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Brad Henry, Governor
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Secretary of State
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Notices of Rulemaking Intent

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

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

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

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #08-1304]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 8. Six-Year Comprehensive Local Education Plan

210:15-8-3. Component of the Six-Year Plan [NEW]

SUMMARY:

The proposed rule will require all schools to complete the self-examination on their use of school time and to assess the amount of time spent on quality instructional time.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1304; filed 10-24-08]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #08-1303]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 24. Science and Mathematics Advanced Recruiting Technique (SMART) Program [NEW]

210:20-24-1. Purpose [NEW]

210:20-24-2. Science and Mathematics Advanced Recruiting Technique (SMART) Program [NEW]

SUMMARY:

The proposed new rules for the Science and Mathematics Advanced Recruiting Technique (SMART) Program outline components important to implementation of the program. The rules include identification criteria for the persons who will receive the one-time recruitment fund and application requirements for public school districts to identify qualified personnel.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

Notices of Rulemaking Intent

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1303; filed 10-24-08]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #08-1305]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 37. Adjunct Teachers
210:20-37-2. Adjunct Teachers [AMENDED]

SUMMARY:

Proposed rule would require all coaches to take a course of care and prevention of athletic injuries and have valid teaching certificates.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State

Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1305; filed 10-24-08]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #08-1307]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 23. School Board Members
210:20-23-3. Requirements for new school board member training [AMENDED]

SUMMARY:

The purpose of the rule amendments is to define the training requirements for new school board members as prescribed in 70 O.S. § 5-110.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1307; filed 10-24-08]

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

[OAR Docket #08-1299]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Additional Standards for Secondary Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate
210:35-9-31. Program of studies and graduation requirements [AMENDED]

SUMMARY:

The proposed rule amendments establish teacher qualifications for teaching the integrated Personal Financial Literacy areas of instruction or a separate course for Personal Financial Literacy instruction.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1299; filed 10-24-08]

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

[OAR Docket #08-1300]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 25. Student Entrance and Progression Through the System
210:35-25-4. Annual student college remediation reports to local school boards [NEW]

SUMMARY:

The rule amendments require that a high school representative annually provide for review and discussion a report for each site regarding first-year college performance and remediation of local high school graduates.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

Notices of Rulemaking Intent

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1300; filed 10-24-08]

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

[OAR Docket #08-1301]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 25. Student Entrance and Progression Through the System

210:35-25-3. Annual student dropout reports to local school boards [NEW]

SUMMARY:

The proposed rule amendments require that a school representative annually report the dropouts for each school site that serves students in Grades 7-12 to the local school board following the certification of the same data to the State Department of Education for its annual statewide dropout report.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1301; filed 10-24-08]

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

[OAR Docket #08-1302]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 17. Co-Curricular and Extracurricular Programs

210:35-17-2. Co-curricular and extracurricular programs [AMENDED]

SUMMARY:

Proposed rule amendments will require all state accredited schools to follow Oklahoma Secondary School Activities Association (OSSAA) guidelines related to student eligibility to participate in extracurricular activities, activity absences, number of games allowed, and length of season.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1302; filed 10-24-08]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 40. GRANTS AND PROGRAMS-IN-AID**

[OAR Docket #08-1306]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 87. Rules for Payment to Charter Schools
210:40-87-5. Charter School Application [NEW]

SUMMARY:

The State Department of Education will provide training on the process and requirements for establishing a charter school. The State Department of Education will accept approved applications in order of receipt to determine that the application does not exceed the statutory limit established in 70 O. S. § 3-134.

AUTHORITY:

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

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 21, 2009, at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m. on Thursday, January 22, 2009, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 9:35 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

A Rule Impact Statement has been prepared, according to 70 O.S. §303(D), and will be available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 2, 2008.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #08-1306; filed 10-24-08]

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

[OAR Docket #08-1292]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

245:2-1-10 [AMENDED]
245:2-1-18 [AMENDED]

SUMMARY:

The proposed revisions to Chapter 2, Subchapter 1 are to revise the list of official records and the schedule of fees and penalties.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 9, 2009 at: Oklahoma Engineering Center, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105, Attn: Kathy Hart.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Kathy Hart at (405) 521-2874 no later than 4:30 p.m. on January 9, 2009.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #08-1292; filed 10-23-08]

Notices of Rulemaking Intent

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

[OAR Docket #08-1293]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions [AMENDED]
- Subchapter 3. Application and Eligibility for Licensing [AMENDED]
- Subchapter 5. Examinations [AMENDED]
- Subchapter 9. Rules of Professional Conduct [AMENDED]
- Subchapter 11. Continuing Education [AMENDED]
- Subchapter 13. Minimum Standards for the Practice of Land Surveying [AMENDED]
- Subchapter 17. Licensee's Seal [AMENDED]
- Subchapter 19. Organizational Practice [AMENDED]
- Subchapter 21. Corner Perpetuation and Filing Act Requirements [AMENDED]
- Subchapter 23. Violations [AMENDED]

SUMMARY:

The proposed revisions to the subchapters are as follows:

Subchapter 1 General Provisions: The proposed amendments will modify the definitions of an "Oklahoma Model Law Engineer", "Signature and Date", and remove the definition of a "Related science or non-approved land surveying curriculum".

Subchapter 3 Application and Eligibility for Licensing: The proposed amendments will modify the engineering and land surveying requirements for licensure to be in conjuncture with statutory changes effective November 1, 2008.

Subchapter 5 Examinations: The proposed amendments will modify administrative procedures for transferring examination grades and examination security provisions.

Subchapter 9 Rules of Professional Conduct: The proposed amendments will modify the Rules of Professional Conduct and require applicants to provide the Board with which area(s) of engineering in which they are competent to practice.

Subchapter 11 Continuing Education: The proposed amendments will modify the list of professional development hours and the conversion of units.

Subchapter 13. Minimum Standards for Land Surveying: The proposed amendments will clarify what contact information and monument and other evidence descriptions must be shown on a survey, describe what right-of-ways and roadways must be shown on the drawing, describe when other surveyors must be contacted and clarify legal description requirements.

Subchapter 17. Licensee's Seal: The proposed amendments will allow licensees to use a digitized or electronic signature

and further defines direct control and personal supervision. Subchapter 19 Organizational Practice: The proposed amendments will clean up language already described in the rules.

Subchapter 21 Corner Perpetuation and Filing Act Requirements: The proposed amendments will remove language that is duplicated in the statutes and defer specifics to the "Instruction Manual for Certified Corner Records" adopted by the Board.

Subchapter 23 Violations: The proposed amendments will further define practicing without a license and the grounds for violations and penalties.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before 4:30 p.m., January 9, 2009 at: Oklahoma Engineering Center, 201 N.E. 27th St., Room 120, Oklahoma City, OK 73105, Attn: Kathy Hart.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Kathy Hart at (405) 521-2874 no later than 4:30 p.m. on January 9, 2009.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

[OAR Docket #08-1293; filed 10-23-08]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 10. RACING ORGANIZATION

[OAR Docket #08-1283]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:10-1-6. Duty of licensed organization [AMENDED]

SUMMARY:

The Commission Law Enforcement Agents have been somewhat unsuccessful in securing certain information relating to the security departments' reporting procedures. The Commission Law Enforcement Division believes that, with the added language, racetracks will comply with reporting procedures with a higher sense of urgency.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on December 18, 2008

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by November 3, 2008 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #08-1283; filed 10-20-08]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 20. RACING OFFICIALS AND RACING PERSONNEL**

[OAR Docket #08-1284]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:20-1-15. Duties of the Paddock Judge [AMENDED]

SUMMARY:

The Commission's Ad Hoc Committee on Industry Safety Issues reviewed several national studies and presentations which indicated the detrimental use of toe grabs on Thoroughbreds. The information contained in those studies necessitates the need for regulating the use of toe grabs and other devices which have been shown to cause an increased rate of injury to the horse. This rule amendment proposes to make the Paddock Judge responsible for inspecting shoes and verifying if a horse is properly shod.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on December 18, 2008

COPIES OF PROPOSED RULES:

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

Notices of Rulemaking Intent

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by November 3, 2008 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #08-1284; filed 10-20-08]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 20. RACING OFFICIALS AND RACING PERSONNEL

[OAR Docket #08-1285]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:20-1-24. Duties of the Horse Identifier [AMENDED]

SUMMARY:

The Commission's Ad Hoc Committee on Industry Safety Issues reviewed several national studies and presentations which indicated the detrimental use of toe grabs on Thoroughbreds. The information contained in those studies necessitates the need for regulating the use of toe grabs and other devices which have been shown to cause an increased rate of injury to the horse. This rule amendment proposes to eliminate the responsibility of the Horse Identifier for inspecting shoes and verifying if a horse is properly shod; that responsibility is being placed with the Paddock Judge through a proposed amendment to Rule 325:20-1-15, Duties of the Paddock Judge.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if

possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on December 18, 2008

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by November 3, 2008 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #08-1285; filed 10-20-08]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 75. OKLAHOMA-BRED PROGRAM

[OAR Docket #08-1286]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:75-1-15. Distribution of funds for Oklahoma-Bred pari-mutuel races [AMENDED]

SUMMARY:

The Commission is proposing amendment to clarify the distribution of breakage and unclaimed ticket proceeds.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the

Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on December 18, 2008

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by November 3, 2008 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #08-1286; filed 10-20-08]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 80. GAMING LICENSING REQUIREMENTS**

[OAR Docket #08-1287]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

Subchapter 5. Gaming Licenses and Applications
325:80-5-5. Conditions of a Racetrack Gaming Operator License [AMENDED]

SUMMARY:

The Commission Law Enforcement Agents have been somewhat unsuccessful in securing certain information relating to the security departments' reporting procedures. The Commission Law Enforcement Division believes that, with the added language, racetracks will comply with reporting procedures with a higher sense of urgency.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Thursday, December 18, 2008, at the following address: Oklahoma

Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on December 18, 2008

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by November 3, 2008 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #08-1287; filed 10-20-08]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 90. GAMING OPERATIONS**

[OAR Docket #08-1288]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

Subchapter 5. Unresolved Patron Disputes
325:90-5-1. Unresolved patron disputes [AMENDED]

SUMMARY:

A Commission Gaming Agent proposes the amendment to provide a time limit for a patron to submit an appeal to the Commission Executive Director to result in a timely resolution of the issue.

AUTHORITY:

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

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Thursday, December 18, 2008, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on December 18, 2008.

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by November 3, 2008 may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

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

[OAR Docket #08-1288; filed 10-20-08]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #08-1308]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Consulting Engineer Services

730:30-5-1 [AMENDED]

SUMMARY:

The purpose of this permanent rulemaking action is to address the related provisions of SB1181, 2008 O.S.L. § 116 in order to continue with the effective and efficient procurement and utilization of consulting services in support of the Department's mission. An emergency rule is now in effect and this permanent rulemaking action will replace it. No changes have been made between the language in the emergency and permanent rule.

AUTHORITY:

Transportation Commission; 69 O.S. §§ 303, 304, 708.2 and 4002; 2008 O.S.L. §116

COMMENT PERIOD:

Persons may submit written or oral comments to Mike Patterson, Oklahoma Department of Transportation, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73105, or 405-521-3690, during the period from November 18, 2008 through December 19, 2008.

PUBLIC HEARING:

A public hearing has not been scheduled; however, pursuant to 75 O.S., §303(B)(9), "persons may demand a hearing" by contacting Mary Brewington at 405- 522-6002, no later than 4:00 p.m. on December 19, 2008.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule may be obtained at the Oklahoma Department of Transportation, 200 N.E. 21st Street, Room 1B7, Oklahoma City, OK 73105, or by sending a request via email to: mbrewington@odot.org

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared prior to December 3, 2008 at the same location listed above for obtaining copies.

CONTACT PERSON:

Mary C. Brewington, C.P.M. at 405-522-6002 or mbrewington@odot.org

[OAR Docket #08-1308; filed 10-24-08]

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 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 105. OKLAHOMA LOCAL DEVELOPMENT AND ENTERPRISE ZONE INCENTIVE LEVERAGE ACT

[OAR Docket #08-1294]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

150:105-1-2. Definitions [AMENDED]

150:105-1-3. Application Process [AMENDED]

150:105-1-4. Threshold and Selection Criteria [AMENDED]

AUTHORITY:

62 O.S. § 842(J); Oklahoma Department of Commerce

DATES:

Adoption:

September 22, 2008

Approved by Governor:

October 17, 2008

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2009, unless superseded by another rule of disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATION BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Senate Bill 1943 of the Second Session of the 51st Oklahoma Legislature made substantial amendments to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, which were effective when executed by the Governor on May 20, 2008. The Oklahoma Local Development and Enterprise Zone Incentive Leverage Act include economic development incentives that have to be applied for through the Oklahoma Department of Commerce. The amendments to the rules are necessary to provide an orderly process for making applications to the Oklahoma Department of Commerce.

ANALYSIS:

Senate Bill 1943 made a substantially addition to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act by adding a new major category for the incentive of "Major Tourism Destination". In addition to this addition and guidance related to this addition, Senate Bill 1943 made other substantial additions to further clarify the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act which necessitate the emergency rules.

CONTRACT PERSON:

Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE

UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

150:105-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, the following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting director.

