55-7-3. Designation of floodplain administrator [AMENDED]
785:55-7-5. Temporary accreditation period; first full accreditation period [REVOKED]
785:55-7-6. Vacancies and replacement of floodplain administrators; notice to Board [AMENDED]
785:55-7-7. Accreditation application [AMENDED]
785:55-7-9. Expiration of accreditation and renewal of accreditation [AMENDED]

AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. § 1601 et seq. and 82 O.S. § 1085.2.

DATES:
Comment period:
November 15, 2007 through January 8, 2008
Public hearing:
January 8, 2008
Adoption:
February 12, 2008
Submitted to Governor:
February 22, 2008
Submitted to House:
February 22, 2008
Submitted to Senate:
February 22, 2008
Gubernatorial approval:
April 2, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2008.

Final adoption:
April 17, 2008
Effective:
May 27, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of Oklahoma Administrative Code 785:55 as follows:

Revisions have been adopted which are similar to three provisions of rules on floodplain administrators in order to acknowledge that communities in the floodplain management program before the effective date of the Oklahoma Floodplain Management Act in May 1980 may not have created a floodplain board that designates or fills vacancies in the floodplain administrator position for the community. Communities in the program before May 1980 may specify by ordinance or by job description the person that fills the position of floodplain administrator for the community. The intended effect of the revisions is to clarify the distinction between pre-1980 communities and post-1980 communities.

Another revision revokes Section 785:55-7-5 as no longer necessary. This section was adopted for the transition period after the law was enacted to require accreditation of floodplain administrators. The intended effect is to delete obsolete and unnecessary language.

Another change relating to expiration and renewal of accreditations is to delete language allowing an exemption from continuing education requirements for persons accredited for less than one year or who are Certified Floodplain Managers. The circumstances which created the need for the rule is the recognition that lack of continuing education by newly accredited persons or by those who have moved to the next level by being a Certified Floodplain Manager has caused confusion concerning new requirements regarding floodplain management. The intended effect of the rule is to start requiring newly accredited floodplain managers and Certified Floodplain Managers to take continuing education courses.

CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2008:

SUBCHAPTER 7. FLOODPLAIN ADMINISTRATOR ACCREDITATION PROGRAM

785:55-7-3. Designation of floodplain administrator

The floodplain board or proper community official or community governing body, as the case may be, for each community that participates in the National Flood Insurance Program shall designate a person to serve as the floodplain administrator for the community. The floodplain administrator may be part-time, full-time or contracted.

785:55-7-5. Temporary accreditation period; first full accreditation period [REVOKED]

~~A temporary accreditation period is established for the period November 1, 2004 through June 30, 2005. All persons designated as floodplain administrators as of November 1, 2004, shall be deemed accredited through June 30, 2005. The first full accreditation period shall be from July 1, 2005 through June 30, 2006. Unless otherwise approved by the Board, all persons designated as floodplain administrators as of June 30, 2005, must be accredited pursuant to the provisions of 785:55-7-7 and 785:55-7-8 no later than June 30, 2005.~~

785:55-7-6. Vacancies and replacement of floodplain administrators; notice to Board

The community's floodplain board or appropriate community official or community governing body shall contact the Board within thirty (30) days after a floodplain administrator position becomes vacant. The floodplain board or appropriate community official shall use its best efforts to designate a successor floodplain administrator within sixty (60) days after a vacancy occurs. The successor must become accredited as described in Sections 785:55-7-7 and 785:55-7-8 within one hundred twenty (120) days after being designated as floodplain administrator.

785:55-7-7. Accreditation application

(a) All persons who are designated as a floodplain administrator by a community floodplain board, proper community official or community governing body, as the case may be must file an application for accreditation with the Board on a form provided by the Board.

(b) The application and supporting documentation will be reviewed by the Board's staff, Board staff will inform the applicant in writing regarding any deficiencies in the application.

(c) Completed applications will be presented to the Board with a recommendation from Board staff on whether to accredit the floodplain administrator.

(d) Proof of being a Certified Floodplain Manager (CFM®) under the Oklahoma Floodplain Managers Association (OFMA) or other association will fulfill the accreditation obligation.

785:55-7-9. Expiration of accreditation and renewal of accreditation

(a) All accreditations expire on June 30 of each year.

(b) Accreditation must be renewed each year. On or before July 1 of each year, each accredited floodplain administrator shall submit the following:

(1) renewal application on a form provided by the Board;

(2) documentation, such as an attendance certificate, showing completion of required continuing education unless otherwise determined by the Executive Director~~, provided that continuing education shall not be required for renewal for floodplain administrators who have been accredited less than one (1) year prior to July 1 or proof of being a CFM®.~~

(c) An application for renewal submitted after June 30 will be considered an application for new accreditation.

[OAR Docket #08-733; filed 4-25-08]

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

1:2008-3B.

SECOND AMENDED EXECUTIVE ORDER 2008-3 OF JANUARY 18, 2008

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and 63 O.S. §§ 683.1 *et seq.*, hereby declare that because there is a state of emergency continuing in the State of Oklahoma due to catastrophic weather occurring statewide, it is necessary to assist and expedite all efforts of storm relief. In order to accommodate this need and to provide assistance to the citizens of Oklahoma in this extraordinary situation, I hereby order the temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of oversized vehicles under Title 47;
2. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission;
3. The requirements for licensing/registration as required by the Oklahoma Tax Commission; and,
4. This order does not exempt operators from statutes regulating overweight loads as described in Oklahoma Statute Title 47 § 14-109.
5. This Executive Order amends Executive Order 2008-3 because of the on-going state of emergency which has existed continually since December 8, 2007. This Executive Order shall be effective until the end of thirty (30) days after the filing of this Executive Order.

This executive order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission and the Commissioner of Public Safety, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 17th day of February, 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #08-677; filed 4-18-08]

1:2008-17.

EXECUTIVE ORDER 2008-17

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 Tuesday, April 22, 2008 to honor Sergeant William E. Allmon an Oklahoma resident, who died on Saturday, April 12, 2008, at age 25 while serving in Iraq.

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 21st day of April, 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #08-701; filed 4-22-08]

1:2008-18. [1]

CORRECTED NUMBER EXECUTIVE ORDER 2008-18 [1]

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare the following:

1. Tornadoes, severe storms and flooding beginning April 9, 2008, and continuing have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.
2. It may be necessary to provide for the rendering of mutual aid assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The counties included in this declaration are:

Adair, Atoka, Bryan, Caddo, Canadian, Cherokee, Coal, Comanche, Choctaw, Garvin, Grady, Haskell, Hughes, Johnston, Kiowa, Latimer, LeFlore, Logan, Love, Marshall, Mayes, McClain, McCurtain, McIntosh, Muskogee, Okfuskee, Oklahoma, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Tulsa and Wagoner.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.
5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.
6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 11 day of April, 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

EDITOR'S NOTE: *[1] This Executive Order was first issued as Executive Order 2008-17, creating a duplication in numbering. Upon discovery of the error, a "Corrected Number Executive Order," as published herein, was issued to change the number from 2008-17 to 2008-18. The earlier Executive Order, with the incorrect number, was published in a prior issue of the Register [see 25 Ok Reg 1009 (May 1, 2008)].*

[OAR Docket #08-769; filed 4-30-08]