"District" means either an incentive district as authorized by Section 860 of this title or an increment district as authorized by Section 861 of this title. A district may consist of all or a portion of a project area. [62 O.S. § 853(4)]

"Enterprise" means any form of business organization including, but not limited to, any partnership, sole proprietorship, corporation, limited liability company or other legally constituted business entity. [62 O.S. § 841(1)]

"Enterprise zone" means:

(A) ~~a county which:~~

(i) ~~has experienced a decrease in population during the ten-year period preceding the date as of which an establishment either enters into a commitment to locate or announces a plan to locate within an enterprise zone or expands activity within an existing enterprise zone as determined by the Oklahoma Department of Commerce, or~~

(ii) ~~has been determined to rank in the lowest one-third (1/3) of all counties, which for purposes of this division shall be computed as the lowest twenty-five (25) counties, for per capita personal income as measured by the Bureau of Economic Analysis for the Oklahoma region for the calendar year preceding the beginning of the fiscal year for which an application is made pursuant to Section 690.3 of this title,~~

(B) ~~an area within or contiguous to the corporate limits of any city or town of this state which the Oklahoma Department of Commerce determines, upon~~

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~~application, as an area of economic distress. For purposes of this subparagraph, an area within or contiguous to the corporate limits of a city or town may be determined to be an area of economic distress if it consists of one or more census tracts located within a city or town or contiguous to a city or town. The area as defined by this subparagraph must:~~

- ~~(i) contain a population of persons equal to or greater than thirty percent (30%) of the total population the household income for whom is equal to or less than the poverty level as measured by the U.S. Census Bureau for the Oklahoma region for the most recent year for which data is available prior to the date an application is made pursuant to Section 690.3 of this title, or~~
- ~~(ii) contain a population of persons the per capita gross income for whom is fifteen percent (15%) or more below the state per capita income,~~
- ~~(C) an area designated as a federal enterprise community as provided by Section 690.3 of this title, or~~
- ~~(D) any enterprise zone designated by the Oklahoma Department of Commerce prior to July 1, 2000; [62 O.S. § 690.2(5)]~~

"Enterprise zone" means an area as defined pursuant to paragraph 5 of Section 690.2 of this title. [62 O.S. 841(2)]

"Estimated direct state benefits" is defined as the incremental means the total incremental state tax revenues new to the state estimated by the Oklahoma Department of Commerce to accrue to the state from new sales ~~and/or~~ investments ~~originating outside the state borders~~ during the period of apportionment of local sales taxes; as a result of the project ~~or~~ and/or projects described in the related project plan. In projecting such benefits, the Oklahoma Department of Commerce shall consider, if practicable, whether or not the project plan involves an enterprise:

- ~~(A) In projecting such benefits, the Oklahoma Department of Commerce shall consider, if practicable, whether or not the project plan involves an enterprise:~~
- ~~(Aⁱ) relocating from within the state,~~
- ~~(Bⁱ) subject to or in the process of recruitment by two or more governmental entities within the state, or~~
- ~~(Cⁱⁱⁱ) which will be in direct competition with an existing enterprise located in the state. [62 O.S. § 841(3)]~~

~~(D-B)~~ The Department may also look to the following information to assist the Department to determine the estimated direct state benefit:

- (i) The Department may review the following related to the project:
 - (I) historical data on similar or existing projects;
 - (II) information provided in the application;
 - (III) data from federal agencies such United States Bureau of the Census and the United States Department of Labor;

- (IV) the most recent historical data from the Oklahoma Tax Commission on average personal tax rates by income class; and,
- (V) private sector financial reports.
- (ii) The Department may review the following related to the estimated tax benefit:
 - (I) information supplied in the application;
 - (II) data from federal agencies such as the United States Department of Labor;
 - (III) Oklahoma Tax Commission sales and use tax reports; and,
 - (IV) private sector financial reports.

"Estimated direct state costs" means the costs projected by the Oklahoma Department of Commerce to be incurred by the state during the period of apportionment of local sales taxes, as a result of the project ~~or~~ and/or projects described in the related project plan. [62 O.S. § 841(4)] The Department may also look to the following information to assist the Department to determine the estimated direct state cost:

- (A) The costs of educating new state resident children. The Department may determine the estimated direct state costs of such educations by using:
 - (i) information supplied in the application;
 - (ii) the most recent average student allocation per pupil formula provided by the Oklahoma Department of Education; and,
 - (iii) United States Department of Labor statistics.

(B) The costs of government services such as public health, public safety and transportation provided to new residents and/or state service beneficiaries. The Department may determine the estimated direct state costs for such government costs by examining the state's per capita cost of providing non-common education services and estimating the amount of the state's excess capacity; and

(C) The costs of any industrial access road paid for with state funds and provided by the Oklahoma Department of Transportation; provided, the road is clearly from the facility to the thoroughfare and is clearly and primarily utilized by the project.

"Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs. [62 O.S. § 841(5)]

"Facility" means an enterprise's place of business in an enterprise zone, including land, buildings, machinery, equipment and other materials, except inventory used in business. Except as provided by subsection B of Section 11 of this act, "facility" does not include an establishment used primarily for making retail sales [62 O.S. § 690.2(8)].

"Facility" means the definition contained in paragraph 8 of Section 690.2 of this title. [62 O.S. § 841(6)]

"Governing body" means the governing board of a local governmental entity in the case of a single incentive district or increment district when the boundaries of the district are co-extensive with or contained within the jurisdiction of any such single local governmental entity or the governing boards of a

combination of counties, cities, or towns forming an incentive district or an increment district pursuant to the provisions of the Local Development Act. [62 O.S. § 841(7)]

"Incentive district" means an area created pursuant to the provisions of the Local Development Act, including Section 856 of Title 62 of the Oklahoma Statutes. [62 O.S. § 841(8)]

"Increment" means that portion of ad valorem taxes in excess of the amount of that portion of the taxes which are produced by the levy at the rate fixed each year by or for each such ad valorem taxing entity upon the base assessed value of the district or as to an area later added to the district, the effective date of the modification of the plan, or that portion of sales taxes, other local taxes or local fees collected each year reasonably determined by a formula approved by the governing body to be generated by the project, which may be apportioned for specific project costs or as a specific revenue source for other public entities in the area in which the project costs take place. [62 O.S. § 853(9)]

"Increment district" means an area created pursuant to the provisions of the Local Development Act. [62 O.S. § 841(9)]

"Local Development Act" is set forth at 62 O.S. §§ 850 - 869.

"Local governmental entity" means a county, city or town forming an incentive district or an increment district pursuant to the provisions of the Local Development Act. [62 O.S. § 841(10)]

"Local sales taxes" means amounts payable to or for the benefit of a local governmental entity calculated as a percentage, which, except on transient lodgings, shall not exceed four and one-half percent (4.5%) of gross sales whether imposed by ordinance, resolution, covenant, or agreement [62 O.S. § 841(11)]

"Major tourism destination project" means a project which:

(A) meets the definition of a "tourism attraction" as set forth in subparagraph a of paragraph 10 of Section 2357.36 of Title 68 of the Oklahoma Statutes, subject only to the restrictions of divisions (1), (3) and (6) of subparagraph b of paragraph 10 of Section 2357.36 of Title 68 of the Oklahoma Statutes.

(B) is projected to meet the following qualifications within three (3) years of the date of substantial completion of the project based upon the findings of the Oklahoma Department of Commerce:

(i) at least Fifty Million Dollars (\$50,000,000.00) in capital investment.

(ii) at least Fifty Million Dollars (\$50,000,000.00) in projected annual gross sales revenues or at least Ten Million Dollars (\$10,000,000.00) in annual gross sales revenues to out-of-state visitors.

(iii) a number of out-of-state visitors of at least:

(I) twenty percent (20%) of the number of total visitors, or

(II) twenty thousand (20,000) visitors per year, and

(iv) a number of visitors traveling at least one hundred (100) miles of at least:

(I) thirty percent (30%) of the number of total visitors, or

(II) twenty-five thousand (25,000) visitors per year, or

(C) is a lake resort project, containing a hotel, a conference center, and an eighteen-hole golf course, located within twenty-five (25) linear miles of the state boundary on a lake containing at least forty-five thousand (45,000) surface acres of water, that is estimated to generate at least Fifty Million Dollars (\$50,000,000.00) in capital investment. [62 O.S. § 841 (12)]

"Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross taxable sales derived from the project during the period of apportionment of local sales taxes by the local governmental entity. [62 O.S. § 841 (13)]

"Net leasable space" means any area of a building, structure, enclosure, or any other facility that can be leased for any lawful purpose or purposes.

"Project" means all development activities pursuant to the objectives of the project plan. [62 O.S. § 853(12)]

"Project area" means the geographic boundaries within which development activities will occur. The project area may be coextensive or larger than the increment district. [62 O.S. § 853(13)]

"Project costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred which are listed in the project plan as costs of and incidental to planning, approval and implementation of the project plan. Any income, special assessments, or other revenues received, or reasonably expected to be received, by the city, town or county in connection with the implementation of the project plan may be used to pay project costs. Project costs include, but are not limited to:

(A) capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new public or private buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing public or private buildings, structures, and fixtures; and the actual costs of the acquisition of land and equipment for public works, public improvements and public buildings and the actual costs of clearing and grading of such land and environmental remediation related thereto,

(B) financing costs, including interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity,

(C) real property assembly costs, including clearance and preparation costs,

(D) professional service costs, including those incurred for architectural, planning, engineering, legal and financial advice and services,

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(E) *direct administrative costs, including reasonable charges for the time spent by employees of the city, town or county in connection with the implementation of a project plan or employees of private entities under contract with a public entity for project planning or implementation,*

(F) *organizational costs, including the costs of conducting environmental impact studies or other impact studies, the cost of publicizing the consideration of the project plan, costs incidental to creation of the district, and the cost of implementing the project plan for the district,*

(G) *interest, before and during construction and for two (2) years after completion of construction, whether or not capitalized,*

(H) *fees for bond guarantees, letters of credit and bond insurance,*

(I) *the amount of any contributions offset made in connection with the implementation of the project plan,*

(J) *the costs for determining or redetermining the base assessed value of a district,*

(K) *costs of construction of public works or improvements, including but not limited to highways, roads, streets, bridges, sewers, traffic control systems and devices, telecommunications systems, parks, water distribution and supply systems, curbing, sidewalks and any similar public improvements, common utility or service facilities, landscaping, parking, and water detention/retention systems,*

(L) *all or a portion of another taxing jurisdiction's capital costs resulting from the development or redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the plan and project, to the extent the governing body by written agreement accepts and approves such costs,*

(M) *relocation costs to the extent that a governing body determines that relocation costs shall be paid or are required to be paid by federal or state law,*

(N) *all costs incurred in the maintenance, management, marketing and other services provided through an active Main Street Program recognized as such by the Oklahoma Department of Commerce, and*

(O) *assistance in development financing to the extent the governing body approves such financing.* [62 O.S. § 853(14)]

"Project plan" means the approved plans of a city, town or county which may include a designated district or districts under this act in conformance with its comprehensive plan, which is intended by the payment of costs through apportionment of the increment or by the granting of incentives or exemptions to reduce or eliminate those conditions, the existence of which qualified the district, and to thereby enhance private investment of the tax bases of the taxing entities which extend into the district. Project plans may be a part of and incorporate existing neighborhood, renewal, economic development, public school and other such plans. Each project plan

shall conform to the requirements specified by this act. [62 O.S. § 853(15)]

"Public entity" means any city, town, county, board, commission, authority, district, urban renewal authority or public trust. [62 O.S. § 853(16)]

"Retail leasable space" means space intended for retail purposes and shall include, but not be limited to, points of sales, aisles, display areas, storage and warehouse space to support the retail purposes.

~~**"Retail purposes"** shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the seller's business of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. Also those businesses represented by NAICS Codes 441 454390, and 722 722410. As used in this subsection, "retail establishment" shall not include an establishment that provides lodging, including but not limited to a hotel, apartment hotel, public rooming house or motel. [62 O.S. § 860(B). Retail purposes and retail establishment shall be considered to be synonymous terms.~~

"Retail purposes" means the objectives of selling tangible personal property, other than art, on the physical premises of an establishment. Retail purposes shall not mean a hotel, motel, entertainment facility, museum, cultural facility, art gallery, restaurant supporting another establishment excluded herein, or a major tourism destination project. [62 O.S. § 841(15)]

"State local enterprise matching payment" means the payment authorized by subsection A of Section 844 of Title 62 of the Oklahoma Statutes. [62 O.S. § 841(~~13~~16)]

"State local government matching payment" means the payment authorized by subsection D of Section 844 of Title 62 of the Oklahoma Statutes. [62 O.S. § 841(~~14~~17)]

150:105-1-3. Application Process

(a) For the purpose of evaluating the applications, the Department will require all units of local governmental interested in the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide threshold criteria information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) After the Department's evaluation is completed, the Department shall forward to the Oklahoma Tax Commission the Net Benefit Rate determined by the Department, certification that the ~~increment-district project plan~~ is located in an enterprise zone or supports a qualifying major tourism destination

project, and certification that the qualifying investment and development has been or will be substantially completed no later than December 31, 2024, and a complete copy of the application submitted to the Department.

(c) The Department shall forward a complete copy of the submitted application to the Oklahoma Tax Commission upon request.

150:105-1-4. Threshold and Selection Criteria

Complete threshold requirements and selection criteria will be set forth in the application guide. The minimum threshold criteria are as follows:

- (1) Project must be located entirely within an enterprise zone or in support of a major tourism destination which the local governmental entity determines is likely to significantly benefit contiguous or nearby enterprise zone census tracts;
(2) No more than ten percent (10%) of the net leasable space of such development may be used for retail purposes and no state local government matching payment shall be made for project costs in support of any gambling establishment;
(3) State local government matching payments cannot be used to supplant local revenue currently being expended within the increment district boundaries; The application must be for a future project as opposed to a project already in process;
(4) Certification that all projects described within the related project plan will generate, in the aggregate, a minimum of either One Million Dollars (\$1,000,000.00) in payroll, exclusive of payroll for construction, or Five Million Dollars (\$5,000,000.00) in investment;
(5) The application must include an estimate of incremental revenues likely to be derived from the project;
(6) The project must include the commitment of local governmental entity; and
(7) The project meets the time deadlines set forth in 62 O.S. § 842(I).
(8) If the project is in support of a major tourism destination, the application must meet the requirements set forth at 62 O.S. § 842 (B)(3) and (B)(4).

[OAR Docket #08-1294; filed 10-24-08]

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

[OAR Docket #08-1295]

RULEMAKING ACTION: EMERGENCY adoption

RULES:

- Subchapter 13. Student Assessment
210:10-13-4. Test security and validity [AMENDED]
210:10-13-10. Requests to view or take possession of documents [AMENDED]
210:10-13-11. Testing students with disabilities [AMENDED]

210:10-13-18. Oklahoma School Accountability System [AMENDED]

AUTHORITY:

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

DATES:

Adoption:

August 28, 2008

Approved by Governor:

October 7, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed rule amendments are necessary because of the submission of the proposed ACE Alternative Pathways to Graduation rule amendments.

ANALYSIS:

The proposed rule amendments bring the present Oklahoma School Testing Program (OSTP) into line with changes in state and federal statute regarding student assessment.

CONTACT PERSON:

Connie Holland, 405-521-3308

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

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-4. Test security and validity

(a) School administrators or their designees shall maintain security on tests administered under the auspices of the Oklahoma School Testing Program through following the procedures listed below:

- (1) School superintendents shall designate both district and building test coordinators before October 1 of each school year. Names and telephone numbers of district test coordinators shall be recorded on the OSTP Questionnaire conducted in the fall semester of each school year. This questionnaire is the order form provided by the testing vendors for all tests in the OSTP including large print and Braille test forms.

(2) The State Department of Education shall provide student/parent pretest information materials to schools for designated grade levels before testing.

(3) The State Department of Education shall require the contracting test publisher to place an embargo on the sale, sampling, and/or distribution of test materials utilized in the OSTP to any person or organization in Oklahoma (other than the official distribution of such materials purchased for the OSTP by the State Department of Education). This embargo is to be enforced from the first day of contract with the State Department of Education throughout use of this test for the OSTP and until the Department has given notice that the test series is no longer going to be used in the OSTP. The State Department of

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Education may enter into a Memorandum of Understanding with publicly funded schools to meet the requirements of federal programs. Violation of this agreement by a contracting test publisher can result in automatic and immediate forfeiture of the contract and reimbursement to the State Department of Education (by the contracting company) of any funds expended in the conduct of the OSTP.

(4) No person nor organization--either private or public--shall obtain copies of any test materials utilized in the OSTP other than through the official distribution of test materials to public schools immediately prior to administration of the annual OSTP. Any person or organization attempting to order such materials from the contracting test publisher (or from other scoring companies handling OSTP or "off-grade" scoring and reporting) shall be reported by the contractor to the State Superintendent of Public Instruction.

(5) All student test materials (i.e., test booklets, prompts for writing assessment, and answer documents) shall be bound by the test publisher in packages of designated lot sizes. Test booklets shall be individually sealed, as practicable, to prohibit them from being opened. When seals are used, the following procedures shall be followed: they shall remain intact until tests are distributed to students at the beginning of the test administration session; each test booklet seal shall be broken only by the student who is administered the test, except where special education or Section 504 accommodations allow the opening of the test; and unused tests shall remain sealed. When seals are not used, the following procedures shall be followed: tests booklets shall remain closed until distributed to students at the beginning of these test administration session; each test booklet shall be opened only by the student who is administered the test, except where special education or Section 404504 accommodations allow the opening of the book and turning of pages by someone other than the students. No test booklets shall be viewed by any person other than the student taking the test at the time of testing, except in the case of special education, Section 504, or ELL accommodations which allow a test administrator to assist a student being tested.

(6) All test materials shall be inventoried upon receipt from the test publisher/contractor. Any discrepancies representing shortages in the quantity of materials supplied and the quantity needed for tests administered shall be reported immediately to the contracting company by the district test coordinator. Immediately upon receipt and inventory of materials, all tests, and other materials shall be locked in a secure place by the district test coordinator or school administrator. The site level distribution of test documents and materials may occur beginning one ~~school day~~ one week prior to testing. Exceptions to the test materials distribution time limit needed by the largest districts in the state shall be registered with and approved by the Student Assessment Section of the State Department of Education at least four weeks prior to the first designated testing window of each year. During the days in which tests are being

administered in each school district, all test administrators are responsible for locking all test materials in a secure place when the tests are not being utilized in the official test administration with students. This includes the time period between completion of the test administration and delivery of the answer documents and other test materials to the district test coordinator. Further, the building test coordinator is responsible for ensuring that materials are properly locked in a secure place at the times specified above. Test booklets are not to leave school buildings at any time (i.e., students' test booklets are not to be taken home by an employee or the community member/test monitor before, during, or after test administration has been completed). Exceptions to test booklets leaving a school site shall be made at the discretion of the State Department of Education Student Assessment Section for the purpose of secure transport to a site of instruction for the purpose of test administration, upon a written request from a District Test Coordinator. These requests must be registered with and approved by the Student Assessment Section at least four weeks prior to the first designated testing window of each year.

(7) An accounting is to be conducted on all test booklets. Unused test booklets are to remain in "shrink-wrap" (or otherwise packaged) when possible. All unused tests are to be returned to the test publisher. Failure to return test booklets to the appropriate companies (1) will result in a school or district being reported to the State Superintendent and (2) may result in invalidation of the school's and/or district's scores.

(8) The contracting test publisher shall print electronically read identification codes on all documents containing secured test items prior to distribution of these materials to the public schools. Within all test program components of the OSTP, the contracting test publisher shall record the specific series of numbers (represented by the "bar codes") assigned to each school district and building site within a district. Inventory lists of test document bar codes by school site shall be provided for each district test coordinator.

(9) ~~On the first available school day following the test administration in each school district, the~~ The district test coordinator shall ship all answer documents and specified identification forms to the designated scoring/reporting company and all other test materials to the contracting test publisher in accordance with the schedule for return of materials provided in the Test Preparation Manual. If a district fails to return materials and answer documents in a timely fashion, the district may be penalized with additional costs- and the test scores for the individual school(s) and/or district in question may be declared invalid. If a district fails to complete or incorrectly complete answer documents and/or demographic pages or other required testing-related materials, the district may be penalized with additional costs- and may also receive a deficiency on the district accreditation report.

(10) The contracting test publisher shall submit an inventory of test materials to the State Department of

Education each year. This inventory shall document the quantity of materials distributed to each school district and received from each school district-- recorded by school site as indicated by the numbers represented by the "bar codes" printed on test materials. Quantities of writing assessment materials distributed to and retrieved from schools will be reported to the State Department of Education by the contracting test publisher.

(11) School superintendents from whom incomplete quantities of materials have been received shall be notified of this discrepancy and shall be provided a date by which the remaining materials must be returned to the test publisher. The test publisher shall notify the Department of Education of all school districts from which test materials have not been received after this date. Names of these school districts shall be reported to the State Superintendent, and may also receive a deficiency on the district accreditation report.

(12) Reproduction in any form of any copyrighted test materials--including test documents, teachers' test administration manuals, and student pretest materials--is strictly prohibited. Photocopying of these materials constitutes a violation of federal copyright laws. To ensure that all school employees and community members are aware of this regulation and the laws in support of same, the district or building test coordinator shall post a sign to this effect over each copy machine. The Federal Copyright Law--as it applies to the multiple-choice and/or Writing Assessment Component of the OSTP--prohibits the photocopying of any part of the student Test Booklet. This includes the lined writing pages, the writing prompt, and the student's written response. This portion of the set of test documents is considered protected under the copyright guidelines [as is the writing prompt]. These items shall remain protected, and thus may not be copied, printed, or disseminated in any manner, until they are officially released by the OSDE.

(13) Every test administered within the OSTP shall be administered by an education-certified professional person employed by the school district.

(14) No person shall teach test items to students (except in the case of an alternate special education assessment in which authentic performance tasks may be utilized), change students' answers, or in any manner provide answers to test questions for students before, during, or after test administration has been completed. Violation of this regulation may result in revocation of the person's teaching, counseling, administrative, and/or other certificate(s).

(15) All of the following actions are prohibited in that such actions represent violations of test security:

(A) Using secured test items as instructional tools or for student "practice"--either verbatim as written or in reworded form. Note: Secured test items are those provided to measure student knowledge and/or skills on OSTP tests. Said items are to be differentiated from sample test items that are provided at the beginning of each subtest and used, according to official

test administration procedures, solely for the purpose of understanding directions and marking answers.

(B) Reading secured test items orally to students at any time before, after, or during test administration unless it is an IEP, Section 504, or ELL accommodation, in which case an affidavit shall be signed, prior to reading items, by the test administrator/reader stating they shall not reveal any test items, writing prompts, or other secured information to any person.

(C) Deviating from any instruction provided in the official test administration manual.

(D) Allowing students to view and/or read the writing assessment prompts before test administration or discussing or exposing the theme or topic of the prompt.

(E) Providing answers to secured test items. This includes provision of cues, clues, hints, and/or actual answers in any form--written, printed, verbal (oral), or nonverbal. In regard to the writing assessment component of the OSTP, prohibited actions include the provision of "hints" or any form of clues in regard to the manner in which students respond to the prompt (e.g., "brainstorming" about the topic of the prompt; offering suggestions regarding how to respond; assisting the student or class in organizing the response; and all other such deviations from the printed instructions for administering the test).

(F) Changing students' responses to secured test items and/or influencing or encouraging students to change their answers to test items at any time.

(16) Test Security Forms provided by the State Department of Education's test contractor(s) shall be distributed by the district test coordinator with test materials to the persons designated on each form.

(A) OSTP Test Security Forms shall be provided for the following:

- (i) Form 1: Superintendent and District Test Coordinator
- (ii) Form 2: Building Principal and Building Test Coordinator
- (iii) Form 3: Test Administrators and Test Monitors.

(B) After completing the test administration, these forms shall be signed by the designated persons and returned to the district test coordinator. The district test coordinator shall return all signed forms to the respective scoring company. Failure to sign and return the appropriate forms may result in:

- (i) a school or district being reported to the State Superintendent; and
- (ii) invalidation of a school's and/or district's test scores.

(17) The contracting test companies shall provide the State Department of Education the signed OSTP Test Security Forms or a report of names of educators who signed SDE/OSTP Test Security Forms and an accounting of the number of tests and manuals:

(A) distributed to, and

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(B) returned from each school district.

(18) All test administration sessions shall be conducted according to the standardized procedures described in the test administrators' manuals. This includes reading the directions to students verbatim; ~~timing each subtest according to the time delineated in the official administration manual;~~ refraining from allowing students to read test items before test timing begins and/or beyond the completion of time specified for each section of each test; and assuring that only the materials designated for student test use are on the student's desk during test sessions. Any violation of security provisions in Section 210:10-13-4 constitutes invalidation of the test and test results. Such violations shall be reported to the State Superintendent and may result in a school's and/or school district's test scores being declared as invalid.

(19) All test administration sessions shall be monitored by an adult other than the test administrator. All test monitors shall be approved by the superintendent or school principal. Superintendents and principals may designate school employees or noncertified members of the community to serve as test monitors. All test administration procedures including time specifications, State Board of Education Rules 210:10-13, and the Instructions for Test Monitors shall be distributed to test monitor(s) before test administration.

(b) School administrators or their designee(s) shall assure that all test administration procedures replicate standardized testing conditions to preserve test validity. Such procedures are stated in the manuals for administering the test.

210:10-13-10. Requests to view or take possession of documents

Responses to requests to view or take possession of test documents shall be executed as specified herein. Documents shall include student test books containing secured test items; student answer sheets; and test administrator manuals. In order to maintain the security and validity of the testing materials, individuals making requests to view test documents must comply with the following procedural requirements:

(1) ~~Test viewing will NOT be the month before or during testing.~~ Test viewing will NOT be allowed beginning one month before and extending throughout the testing window.

(2) The person will submit a request to the State Department of Education's ~~Student Assessment Section~~ Office of Accountability and Assessment.

(3) Viewing shall take place at the State Department of Education.

(4) The viewing of test documents will be limited to no more than two viewers during a single time period.

(5) ~~The Student Assessment Team Leader~~ The Assistant Superintendent of the Office of Accountability and Assessment or his/her designee will remain in the room during the viewing.

(6) Students will not be allowed to view tests.

(7) The viewing of assessment materials will not be allowed for professional development purposes.

~~(78) Viewers of tests shall be prohibited from duplicating, paraphrasing, or summarizing test items in any form--by hand-written means or through use of any mechanical tool (i.e., audio or video tape recorder; copy machine; still picture camera; or other). cell phones camera; or any other electronic or mechanical means.~~

(89) Tests and test materials shall be considered secured documents. No viewer shall be allowed to remove secured documents from the viewing room.

~~(910)~~ No unauthorized person shall be allowed to view an OSTP writing assessment prompt until after that prompt has been administered in Oklahoma as a test item. Viewing of writing test prompts shall be subject to the same procedures and conditions as viewing of other test materials.

~~(1011)~~ Prior to the viewing of any test materials, all viewers shall sign an affidavit stating that

(A) they shall not reveal any test items, writing prompts, or other secured information to any person; and

(B) they shall ~~neither~~ not serve as a test administrator nor test monitor.

~~(1112)~~ A student's answer sheet ~~or writing assessment essay~~ may be viewed only by the student's parent, legal guardian or by a student of legal age. Any person requesting to view student test documents shall provide proof of his or her status as the parent or legal guardian of the student whose documents are required for viewing. Proof of identification shall be provided in one of the following forms:

(A) the student's birth certificate; and

(B) a driver's license containing a picture of the requesting person; or

(C) other recognized official form of identification. In addition, the person shall provide proof of his or her status as parent or legal guardian of the student whose documents are requested for viewing.

(13) When sufficient writing prompts are available, once writing assessments have been scored and reported, the SDE will provide the student essay responses to the individual student's home school district by electronic means. The information will be provided as a service to Oklahoma public schools for purposes related to instructional improvement only. Schools and districts receiving such data will make every reasonable effort to insure that these individual student testing results are secure and remain confidential. The SDE reserves the right to use these data for research and assessment improvement purposes.

210:10-13-11. Testing students with disabilities

(a) Acceptable accommodations of the general assessments of the OSTP for students with disabilities shall be:

(1) specified in the student's IEP under the Individuals with Disabilities Education Act (IDEA); or

(2) specified for student served under Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

(b) The use of test accommodations which deviate from established standardized test procedures for the general assessments of the OSTP shall be reported to the State Department of Education's Student Assessment Section.

(c) Large print and Braille versions of the tests may be utilized with students whose visual disabilities necessitate such accommodations. The student must be utilizing large print or Braille in daily classwork as indicated on the student's IEP on file at the school district. To order large print or Braille tests, the district test coordinator shall indicate the quantities required at each grade level tested on the annual questionnaire.

(d) Students with disabilities who cannot be assessed in a valid and reliable manner with the general state assessment even with accommodations, as specified in the student's IEP, shall be assessed with an appropriate alternate assessment provided by the State Department of Education. Eligibility for an alternate assessment shall be determined annually by the student's IEP team. Alternate assessments may include, but not be limited to, portfolio assessments—or modified assessments. The scores from alternate assessments shall be included in accountability calculations for the school, district, and state according to the standard AYP calculation procedures, as specified in federal law.

(e) Students with the most significant cognitive disabilities shall participate in an alternate assessment named the Oklahoma Alternate Assessment Program (OAAP) and should not exceed a small percentage of the special education population. The OAAP shall be designed for students who are participating in adapted Priority Academic Student Skills (PASS), an alternative curriculum based on the Curriculum Access Resource Guide (CARG).

(f) The OAAP shall consist of a portfolio assessment, which may include authentic performance tasks. A portfolio assessment is a collection of student-generated or student-focused products that exhibit the student's interests, range of skills, and development over time; the alternative approach to teaching the Priority Academic Student Skills (PASS). Teams of teachers shall score the OAAP portfolio. If authentic performance tasks are used, teachers completing the portfolio shall be provided with information regarding these tasks during a specified time prior to the completion of the portfolio.

(g) Students with cognitive disabilities that inhibit their ability to attain, even after receiving appropriate instructional interventions, grade-level achievement standards within the same time frame as other students may demonstrate academic proficiency through participation in a statewide system of modified assessments. These assessments, the Oklahoma Modified Alternate Assessment Program (OMAAP), shall be based in the content drawn from the Priority Academic Students Skills (PASS), and shall be designed to be rigorous, reliable and valid measures of the academic content required of all students.

210:10-13-18. Oklahoma School Accountability System

(a) **Adequate Yearly Progress (AYP).** The Oklahoma School Accountability System shall be based on AYP. All public elementary and secondary schools and local educational agencies (LEAs) shall be accountable for student achievement and for making Adequate Yearly Progress (AYP) according to

federal law. AYP will be determined by meeting or exceeding statewide performance targets for required student groups in Reading/Language Arts and Mathematics on state tests; administering tests to 95 percent of students in each required student group; and meeting statewide targets for attendance rates and graduation rates where applicable. Alternatively, schools shall make AYP by showing growth in Reading/Language Arts and Mathematics on state tests as required by Safe Harbor regulations as defined in the No Child Left Behind Act of 2001, Public Law 107-110.

(b) Consequences of Testing Irregularities or Misconduct on Test Scores and AYP.

(1) If the State Department of Education (SDE) Student Assessment Office receives documentation of a student cheating on a test, the student's score shall be "invalidated." The student's score report for that content area shall read "Invalidated." The "invalidated" score shall have the effect of nonparticipation when aggregated with scores of other students at the school, district, and state levels.

(2) If a student does not attempt the test (such as refusal to read items or mark answers, finishing in 5 minutes, or randomly marking answers), no special action shall be taken. The student's test shall be scored and the score aggregated with the rest of the scores at the school, district, and state levels according to standard procedure.

(3) If a student becomes ill during testing and is not able to complete the test, the test shall not be scored and not counted in the summary scores. The student shall be counted as absent. If an alternate equivalent form of the test is available through the OSTP, the student may be given an opportunity to take the alternate equivalent form within the same testing window. In this case, the first test shall not be scored and the alternate equivalent test shall be scored in its place. (Note: Alternate Equivalent test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(4) If any violation of security provisions (Section 210:10-13-4) occurs, such violations shall be reported in writing to the Student Assessment Section of the State Department of Education and may result in a student's, a school site's, and/or a school district's test scores being declared as invalid (Section 210:10-13-4 (18)). In the case of invalidation, each invalidated score shall have the effect of a zero score and each zero score shall be aggregated with the remaining student scores at the school, district, and state levels. If the violation is not the fault of the students involved, and if an alternate equivalent form of the test is available through the OSTP, students may be given the alternate equivalent form within the same testing window at the district's expense if this is the first year for a security violation within the school and/or district in question. In the case that an alternate equivalent form is administered, the individual student score report shall reflect the scores from the alternate equivalent test (in place of the previous invalidated scores) and shall be aggregated at the school, district, and state levels. (Note: Alternate Equivalent test forms of the OSTP shall only be made available through

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the SDE only if determined practicable by the State Department of Education.)

(5) If extreme changes in test scores or in Academic Performance Index (API) scores occur for a school or district from year to year, an investigation shall be conducted, which may include, but not be limited to, a hand erasure analysis, and results of any apparent testing irregularity or misconduct reported to the State Board of Education for possible further action, which may include but not be limited to, score invalidation.

(6) Erasures shall be identified statewide by electronic scanning of all student answer documents, and the following action shall be taken: Scores for classes whose wrong-to-right erasures exceed the state average by more than four standard deviations shall be identified for further investigation. For each class with excessive erasures, the proportion of wrong-to-right erasures to the total number of erasures will be taken into account. A report shall be made to the State Board of Education of schools where classes have been identified with excessive erasures as defined by the criteria above for possible further action, which may result in score invalidation.

(7) Steps for Dealing with Reported Testing Irregularities or Misconduct

(A) **Step One.** When report of a testing irregularity or misconduct is made to the State Department of Education Student Assessment Section, the school site and/or school district involved shall be required to respond by conducting an investigation and providing in writing to the State Department of Education Student Assessment Section an explanation of how the testing misconduct/irregularity occurred and a description of the measures taken to prevent the misconduct from occurring again.

(B) **Step Two.** The testing irregularity or misconduct shall be categorized into one of three violation categories (minor, major, and critical) according to the severity of the violation and its possible consequences. Possible consequences may include, but not be limited to, invalidation of scores, accreditation with deficiency, accreditation with warning, accreditation with probation.

(C) **Step Three.** At the end of each testing period, a testing violations report shall be prepared by the Student Assessment office for review by the State Superintendent and possible further action.

(c) **Procedures for Schools to Review AYP Data and Appeal Accountability Decisions.**

(1) To assure the validity of AYP determinations prior to the release of the AYP data reports, as required by No Child Left Behind, the State Department of Education will forward to schools the preliminary AYP Data Reports containing component pieces from the school district, testing vendor, and the State Department of Education. Each school district must review these component pieces for accuracy and report any inaccuracies to the entity supplying the information within the applicable timelines. If the school district does not report inaccuracies within the

timeline the State Department of Education will rely on the data in the preliminary AYP Data Report.

(2) Upon receiving their preliminary AYP Data Reports from the State Department of Education for use in creating School and District Report Cards, districts shall review the data in the preliminary AYP Data Reports and report any discrepancies with the data components previously reviewed by the district to the Student Assessment Section of the State Department of Education within the specified timeline.

(3) Subsequent to the review of the preliminary AYP Data Report, if a principal of a school, or a majority of the parents of the students enrolled in a school, believe that any accountability decision contained in the AYP Data Report is in error the principal shall provide supporting evidence to the district. The district must consider the evidence and if warranted, request an appeal in writing to the State Department of Education. The State Department of Education must receive the appeal request within ten working days of the release of the AYP Data Reports.

(4) If a school and/or district has had test scores invalidated because of a testing irregularity or misconduct with the effect of nonparticipation for aggregation purposes, and such action results in a API score that prevents the school and/or district from making AYP, the district may appeal this accountability decision on a first time occurrence and request placement on Probationary Status instead of receiving an API score. At the end of the next consecutive year, if the school and/or district do not make AYP, they shall not be allowed to invoke Safe Harbor and shall automatically be identified as being in School Improvement status.

(5) When a school district or charter school appeals an accountability decision, the appeal request will be sent to the Office of Accountability and Assessment on the appeal form provided by the State Department of Education. The school district or charter school must specify on the form, if a hearing pursuant to Title 75 O.S. § 309 is requested. If such a hearing is requested, the district must provide a written waiver of the right of the district to receive a final determination from the State Department of Education within the 30 day period required by the NCLB Act. In that event, all parties will cooperate to expedite the hearing process. If a hearing pursuant to Title 75 O.S. § 309 is not requested, the school district must submit with the appeal request written evidence supporting its appeal. The district may also request to address the AYP Appeals Committee in person or by telephone. All appeal requests will initially be reviewed by the Office of Accountability and Assessments to determine whether the appeal request remains with the AYP Appeals Committee or is forwarded to the State Superintendent for a hearing pursuant to Title 75 O.S. § 309. The AYP Appeal Committee will consist of members of the State Department of Education's School Improvement Leadership Team and may also include additional members appointed by the State Superintendent. The AYP Appeals Committee will review the district's evidence submitted with the appeal and if requested, hear

comments from the school district, before providing a final determination in writing within thirty working days from release of the AYP Data Reports.

(6) At the end of the State Department of Education Appeals process, the State Department of Education shall report to the State Board of Education the statewide list of School Improvement schools.

(d) **Sanctions for public elementary and secondary schools that do not make Adequate Yearly Progress (AYP)**

(1) Title I schools that do not make Adequate Yearly Progress (AYP) for two consecutive years shall be identified as being in School Improvement status. Title I schools in the state of Oklahoma shall be subject to the sanctions defined in the No Child Left Behind Act of 2001, Public Law 107-110.

(2) Non-Title I schools that do not make AYP for two consecutive years or more shall be subject to sanctions as determined by the State Board of Education. The State Board of Education may utilize sanction options identified in the No Child Left Behind Act of 2001, Public Law 107-110, as deemed appropriate based upon relevant circumstances of the school's performance. The sanctions shall include but not be limited to the following:

- (A) provide school improvement plan,
- (B) provide technical assistance,
- (C) offer school choice,
- (D) provide supplemental services,
- (E) take corrective action, or
- (F) implement a restructuring plan.

(e) **Rewards for public elementary and secondary schools that make Adequate Yearly Progress (AYP)**

(1) **Academic Achievement Awards - Title I, Part A.** Title I Schools that meet AYP shall be eligible for Academic Achievement Awards. Academic Achievement Awards, under section 1117 (b) of the No Child Left Behind Act of 2001, states that each state receiving a grant under federal funds shall establish a program for making academic achievement awards to recognize schools that significantly close the achievement gap between subgroups of students or exceed their adequate yearly progress. Schools that receive Title I, Part A funds are eligible for Academic Achievement Awards.

(2) **State Academic Performance Award Program.**

(A) All public elementary and secondary schools that make Adequate Yearly Progress, shall be recognized by the state as Distinguished Schools and eligible for state funds, if available, as established by the State Academic Performance Index (API) Program (O.S. § 70-30-152).

(B) Nonmonetary recognition may include, but not be limited to, citations of congratulations from the State Superintendent of Public Instruction as the designee of the State Board of Education, the Governor or designee, the Representative and Senator

representing the school district, and a flag for each school achieving Distinguished status.

[OAR Docket #08-1295; filed 10-24-08]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION**

[OAR Docket #08-1296]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 31. Middle School Mathematics Laboratories for Public Schools With Low Student Achievement in Mathematics Program
210:15-31-2. Middle school mathematics laboratories for public schools with low student achievement in mathematics program [AMENDED]

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

DATES:
Adoption:
August 28, 2008

Approved by Governor:
October 7, 2008

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Immediately upon Governor's approval

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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The proposed rule amendments are for the 2008-2009 school year and are necessary to comply with Senate Bill 179.

ANALYSIS:
The proposed rule amendments will eliminate the need for school sites to provide a permanent location for the mathematics laboratory.

CONTACT PERSON:
Connie Holland, 405-521-3308

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

SUBCHAPTER 31. MIDDLE SCHOOL MATHEMATICS LABORATORIES FOR PUBLIC SCHOOLS WITH LOW STUDENT ACHIEVEMENT IN MATHEMATICS PROGRAM

210:15-31-2. Middle school mathematics laboratories for public schools with low student achievement in mathematics program

(a) The State Department of Education shall identify public schools with low student achievement in mathematics at the middle school level that meet the following criteria:

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- (1) Each school shall have at least fifty percent of its students performing below satisfactory on the eighth grade mathematics criterion referenced test of the Oklahoma School Testing Program in at least one of the two preceding years.
 - (2) There shall be a limit of one school per school district each year.
 - (3) There shall be representation from urban, suburban, and rural districts provided that such schools meet all other criteria.
 - (4) There shall be representation from each quadrant of the state provided that such schools meet all other criteria.
- (b) Each selected school shall:
- ~~(1) provide a classroom facility for permanent occupation of the mathematics laboratory.~~
 - ~~(2) implement the computer education teaching system as recommended by the vendor and the State Department of Education.~~
 - ~~(3) develop a Mathematics Laboratory Team which may include up to ten administrators, teachers, and technicians selected by school personnel to operate and utilize the computer education teaching system.~~
 - ~~(4) attend all professional development provided by the vendor and the State Department of Education for appropriate implementation of the program.~~
 - ~~(5) establish benchmark goals based upon preassessment data and state performance standards for the Oklahoma School Testing Program which will be submitted to the State Department of Education.~~
- (c) Each participating school shall provide disaggregated data to the State Department of Education through quarterly reports.

[OAR Docket #08-1296; filed 10-24-08]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #08-1297]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-99.1. National certification bonus for school psychologists, speech-language pathologists, and audiologists. [AMENDED]

AUTHORITY:

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

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed rule amendments are necessary to allow individuals who are nationally certified and are employed part-time to receive the bonus as prescribed in 70 O. S. § 6-206.

ANALYSIS:

The proposed rule amendments delete the full-time requirement for nationally certified psychologists who are nationally certified by the National School Psychology Certification Board, or a speech-language pathologist or audiologist who holds a Certificate of Clinical Competence awarded by the American Speech-Language Hearing Association and are eligible for the bonus prescribed in 70 O. S. § 6-204.2 and 70 O. S. § 6-206.

CONTACT PERSON:

Connie Holland, 405-521-3308

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

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-99.1. National certification bonus for school psychologists, speech-language pathologists, and audiologists.

(a) Subject to availability of funds, a bonus in the amount prescribed in 70 O.S. § 6-206, shall be provided to individuals currently providing service to children and who are an Oklahoma school psychologist who has been designated as a nationally certified school psychologist by the National School Psychology Certification Board, or a speech-language pathologist or audiologist who holds a Certificate of Clinical Competence awarded by the American Speech-Language Hearing Association.

(b) If adequate funding is not available for a full bonus to be provided, the bonus amount may be prorated.

(c) Psychologists, speech-language pathologists, or audiologists eligible for the bonus are those individuals currently employed ~~full time~~ in the public schools of Oklahoma and are carried on the school personnel report submitted to the State Department of Education. ~~Full time equates to a minimum of 175 contracted days and a minimum of 6 hours per day, Monday through Friday, and must be correctly reported to the State Department of Education through school personnel records as a full time equivalency of 1.0, and the~~ The individual must be coded as a speech-language pathologist, psychologist, or audiologist only. Individuals may be employed in multiple districts, ~~as long as full time equivalency equals 1.0.~~

(d) To document having a current national certificate, being employed ~~full time~~ by a public school district, and are currently providing services to children as a psychologist, speech-language pathologist, or audiologist, as of January 1 of

the year the bonus is to be awarded, a verification form will be sent to each nationally certified person to be signed by the psychologist, speech-language pathologist, or audiologist and the superintendent of the local school district and returned to the State Department of Education before the bonus is awarded.

(e) Verification of national certification shall be provided to the State Department of Education prior to the bonus being awarded.

[OAR Docket #08-1297; filed 10-24-08]

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

[OAR Docket #08-1298]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 21. Standard XI: Accreditation Status
210:35-3-201. Statement of the standard [AMENDED]

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

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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The proposed rule amendments are considered to be an emergency so the rules may be implemented in time for the 2008-2009 school year.

ANALYSIS:
The proposed rule amendments outline how an accredited school site shall meet all regulatory and statutory requirements. The changes are in keeping with new statutory language concerning school sites on the school improvement list.

CONTACT PERSON:
Connie Holland, 405-521-3308

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

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 21. STANDARD XI: ACCREDITATION STATUS

210:35-3-201. Statement of the standard

(a) Each school site must submit an Application for Accreditation to the Accreditation Standards Section of the State Department of Education by the due date specified on the Application. School sites are accredited for one year. An accredited school site shall meet all regulations and statutory requirements at the beginning of and throughout the school year.

(b) Accreditation status of school sites shall be classified according to the following categories:

(1) Accredited With No Deficiencies--All standards are being met.

(2) Accredited With Deficiencies--A school site fails to meet one or more of the standards but the deficiency does not seriously ~~distract~~detract from the quality of the school's educational program.

(3) Accredited With Warning--A school site:
(A) fails to meet one or more of the standards and the deficiency seriously ~~distracts~~detracts from the quality of the school's educational program; and/or
(B) is declared as a ~~low performing school~~School Improvement School (to be implemented in school year 2008-09).

(4) Accredited With Probation--A school site:
(A) consistently fails to remove or make substantial progress towards removing all deficiencies noted the previous year; and/or,
(B) consistently violates regulations; and/or,
(C) deliberately and unnecessarily violates one or more of the regulations; and/or
(D) is declared as a ~~high challenge school~~School Improvement School year three (3) or beyond (to be implemented in school year 2008-09).

(5) Nonaccredited--The school site is no longer recognized by the State Board of Education.

(c) If a school site is placed on warning or probation, the school board and administration will meet with a committee from the Accreditation Section to review their accreditation status. After the review from the committee, a determination will be made concerning warning, probation or nonaccredited status. The Accreditation Section will then present a recommendation to the State Board of Education.

[OAR Docket #08-1298; filed 10-24-08]

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

[OAR Docket #08-1277]

RULEMAKING ACTION:
EMERGENCY adoption

Emergency Adoptions

RULES:

Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5.1. [Amended]
(Reference APA WF# 08-16)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 431.950 through 431.1002

DATES:

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September 23, 2008

Effective:

Immediately upon Governor's approval or October 1, 2008, whichever is later.

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Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to clarify that payment of claims for SoonerCare services are paid up to the maximum allowable amount, preventing the appearance of payment error for claims billed and paid at less than the maximum amount allowed.

ANALYSIS:

Rules are revised to clarify that claims will be paid based on the amount billed, up to a maximum allowable amount. Without revisions the Centers for Medicare and Medicaid Services (CMS), during a federal PERM audit, may recognize payment for less than the maximum amount allowed, as a payment error. Revisions are needed to prevent (CMS), during a federal PERM audit, from recognizing that payment for less than the maximum amount allowed is not a payment error.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR OCTOBER 1, 2008, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5.1. Usual and customary fees

(a) Providers are required to indicate their usual and customary charge when submitting claims to SoonerCare. The usual and customary charge is the provider's charge for providing the same service to persons not entitled to SoonerCare benefits. For providers using a sliding fee scale, the usual and customary charge is the one that best represents the most frequently charged amount by the individual provider for the service

when provided to non-SoonerCare members. Providers that do not have an established usual and customary charge ~~should~~ indicate an amount reasonably related to the provider's cost for providing the service.

(b) Providers may not charge SoonerCare a higher fee than they charge non-SoonerCare patients even if the SoonerCare allowable is greater than the provider's usual and customary fee. Unless otherwise permitted by SoonerCare reimbursement methodology, individual claim payments ~~will be~~ are limited to the lesser of their usual and customary charge or the SoonerCare allowable.

(c) Providers ~~should~~ indicate their usual and customary charge without deducting the co-payment for services that require a member co-payment. When applicable, the co-payment ~~will be~~ is systematically deducted.

(d) Payment is made based on the amount of the claim submitted, up to the maximum allowable amount.

[OAR Docket #08-1277; filed 10-15-08]

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

[OAR Docket #08-1276]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-22. through 30-5-22.1.[AMENDED]
(Reference APA WF # 08-12)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.250(p).

DATES:

Adoption:

June 12, 2008

Approved by Governor:

July 17, 2008

Effective:

Immediately upon Governor's approval or August 1, 2008, whichever is later

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to: (1) allow reimbursement of one non stress test and/or one biophysical profile to a Maternal Fetal Medicine (MFM) specialist without requiring a prior authorization; and (2) remove the OB signature requirement from the high risk OB treatment plan form unless the OB provider wishes to request authorization of the ante partum management fee. If the current obstetrical and high risk pregnancy rules are not revised, providers will not be reimbursed for non stress and biophysical profiles performed on SoonerCare members prior to them being determined high risk and SoonerCare members will continue to experience treatment delays that may negatively impact their pregnancy.

ANALYSIS:

Physician rules are revised to: (1) allow reimbursement of one non stress test and/or one biophysical profile to a Maternal Fetal Medicine (MFM) specialist without requiring a prior authorization; and (2) remove the OB signature requirement from the high risk OB treatment plan form unless he or she wishes to request authorization of the ante partum management fee. Prior to the addition of enhanced services for medically high risk pregnancies, SoonerCare did not cover non stress tests or biophysical profiles. Currently, non stress tests and biophysical profiles are only a covered SoonerCare benefit if the member has a high risk diagnosis and the tests are part of a prior authorized high risk OB treatment plan. According to our medical staff, as well as several MFMs, one or both of these procedures is often required to confirm a suspected high risk pregnancy diagnosis. Therefore, we are now proposing to revise the obstetrical care rules at OAC 317:30-5-22. Current rules also require a High Risk OB Treatment Plan/Prior Authorization Request (OHCA CH-17) signed by the primary provider of obstetric care and a MFM in order to access the enhanced services for medically high risk pregnancies. According to OHCA staff, the MFMs are sending in the plan of care with their signature; however, the Medical Authorizations Unit is having difficulty getting the OB provider's signature on the form. Based on current policy, without both signatures, authorization cannot be granted. This is causing treatment delays that could be potentially detrimental to pregnant SoonerCare members who have been deemed high risk and may require urgent care. OHCA anticipates removal of the OB signature requirement will improve the turn-around-time for authorizations and enable providers to provide more timely care to our members.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR AUGUST 1, 2008, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

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)~~ (7) 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'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~~ 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~~ 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~~ diplomate 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.

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- (7) One non stress test and/or biophysical profile to confirm a suspected high risk pregnancy diagnosis. The non stress test and/or biophysical profile must be performed by an active candidate or Board Certified diplomate in Maternal Fetal Medicine.
- (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 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) ~~Non stress~~ Additional non stress tests, unless the pregnancy is determined medically high risk, except as described in See 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 an assistant surgery surgeon for obstetrical procedures ~~which that~~ include prenatal or post partum care.
- (4) 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 can~~ 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 To~~ To receive enhanced services, the following documentation must be received by the OHCA Medical Authorizations Unit for ~~review/approval~~ review and approval:

- (1) ACOG or other comparable comprehensive pre-natal assessment;
- (2) chart note identifying and detailing the qualifying high risk condition; and
- (3) an OHCA ~~CH-17~~ High Risk ~~Ob~~ OB Treatment Plan/Prior Authorization Request (~~CH-17~~) signed by ~~the primary provider of obstetric care and a Maternal Fetal Medicine (MFM) specialist who has agreed to provide collaborative care.~~
- (c) **Reimbursement.** ~~Enhanced~~ When prior authorized, enhanced benefits will be reimbursed as follows:
- (1) ~~ante~~ Ante partum management for high risk ~~will be is~~ reimbursed to the primary ~~provider of obstetrical care~~ provider. If the primary provider of obstetrical care is not the MFM and wishes to request authorization of the ante partum management fee, the OHCA CH-17 must be signed by the primary provider of OB care. Additionally, reimbursement for enhanced at risk ante partum management is not made during an in-patient hospital stay.
- (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~~ Non stress tests, biophysical profiles and ultrasounds (in addition to those covered under OAC 317:30-5-22(a)(2) subparagraphs (A) through (C) are reimbursed when prior authorized.
- (3) ~~reimbursement for enhanced at risk ante partum management will not be made during an in patient hospital stay~~ Reimbursement for enhanced at risk ante partum management is not available to physicians who already qualify for enhanced reimbursement as state employed physicians.

[OAR Docket #08-1276; filed 10-15-08]

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

[OAR Docket #08-1280]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 21. Outpatient Behavioral Health Services

317:30-5-241. [AMENDED]

(Reference APA WF # 08-26)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.130

DATES:

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N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to comply with directives from the Centers for Medicare and Medicaid Services (CMS). The revisions would remove language referring to the reimbursement methodology for Program of Assertive Community Treatment (PACT) services. CMS is requiring that PACT services no longer be reimbursed using a bundled, per diem rate but as individual, fee for service rates billed in fifteen minute increments.

ANALYSIS:

Agency rules are revised to remove language referring to the reimbursement methodology for PACT services. PACT services are currently reimbursed using a per diem rate inclusive of all services provided by the PACT team. The revised methodology is needed to comply with the Centers for Medicare and Medicaid Services and would reimburse PACT services using fee for service rates that correlate with each individual service which must be billed in fifteen minute increments. The proposed rule changes also update terminology which reflects recent changes in federal and state law and policy.

CONTACT PERSON:

Joanne Terlizzi at (405)522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR OCTOBER 1, 2008, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-241. Coverage for adults and children

(a) **Service descriptions and conditions.** Outpatient behavioral health services are covered for adults and children as set forth in this Section, unless specified otherwise, and when provided in accordance with a documented individualized service plan, developed to treat the identified mental health and/or substance abuse disorder(s). All services are to be for the goal of improvement of functioning, independence, or well being of the member. The services and treatment plans are to be recovery focused, trauma and ~~co-occurring~~ co-occurring specific. 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. The assessment must include a DSM multi axial diagnosis completed for all five axes from the most recent DSM version. All services will be subject to medical necessity criteria and will require prior authorization. For all outpatient behavioral health facilities, the OHCA, or its designated agent,

will comply with established medical necessity criteria. Non prior authorized services will not be SoonerCare compensable with the exception of Mental Health Assessment by a Non-Physician, Alcohol and Drug Assessment, Mental Health Service Plan Development (moderate complexity), Alcohol and/or Substance Abuse Services Treatment Plan Development (moderate complexity), Crisis Intervention, ~~Services (by a LBHP and Facility based for adults), and Program of Assertive Community Treatment Services (PACT) and Adult Facility Based Crisis Stabilization.~~ Payment is not made for ~~Outpatient Behavioral Health Services~~ outpatient behavioral health services for children who are receiving Residential Behavioral Management Services in a Group Home or Therapeutic Foster Care unless authorized by the OHCA or its designated agent as medically necessary. Adults and children in Facility Based Crisis Intervention Services cannot receive additional ~~Outpatient Behavioral Health Services~~ outpatient behavioral health services outside of the admission and discharge dates. Residents of nursing facilities are not eligible for ~~Outpatient Behavioral Health~~ outpatient behavioral health services.

(1) **Mental Health Assessment by a Non-Physician.**

All agencies must assess the medical necessity of each individual to determine the appropriate level of care. The assessment must contain but is not limited to the following:

- (A) Date, to include month, day and year of the assessment sessions(s), more than one session can be billed in multiple units;
- (B) Source of information;
- (C) Member's first name, middle initial and last name;
- (D) Gender;
- (E) Birth date;
- (F) Home address;
- (G) Telephone number;
- (H) Referral source;
- (I) Reason for referral;
- (J) Person to be notified in case of emergency;
- (K) Presenting reason for seeking services;
- (L) Psychiatric social information, which ~~must include~~ includes: personal history, including; family - social; educational; cultural and religious orientation; occupational - military; sexual; marital; domestic violence or sexual assault (including child abuse/neglect and child welfare involvement); recreation and leisure; financial; clinical treatment history including past and current medical and psychiatric diagnoses, symptoms, and treatment recommendations; legal or criminal record, including the identification of key contacts, i.e. attorneys, probation officers, etc. when appropriate; substance abuse and dependence, both current and historical; gambling abuse and dependence, both current and historical; and present life situation.
- (M) Mental status information, including questions regarding:

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- (i) physical presentation, such as general appearance, motor activity, attention and alertness, etc.;
 - (ii) affective process, such as mood, affect, manner and attitude, etc., and
 - (iii) cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc; and
 - (iv) Full Five Axes DSM diagnosis.
- (N) A section on health history and pharmaceutical information, with pharmaceutical information to include the following for both current and past medications:
- (i) name of medication;
 - (ii) strength and dosage of medication;
 - (iii) length of time on the medication;
 - (iv) benefit(s) and side effects of medication; and
 - (v) level of functionality.
- (O) Identification of the member's strengths, needs, abilities, and preferences:
- (i) LBHP's interpretation of findings;
 - (ii) signature and credentials of LBHP.
- (P) The assessment ~~must include~~ includes all elements and tools required by the OHCA. For adults, it may include interviews or communications with family, caretakers, or other support persons as permitted by the member. For children under the age of ~~18~~ 16, it ~~must include~~ includes an interview with a parent, or other adult caretaker. For children, the assessment must also include information on school performance and school based services. This service is performed by an LBHP. The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in this paragraph for a low complexity Mental Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more. ~~This service can be billed in partial units to allow for shorter assessment sessions as needed by the member.~~ This service is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in services of more than six months and it has been more than one year since the previous assessment.
- (2) **Alcohol and Drug Assessment.** All providers must assess the medical necessity of each individual to determine the appropriate level of care. The assessment ~~will contain~~ contains but is not limited to the following:
- (A) Date, to include month, day and year of the assessment sessions(s), more than one session can be billed in multiple units;
 - (B) Source of information;
 - (C) Member's first name, middle initial and last name;
 - (D) Gender;
 - (E) Birth date;
 - (F) Home address;
 - (G) Telephone number;
 - (H) Referral source;
 - (I) Reason for referral;
 - (J) Person to be notified in case of emergency;
 - (K) Presenting reason for seeking services; and
 - (L) Psychiatric social information, which must include:
 - (i) personal history, including: family - social; educational; cultural and religious orientation; occupational - military; sexual; marital; domestic violence or sexual assault (including child abuse/neglect and child welfare involvement); recreation and leisure; and financial;
 - (ii) clinical treatment history including past and current medical and psychiatric diagnoses, symptoms, and treatment recommendations;
 - (iii) legal or criminal record, including the identification of key contacts, i.e. attorneys, probation officers, etc. when appropriate;
 - (iv) substance abuse and dependence, both current and historical;
 - (v) gambling abuse and dependence, both current and historical;
 - (M) Present life situation;
 - (N) Mental status information, including questions regarding:
 - (i) physical presentation, such as general appearance, motor activity, attention and alertness, etc.;
 - (ii) affective process, such as mood, affect, manner and attitude, etc.; and
 - (iii) cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc.;
 - (O) Full Five Axes DSM diagnosis;
 - (P) A section on health history and pharmaceutical information, with pharmaceutical information to include the following for both current and past medications:
 - (i) name of medication;
 - (ii) strength and dosage of medication;
 - (iii) length of time on the medication;
 - (iv) benefit(s) and side effects of medication; and
 - (v) level of functionality;
 - (Q) Identification of the member's strengths, needs, abilities, and preferences:
 - (i) AODTP OR ~~BHP's~~ LBHP's interpretation of findings; and
 - (ii) signature and credentials of AODTP OR LBHP;
 - (R) The assessment ~~must include~~ includes all elements and tools required by the OHCA; and
 - (S) For adults, it may include interviews and/or communication with family, caretakers or other support persons as permitted by the member. For

children under the age of ~~18~~ 16, it must include an interview with a parent or other adult caretaker. For children, the assessment ~~must also include~~ includes information on school performance and school based services. This service is performed by an AODTP or LBHP. The minimum face to face time spent in assessment with the member (and other family or caretakers as previously described in this paragraph) for a low complexity is one and one-half hours. For a moderate complexity, it is two hours or more. ~~This service can be billed in partial units to allow for shorter assessment sessions as needed by the member.~~ This service is compensable on behalf of a member who is seeking services for the first time from the contracted agency. The service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in services of more than six months and it has been more than one year since the previous assessment.

(3) Mental Health Services Plan Development by a Non-Physician (moderate complexity).

(A) Mental Health Services Plan Development by a Non-Physician (moderate complexity) is ~~to be~~ performed by the practitioners and others who will comprise the treatment team. It is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of ~~18~~ 16, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate.

(B) The Mental Health Services Plan is developed based on information obtained in the mental health assessment and includes the evaluation of assessment and determined diagnosis by the practitioners and the member of all pertinent information. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited.

(C) For adults, it ~~must be~~ is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan ~~must address~~ addresses school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(D) Comprehensive and ~~ingrafted~~ integrated service plan content ~~must address~~ addresses the following:

- (i) member strengths, needs, abilities, and preferences;
- (ii) identified presenting challenges, problems, needs, and diagnosis;
- (iii) specific goals for the member;

(iv) objectives that are specific, measurable, attainable, realistic, and time-limited (unless the individual is on a recovery maintenance/relapse prevention services plan, then objectives may be broad while the progress notes are detailed);

(v) each type of service and estimated frequency to be received;

(vi) each treatment methodology for individual, interactive, group and family psychotherapies the provider will utilize;

(vii) the ~~practitioner(s)~~ practitioner(s) name and credentials that will be providing and responsible for each service;

(viii) any needed referrals for services;

(ix) specific discharge criteria;

(x) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;

(xi) service plans are not valid until all signatures are present (signatures are required from the member, the parent/guardian when applicable, and the primary LBHP); and

(xii) changes in service plans can be documented in a service plan update (low complexity) or in the progress notes until time for the update (low complexity).

(E) One unit per SoonerCare member per provider is allowed without prior authorization. If determined by the OHCA or its designated agent, one additional unit per year may be authorized.

(4) Mental Health Services Plan Development by a Non-Physician (low complexity).

(A) Mental Health Services Plan Development by a Non-Physician (low complexity) is for the purpose of reviewing, revising and updating an established Mental Health Services Plan. All elements of the plan must be reviewed with the member and treatment progress assessed.

(B) Updates to goals, objectives, service provider, services, and service frequency, can be documented in a progress note until the six month review/update is due.

(C) Service plan updates must address the following:

(i) progress, or lack of, on previous service plan goals and/or objectives;

(ii) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(iii) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(iv) change in frequency and/or type of services provided;

(v) change in treatment methodology(ies) for individual, interactive, group and family psychotherapies the provider will utilize;

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- (vi) change in practitioner(s) who will be responsible for providing services on the plan;
- (vii) additional referrals for needed services;
- (viii) change in discharge criteria;
- (ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date; and
- (x) service plans are not valid until all signatures are present. The required signatures are: the member (if over age 14), the parent/guardian (if under age ~~18~~ 16 or otherwise applicable), and the primary LBHP.

(D) Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member.

(5) Alcohol and/or Substance Abuse Services, Treatment Plan Development (moderate complexity).

(A) Alcohol and Substance Abuse Treatment Plan Development (moderate complexity) is to be performed by the AODTP practitioners and others who will comprise the treatment team. The current edition of the ASAM criteria or other required tool is to be utilized and followed.

(B) The service is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of ~~18~~ 16, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. The service includes a discharge plan. The service is a process whereby an individualized rehabilitation plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited.

(C) For adults, it ~~must be~~ is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and ~~assisting~~ assist the family in caring for the child in the least restrictive level of care.

(D) Comprehensive and integrated service plan contents must address the following:

- (i) member strengths, needs, abilities, and preferences;
- (ii) identified presenting challenges and problems, needs, and diagnosis;
- (iii) specific goals for the member;
- (iv) objectives that are specific, measurable, attainable, realistic and time-limited (unless the individual is on a recovery maintenance/relapse prevention services plan, then objectives may be broad while the progress notes are detailed);

- (v) each type of service and estimated frequency to be received;
- (vi) each treatment methodology for individual, interactive, group and family psychotherapies the provider will utilize;
- (vii) the practitioner(s) name and credentials who will be providing and responsible for each service;
- (viii) any needed referrals for services;
- (ix) specific discharge criteria;
- (x) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;
- (xi) service plans are not valid until all signatures are present. The required signatures are: the member (if over age 14), the parent/guardian (if under age ~~18~~ 16 or otherwise applicable), and the primary LBHP; and
- (xii) changes in service plans can be documented in a Service Plan Update (low complexity) or in the progress notes until time for the Update (low complexity).

(6) Alcohol and/or Substance Abuse Treatment Plan Development (low complexity).

(A) Alcohol and/or Substance Abuse Treatment Plan Development (low complexity) is for the purpose of reviewing, revising and updating an established Mental Health Services Plan. The ASAM criteria or other required tool ~~will be~~ is utilized in the development of the Plan. All elements of the plan ~~must be~~ are reviewed with the member and treatment progress assessed.

(B) Alcohol and/or Substance Abuse Treatment Plan Development (low complexity) ~~will be~~ are provided by the treatment team members.

(C) Service plan updates ~~must~~ are to address the following:

- (i) progress, or lack of, on previous service plan goals and/or objectives;
- (ii) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;
- (iii) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;
- (iv) change in frequency and/or type of services provided;
- (v) change in treatment methodology(ies) for individual, interactive, group and family psychotherapies the provider will utilize;
- (vi) change in practitioner(s) who will be responsible for providing services on the plan;
- (vii) additional referrals for needed services;
- (viii) change in discharge criteria;
- (ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;

(x) service plans are not valid until all signatures are present. The required signatures are the:

- (I) member (if over age 14),
- (II) parent/guardian (if under age ~~18~~ 16 or otherwise applicable), and
- (III) primary LBHP.

(D) Updates to goals, objectives, service provider, services, and service frequency, can be documented in a progress note until the ~~6~~ six month review/update is due.

(E) Service Plan updates are required every six months during which services are provided. Updates can be conducted whenever needed as determined by the provider and member.

(7) Individual/Interactive Psychotherapy.

(A) Individual Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change.

(B) Interactive Psychotherapy is individual psychotherapy that involves the use of play therapy equipment, physical aids/devices, language interpreter, or other mechanisms of nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the member who has not yet developed or who has lost the expressive language communication skills to explain his/her symptoms and response to treatment, requires the use of a mechanical ~~devices~~ device in order to progress in treatment, or the receptive communication skills to understand the clinician. The service may be used for adults who are hearing impaired and require the use of language interpreter.

(C) There are a total of six different compensable units of individual/interactive psychotherapy, three each for interactive and individual psychotherapy. They are Individual Insight Oriented, Behavior Modifying and/or Supportive Psychotherapy in an Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes), and Interactive Psychotherapy in an office or Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes). There is a maximum of one unit of either Individual or Interactive Psychotherapy per day. With the exception of a qualified interpreter if needed, only the member and the LBPH or AODTP should be present and the setting must protect and assure confidentiality. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention

are appropriate components of individual counseling. The counseling must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities.

(D) Individual/Interactive counseling must be provided by a ~~MHP~~ LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(8) Group Psychotherapy.

(A) Group psychotherapy is a method of treating behavioral disorders using the interaction between the ~~MHP~~ LBHP when treating mental illness or the AODTP when treating alcohol and other drug disorders, and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual member's current service plan. This service does not include social or daily living skills development as described under Individual and Group Psychosocial Rehabilitation Services, or Alcohol and/or Substance Abuse Services Skills Development.

(B) Group Psychotherapy must take place in a confidential setting limited to the LBHP or the AODTP conducting the service, an assistant or co-therapist, if desired, and the group psychotherapy participants. Group Psychotherapy is limited to a total of eight adult individuals except when the individuals are residents of an ICF/MR where the maximum group size is six. For all children under the age of 18, the total group size is limited to six. ~~The typical length of time for a group psychotherapy session is one hour to one and one half hours.~~ A maximum of ~~two~~ three ~~Group Psychotherapy sessions~~ units per day per member are allowed. ~~Partial units are acceptable when the whole unit of time/service is not utilized.~~ Individual or group breaks will be discounted from the overall time and are not required to be noted separately. The individual member's behavior, the size of the group, and the focus of the group must be included in each member's medical record. As other members' personal health information cannot be included, the agency may keep a separate group log which contains detailed data on the group's attendees. A group may not consist solely of related individuals.

(C) Group psychotherapy will be provided by a LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(9) Family Psychotherapy.

(A) Family Psychotherapy is a face-to-face psychotherapeutic interaction between a LBHP or an ~~AOD~~ AODTP and the member's family, guardian, and/or support system. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided

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for the direct benefit of the SoonerCare member to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the Evidence Based Practice titled Family Psychoeducation. (B) ~~The length of a Family Psychotherapy session is one hour to one and one half hour. No more than two sessions~~ A maximum of three units of Family Psychotherapy are allowed per day per member/family. This is also the maximum per family unit (unless prior authorization is given by OHCA or its designated agent). Partial units are acceptable when the whole unit of time/service is not utilized. Family Psychotherapy must be provided by a LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(10) Psychiatric Social Rehabilitation Services (group).

(A) Psychiatric Social Rehabilitation Services (PSR) are behavioral health remedial services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may include the Evidence Based Practice of Illness, Management, and Recovery. This service is generally performed with only the members, but may include a member and the member's family/support system group that focuses on the member's diagnosis, management, and recovery based curriculum. This service may take the form of a work units component in a General PSR program certified through the ODMHSAS. ~~Each day of PSR services~~ must be reflected by documentation (daily or weekly summary notes) in the member's records, and must include the following:

- (i) date;
- (ii) start and stop time(s) for each day of service;
- (iii) signature of the primary rehabilitation clinician;
- (iv) credentials of the primary rehabilitation clinician;
- (v) specific goal(s) and/or objectives addressed (these must be identified on ~~recovery~~ service plan);
- (vi) type of skills training provided;
- (vii) progress made toward goals and objectives;
- (viii) member's report of satisfaction with staff intervention; and
- (ix) any new needed supports identified during service.

(B) Compensable Psychiatric Rehabilitation Services are provided to members who have the ability to benefit from the service. The services performed must have a purpose that directly relates to the goals

and objectives of the member's current service plan. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(C) Travel time to and from PSR treatment is not compensable. Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time. The minimum staffing ratio is fourteen members for each PSRS, AODTP, or LBHP for adults and eight to one for children under the age of eighteen. Countable professional staff must be appropriately trained in a recognized behavioral/management intervention program such as MANDT or CAPE or trauma informed methodology. In order to develop and improve the member's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the ~~Outpatient Behavioral Health~~ outpatient behavioral health agency site. When this occurs, the PSRS, AODTP, or LBHP must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for members who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent.

(D) A PSRS, AODTP, or LBHP may perform group psychiatric social rehabilitation services, using a treatment curriculum approved by a ~~MHP~~ LBHP.

(11) Psychiatric Social Rehabilitation Services (individual).

(A) Psychiatric Social Rehabilitation (PSR) Services (individual) is performed for the same purposes and under the same description and requirements as Psychosocial Rehabilitation Services (group) [Refer to paragraph (10) of this subsection]. The service is generally performed with only the member present, but may include the member's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives. This service may include the Evidence Based Practice of Illness, Management, and Recovery.

(B) A PSRS, AODTP, or LBHP must provide this service. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent. This billing unit is fifteen minutes and no more than six

units per day are compensable. Children under an ODMHSAS Systems of Care program may be prior authorized additional units as part of an intensive transition period.

(12) Assessment/Evaluation testing.

(A) Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Mental Health, Substance Abuse, or Integrated Services plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP. For assessment conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment.

(13) Alcohol and/or Substance Abuse Services, Skills Development (group).

(A) Alcohol and/or Substance Abuse Services, Skills Development (group) consists of the therapeutic education of members regarding their alcohol and other drugs (AOD) addiction or disorder. The service may also involve teaching skills to assist the individual in how to live independently in the community, improve self care and social skills and promote and support recovery. The services performed must have a purpose that directly relates to the goals and objectives of the member's current service plan. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service. This service is generally performed with only the members, but may include a member and member family/support system group that focuses on the member's diagnosis, management, and recovery based curriculum.

(B) Travel time to and from Alcohol and/or Substance Abuse Services, Skills Development is not compensable. Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time. The minimum staffing ratio is fourteen members for each PSRS, LBHP, or AODTP for adults and eight to one for children under the age of eighteen. This service may be performed by an AODTP, LBHP, or a PSRS. In order to develop and improve the member's community and interpersonal functioning and self care abilities, services may take place in settings away from the agency site. When this occurs, the AODTP, LBHP, or PSRS must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing

transportation for members who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange for transportation for those who require specialized transportation equipment. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent.

(C) Alcohol and/or Substance Abuse Services, Skills Development are provided utilizing a treatment curriculum approved by an AODTP or LBHP.

(14) Alcohol and/or Substance Abuse Services, Skills Development (individual).

(A) Alcohol and/or Substance Abuse Services, Skills Development (individual) is performed for the same purposes and under the same description and requirements as Alcohol and/or Substance Abuse Services, Skills Development (group) [Refer to paragraph (13) of this subsection]. It is generally performed with only the member present, but may include the member's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.

(B) An AODTP, LBHP, or PSRS must provide this service. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent. This billing unit is fifteen minutes and no more than six units per day are compensable.

(15) Medication Training and Support.

(A) Medication Training and Support is a documented review and educational session by a registered nurse, or physician assistant focusing on a member's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration and documented within the progress notes. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medication Training and Support may not be billed for SoonerCare member who reside in ICF/MR facilities. One unit is allowed per month per patient without prior authorization.

(B) Medication Training and Support must be provided by a licensed registered nurse, or a physician assistant as a direct service under the supervision of a physician.

(16) Crisis Intervention Services.

(A) Crisis Intervention Services are for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal,

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homicidal or severe psychiatric distress. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented. Crisis Intervention Services are not compensable for SoonerCare members who reside in ICF/MR facilities, or who receive RBMS in a group home or Therapeutic Foster home, or members who, while in attendance for other behavioral health services, experience acute behavioral or emotional dysfunction. The unit is a fifteen minute unit with a maximum of eight units per month; established mobile crisis response teams can bill a maximum of sixteen units per month, and 40 units each 12 months per member.

(B) Crisis Intervention Services must be provided by a LBHP.

(17) **Crisis Intervention Services (facility based stabilization).** Crisis Intervention Services (facility based stabilization) are emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment. Crisis Intervention Services (facility based stabilization) ~~will be~~ are provided under the supervision of a physician aided by a licensed nurse, and ~~will~~ also include ~~MHPs~~ LBHPs for the provision of group and individual treatments. A physician must be available. This service is limited to providers who contract with or are operated by the ODMHSAS to provide this service within the overall behavioral health service delivery system. Crisis Intervention Services (facility based stabilization) are compensable for child and adult SoonerCare member. The unit of service is per hour. Providers of this service must meet the requirements delineated in the Oklahoma Administrative Code. Children's facility based stabilization (0-18 years of age) requires prior authorization.

(18) **Program of Assertive Community Treatment (PACT) Services.**

(A) The reimbursement for PACT services will end effective June 30, 2008.

(B) Program of Assertive Community Treatment (PACT) Services are ~~those provided through the Oklahoma Department of Mental Health and Substance Abuse Services~~ and delivered within an assertive community based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self contained multi-disciplinary team. The team ~~must use~~ uses an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for persons most clearly in need of intensive ongoing services. Services must satisfy all statutory required program elements as articulated in the Oklahoma Administrative Code 450:55. At a minimum, the services must include:

- (i) Assessment and evaluation;
- (ii) Treatment planning;
- (iii) Crisis intervention to cover psychiatric crisis and drug and alcohol crisis intervention;
- (iv) Symptom assessment, management, and individual supportive psychotherapy;
- (v) Medication evaluation and management, administration, monitoring and documentation;
- (vi) Rehabilitation services;
- (vii) Substance abuse treatment services;
- (viii) Activities of daily living training and supports;
- (ix) Social, interpersonal relationship, and related skills training; and,
- (x) Case management services.

(C) Providers of PACT services are specific teams within an established organization and must be operated by or contracted with and must be certified by the ODMHSAS in accordance with 43A O.S. 319 and Oklahoma Administrative Code 450:55. ~~The unit is a per diem inclusive of all services provided by the PACT team. No more than 12 days of service per month may be claimed.~~ SoonerCare members who are enrolled in this service may not receive other Outpatient Behavioral Health Services outpatient behavioral health services except for Crisis Intervention Services (facility based stabilization).

(19) **Behavioral Health Aide.** This service is limited to children with serious emotional disturbance who are in an ODMHSAS contracted systems of care community based treatment program, or are under OKDHS or OJA custody residing within a RBMS ~~Level~~ level of care, who need intervention and support in their living environment to achieve or maintain stable successful treatment outcomes. Behavioral Health Aides provide behavior management and redirection and behavioral and life skills remedial training. The behavioral aide also provides monitoring and observation of the child's emotional/behavioral status and responses, providing interventions, support and redirection when needed. Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(A) Behavioral Health Aides must have completed 60 hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

- (i) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and
- (ii) must be supervised by a bachelor's level individual with a minimum of two years case management experience. Treatment plans must be overseen and approved by a LBHP; and
- (iii) function under the general direction of the established systems of care team and the current treatment plan.

(B) These services must be prior authorized by OHCA (or its designated agent). The Behavioral Health Aide cannot bill for more than one individual during the same time period.

(20) **Family Support and Training.** Family Support and Training is designed to benefit the SoonerCare eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program, are diagnosed with a pervasive developmental disorder, or are under OKDHS or OJA custody residing within a RBMS level of care and who without these services would require psychiatric hospitalization. This service provides the training and support necessary to ensure engagement and active participation of the family in the treatment planning process and with the ongoing implementation and reinforcement of skills learned throughout the treatment process. Child Training is provided to family members to increase their ability to provide a safe and supportive environment in the home and community for the child. This involves assisting the family in the acquisition of knowledge and skills necessary to understand and address the specific needs of the child in relation to their mental illness and treatment; development and enhancement of the families specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management; assisting the family in understanding various requirements, such as the crisis plan and plan of care process; training on the child's medications or diagnoses; interpreting choice offered by service providers; and assisting with understanding policies, procedures and regulations that impact the child with mental illness while living in the community. Parent Support ensures the engagement and active participation of the family in the treatment planning process and guides families toward taking a proactive role in their child's treatment. Parent Training is assisting the family with the acquisition of the skills and knowledge necessary to facilitate an awareness of their child's needs and the development and enhancement of the family's specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management. Services are goal directed as identified in the child's individualized plan of care and provided under the direction of a child and family treatment team and are intended to support the family with maintaining the child in the home and community. For the purposes of this service, "family" is defined as the persons who live with or provide care to a person served and may include a parent, spouse, children, relatives, foster family, or in-laws. "Family" does not include individuals who are employed to care for the member.

(A) The family support and training worker must meet the following criteria:

- (i) have a high school diploma or equivalent;
- (ii) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years experience working with children with

serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(iii) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS prior to providing the service;

(iv) pass OSBI and OKDHS child abuse check as well as adult abuse registry and motor vehicle screens; and

(v) receive ongoing and regular supervision by a person meeting the qualifications of a LBHP. A LBHP must be available at all times to provide back up, support, and/or consultation.

(B) These services may be retrospectively reviewed by OHCA or its designated agent.

(21) **Community Recovery Support.** Recovery Support is a service delivery role in the ODMHSAS public and contracted provider system throughout the mental health care system where the provider understands what creates recovery and how to support environments conducive of recovery. The role is not interchangeable with traditional staff that usually work from the perspective of their training and/or their status as a licensed mental health provider; rather, this provider works from the perspective of their experiential expertise and specialized credential training. They lend unique insight into mental illness and what makes recovery possible because they are in recovery. Each provider must successfully complete over 40 hours of specialized training, demonstrate integration of newly acquired skills and pass a written exam in order to become credentialed. A code of ethics and continuing education opportunities are components which inform the continued professional development of this provider.

(A) The community/recovery support worker must meet the following criteria:

- (i) High School diploma or GED;
- (ii) minimum one year participation in local or national member advocacy or knowledge in the area of mental health recovery;
- (iii) current or former member of mental health services; and
- (iv) successful completion of the ODMHSAS Recovery Support Provider Training and Test to be credentialed.

(B) These services may be retrospectively reviewed by OHCA or its designated agent.

(C) Example of work performed:

(i) Utilizing their knowledge, skills and abilities will:

- (I) teach and mentor the value of every individual's recovery experience;
- (II) model effective coping techniques and self-help strategies;
- (III) assist members in articulating personal goals for recovery; and

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- (IV) assist members in determining the objectives needed to reach his/her recovery goals.
 - (ii) Utilizing ongoing training may:
 - (I) proactively engage members and possess communication skills/ability to transfer new concepts, ideas, and insight to others;
 - (II) facilitate peer support groups;
 - (III) assist in setting up and sustaining self-help (mutual support) groups;
 - (IV) support members in using a Wellness Recovery Action Plan (WRAP);
 - (V) assist in creating a crisis plan/Psychiatric Advanced Directive;
 - (VI) utilize and teach problem solving techniques with members;
 - (VII) teach members how to identify and combat negative self-talk and fears;
 - (VIII) support the vocational choices of members and assist him/her in overcoming job-related anxiety;
 - (IX) assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;
 - (X) assist other staff in identifying program and service environments that are conducive to recovery; and
 - (XI) attend treatment team and program development meetings to ensure the presence of the member's voice and to promote the use of self-directed recovery tools.
 - (iii) Possess knowledge about various mental health settings and ancillary services (i.e., Social Security, housing services, and advocacy organizations).
 - (iv) Maintain a working knowledge of current trends and developments in the mental health field by reading books, journals and other relevant material.
 - (I) attend continuing education assemblies when offered by or approved by the ODMHSAS's Office of Consumer Affairs; and
 - (II) develop and share recovery oriented material at member specific continuing education trainings.
 - (v) Serve by:
 - (I) providing and advocating for effective recovery oriented services;
 - (II) assisting members in obtaining services that suit that individual's recovery needs;
 - (III) informing members about community and natural supports and how to utilize these in the recovery process; and
 - (IV) assisting members in developing ~~empowerment~~ empowerment skills through self-advocacy.
 - (vi) Develop specific competencies which will enhance their work skills and abilities. Identified tasks include, but are not limited to:
 - (I) becoming a trained facilitator of Double Trouble in Recovery (DTR);
 - (II) becoming a trained facilitator of Wellness Recovery Action Plan (WRAP);
 - (III) pursuing the USPRA credential of Certified Psychiatric Rehabilitation Practitioner (CPRP).
- (b) **Prior authorization and review of services requirements.**
- (1) **General requirement.** All SoonerCare providers who provide outpatient behavioral health services are required to have the services they provide ~~either~~ prior authorized by the OHCA or its designated agent. ~~Private behavioral health providers, public and private community mental health centers, providers identified by the ODMHSAS as contracted providers, FQHCs, CHCs, RHCs, and I/T/U facilities are required to have all services prior authorized with the exception of Services that do not require prior authorization are as follows:~~
- (A) Mental Health Assessment by a Non-Physician; ;
 - (B) the initial four individual or family sessions before finalization of the service plan;
 - (C) Mental Health Service Plan Development by a Non-Physician (moderate complexity); ; ~~and~~
 - (D) Crisis Intervention Services; and
 - (E) Adult Facility Based Crisis Intervention.
- (2) **Prior authorization and review of services.** The OHCA or its designated agent who performs the services identified in paragraph (1) of this subsection uses its independent medical judgment to perform both the review of services and the prior authorization of services. OHCA does retain final administrative review over both prior authorization and review of services as required by 42 CFR 431.10.
- (3) **Prior authorization process.**
- (A) **Definitions.** The following definitions apply to the process of applying for an outpatient behavioral health prior authorization.
- (i) **"Outpatient Request for Prior Authorization"** means the form used to request the OHCA or its designated agent to approve services.
 - (ii) **"Authorization Number"** means the number that is assigned per member and per provider that authorizes payment after services are rendered.
 - (iii) **"Initial Request for Treatment"** means a request to authorize treatment for a member that has not received outpatient treatment in the last six months.
 - (iv) **"Extension Request"** means a request to authorize treatment for a member who has received outpatient treatment in the last six months.

- (v) **"Modification of Current Authorization Request"** means a request to modify the current array or amount of services a member is receiving.
- (vi) **"Correction Request"** means a request to change a prior authorization error made by the OHCA or its designated agent.
- (vii) **"Provider change in demographic information notification"** means a request to change a provider's name, address, phone, and/or fax numbers, or provider identification numbers. Change in demographics will require contractual changes with OHCA. Providers should contact OHCA's Contracts Services Division for more information.
- (viii) **"Status request"** means a request to ask the OHCA or its designated agent the status of a request.
- (ix) **"Important notice"** means a notice that informs the provider that information is lacking regarding the approval of any prior authorization request.
- (x) **"Letter of collaboration"** means an agreement between the member and two providers when a member chooses more than one provider during a course of treatment.

(B) **Process.** A provider must submit an Initial Request for Treatment, an Extension Request, a Modification of Current Authorization Request, or a Correction Request on a form provided by the OHCA or its designated agent, prior to rendering the initial services or any additional array of services, with the exception of Mental Health Assessment by a Non-Physician; the first four sessions prior to completion of the service plan; Mental Health Service Plan Development by a Non-Physician (moderate complexity); and Crisis Intervention Services; and Adult Facility Based Crisis Intervention.

- (i) These request forms must be fully completed including the following:
 - (I) pertinent demographic and identifying information;
 - (II) complete and current CAR or ASI unless another appropriate assessment tool is authorized by the OHCA or its designated agent;
 - (III) complete multi axial, DSM diagnosis using the most current edition;
 - (IV) psychiatric and treatment history;
 - (V) service plan with goals, objectives, treatment duration; and
 - (VI) services requested.
- (ii) The OHCA or its designated agent may also require supporting documentation for any data submitted by the provider. The request may be denied if such information is not provided within ten calendar days of notification of the Important Notice.

(iii) Failure to provide a complete request form may result in a delay in the start date of the prior authorization.

(C) **Authorization for services.**

- (i) Services are authorized by the OHCA or its designated agent using independent medical ~~judgement~~ judgment to perform the review of prior authorization requests to determine whether the request meets medical necessity criteria. If services are authorized, a treatment course of one to six months will be authorized. The authorization of services is based upon ~~six~~ seven levels of care for children and ~~five~~ six levels of care for adults. The numerically based levels of care are designed to reflect the member's acuity as each level of care, in ascending order. Additional levels of care are known as Exceptional Case, 0-36 months, ICF/MR, Recovery Maintenance/Relapse Prevention, and RBMS.
- (ii) If the provider requests services beyond the initial prior authorization period, additional documentation is required in the Extension Request.

[OAR Docket #08-1280; filed 10-15-08]

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

[OAR Docket #08-1275]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
(Reference APA WF # 08-11)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 441.20 and 440.250

DATES:

Adoption:

June 12, 2008

Approved by Governor:

July 17, 2008

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Immediately upon Governor's approval or August 1, 2008, whichever is later

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to remove the age and gender restrictions for persons eligible for family planning services. With these revisions, the only limitation for otherwise eligible SoonerCare members is reproductive capability. The less restrictive requirement will enable the SoonerCare program to serve a

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larger population of members through rural health clinics who are in need of family planning services which may result in a lower rate of unwanted pregnancies in Oklahoma.

ANALYSIS:

Rural Health Clinic rules are revised to eliminate the age and gender restrictions for SoonerCare members who are eligible to receive family planning services. The revision removes the reference to age and gender, with the only limitation for otherwise eligible SoonerCare members being reproductive capability. Potentially, fewer unwanted pregnancies may result by enlarging the population of individuals who are eligible to receive family planning services through rural health clinics. The revision also brings policy into current practice of payment based on fee-for-service rather than an encounter basis.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR AUGUST 1, 2008, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 35. RURAL HEALTH CLINICS

317:30-5-356. Coverage for adults

Payment is made to rural health clinics for adult services as set forth in this Section.

(1) **RHC services.** Payment is limited to four visits per ~~recipient~~ member per month. Refer to OAC 317:30-1, General Provisions, and OAC ~~317:30-3-65.4~~ 317:30-3-65.2 for exceptions to this limit for children under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Additional preventive service exceptions include:

(A) **Obstetrical care.** A Rural Health Clinic should have a written contract with its physician, nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how ~~maternity obstetrical~~ care will be billed to ~~Medicaid-SoonerCare~~, in order to avoid duplicative billing situations. The agreement should also specifically identify the physician's compensation for rural health and non-rural health clinic (other ambulatory) services.

(i) If the clinic compensates the physician, nurse midwife or advanced practice nurse to provide ~~maternity obstetrical~~ care, then the clinic must bill the ~~Medicaid SoonerCare~~ program for ~~prenatal care~~ as a "~~maternity encounter~~" each prenatal visit using the appropriate CPT evaluation and management codes. A maternity encounter includes a comprehensive physical examination and/or routine scheduled medical visits. Payment will be allowed for one initial visit and 13 subsequent visits:

- (I) ~~three visits during the first trimester;~~
- (II) ~~three visits during the second trimester; and~~
- (III) ~~eight visits during the third trimester.~~

(ii) If the clinic does not compensate its practitioners to provide ~~maternity-obstetrical~~ care, then the independent practitioner must bill the ~~Medicaid program for obstetrical care according to the method described in the Medicaid provider specific fee for service rules for physicians, nurse midwives and advanced practice nurses OHCA for prenatal care according to the global method described in the SoonerCare provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).~~ ~~(Physician Assistants are excluded from billing the Medicaid program as individual practitioners.)~~

(iii) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.

(iv) A standard profile of routine obstetrical lab services may be billed separately. The appropriate revenue code and CPT codes are used.

(B) **Family planning services.** Family planning services are ~~paid on an encounter basis. Coverage of family planning service are available only to women members with reproductive capability between the child bearing age of 12 and 50.~~ Family planning ~~encounters~~ visits do not count as one of the ~~two~~ four RHC visits per month.

(i) A family planning visit includes a physical examination, counseling and prescribing appropriate medications and/or contraceptive methods.

(ii) Prescribed contraceptives may be billed independently from the family planning encounter.

(2) **Other ambulatory services.** Services defined as "other ambulatory" services are not considered a part of a RHC ~~encounter visit~~ and are therefore billable to the ~~Medicaid-SoonerCare~~ program by the RHC or provider of service on the appropriate claim forms. Other ambulatory services are subject to the same scope of coverage as other ~~Medicaid-SoonerCare~~ services billed to the program, i.e., limited adult services and some services for under 21 subject to same prior authorization process. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-57, ~~through 317:30-5-59, and 317:30-3-60~~ for general coverage and exclusions under the ~~Medicaid-fee for services SoonerCare program.~~ Refer to ~~OAC 317:30-3-51~~ for ~~exceptions under EPSDT.~~ Some specific limitations are applicable to other ambulatory services as set forth in ~~Specific Provider Rules~~ specific provider rules and excerpted as follows: Coverage under optometrists for adults is limited to treatment of eye disease not related to refractive errors. There is no coverage for eye exams for the purpose

of prescribing eyeglasses, contact lenses or other visual aids. (See OAC 317:30-5-431-)

[OAR Docket #08-1275; filed 10-15-08]

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

[OAR Docket #08-1279]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
(Reference APA WF # 08-20)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 6036 of the Deficit Reduction Act of 2005 (P.L. 109-171)

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to broaden the types of verification that may be used to verify United States citizenship and/or identity. Rule revisions are needed to assure that eligible individuals receive the SoonerCare benefits they are entitled to receive.

ANALYSIS:

SoonerCare eligibility rules regarding citizenship are revised to allow the use of tribal membership cards, Certificate of Degree of Indian Blood cards, and Oklahoma Voter Registration cards to verify citizenship and/or identity. Section 6036 of the Deficit Reduction Act of 2005 required states to obtain satisfactory documentary evidence of citizenship and identity in order to receive federal matching funds. Some SoonerCare members who are United States citizens by virtue of being born in the United States have lost eligibility for benefits and others have been denied benefits as they were unable to furnish a copy of their birth certificate or other documentation as outlined in existing rules. Eligibility rules are revised to include these other types of documents which may be more easily obtainable by the SoonerCare applicant than a birth certificate, particularly if the individual was born in a state other than Oklahoma. Additional revisions clarify that individuals who are classified as permanent non-immigrants includes persons from the Marshall Islands, the Republic of Palau and the Federated States of Micronesia.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED UPON APPROVAL
BY THE GOVERNOR AS SET FORTH IN 75 O.S.,**

**SECTION 253(D), AND EFFECTIVE UPON APPROVAL
BY GOVERNOR OR OCTOBER 1, 2008, WHICHEVER
IS LATER:**

**SUBCHAPTER 5. ELIGIBILITY AND
COUNTABLE INCOME**

**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; or
- (E) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, with a photograph of the individual, for Native Americans.

(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);

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(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);

(ix) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, without a photograph of the individual, for Native Americans;

(x) Oklahoma Voter Registration Card; or

(xi) Other acceptable documentation as approved by OHCA.

(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. 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.
 - (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

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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 ineligible alien status described in (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 Permanent non-immigrants.** Marshall Islanders and individuals from the Republic of Palau and the Federated States of Micronesia are classified as permanent non-immigrants by BCIS. They are eligible for emergency services only.

[OAR Docket #08-1279; filed 10-15-08]

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

[OAR Docket #08-1278]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources

317:35-5-45. through 317:35-5-46. [AMENDED]
(Reference APA WF # 08-17)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.201

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to remove inconsistencies in rules regarding the consideration of resources when determining financial eligibility for SoonerCare benefits. The agency eliminated the asset test for SoonerCare applicants and members who categorically relate to Aid to Families with Dependent Children (AFDC) and pregnancy-related services effective December 1, 1997. Inadvertently, language remained in other sections of rules that implies an individual's assets are a factor of eligibility for SoonerCare benefits. Rules must be revised to remove these references that might lead to an incorrect decision regarding eligibility for SoonerCare benefits.

ANALYSIS:

SoonerCare eligibility rules are being revised to remove language regarding the consideration of resources when determining financial eligibility for individuals categorically related to Aid to Families with Dependent Children (AFDC) and pregnancy-related services. Effective December 1, 1997, the agency eliminated the asset test for SoonerCare applicants and members who are categorically related to AFDC or pregnancy-related services. Rules are being revised to remove language that implies that the resources of an individual are a factor that must be taken into account during the financial eligibility determination process for SoonerCare benefits. Revisions are needed to remove incorrect language that inadvertently remained in rules after the asset test was eliminated.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE UPON APPROVAL BY GOVERNOR OR OCTOBER 1, 2008, WHICHEVER IS LATER:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

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 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 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 SoonerCare eligibility, a period of ineligibility is not computed;
- (5) mandatory inclusion of minor blood-related siblings or minor dependent children. For 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 member signing OKDHS Form 08TA016E, Agreement to Repay;~~
- ~~(7)~~ the disregard of one half of the earned income;
- ~~(8)~~ dependent care expense. For 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 SoonerCare only cases is determined according to OAC 317:35-5-41.6;
- ~~(10)~~ AFDC Striker rules. Striker status has no bearing on SoonerCare eligibility;
- ~~(11)~~ ET&E Sanction rule. The ET&E status has no bearing on SoonerCare eligibility. However, a new 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 in the same manner 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. Individuals categorically related

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to pregnancy-related services are excluded from a resource test.

[OAR Docket #08-1278; filed 10-15-08]

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

[OAR Docket #08-1289]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions

590:1-1-7. Declaratory rulings [REVOKED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees, pursuant to 74 O.S. §901 and 909

DATES:

Public hearing:

August 21, 2008

Adoption:

August 21, 2008

Approved by Governor:

September 18, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Agency finds that an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule, amendment, revision, or revocation of an existing rule which necessitates the promulgation of emergency rules, due to the adoption of a similar rule and potential conflict in rules.

ANALYSIS:

The purpose of this rule is to eliminate duplication in the rules and prevent a potential conflict in interpretation and use. Effective May 11, 2008, OPERS permanently adopted 590:1-3-18, a new rule regarding declaratory rulings. The intent of new rule 590:1-3-18 was to replace the existing rule 590:1-1-7 and the existing rule should have been revoked when the new rule was adopted by the Board. A potential conflict in rules exists due to the duplication in rules relating to declaratory rulings. In order to prevent any conflict in the rules and protect the members of OPERS, it is necessary to immediately revoke rule 590:1-1-7.

CONTACT PERSON:

Joseph A. Fox (405) 858-6737

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

SUBCHAPTER 1. GENERAL PROVISIONS

590:1-1-7. Declaratory rulings [REVOKED]

(a) Petitions for declaratory rulings as to the applicability of any rule or order of the agency shall be in writing and must be filed with the Board at least ten days prior to the next regularly scheduled Board meeting. The petition must state with clarity the issues to be decided and any legal authority which may be applicable.

(b) The Board shall issue a written Final Ruling within 60 days of hearing the petition. The Final Ruling shall be mailed to the person requesting the ruling and shall be kept on file in the Board office for public inspection.

(c) Final rulings of the Board are subject to judicial review pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.

[OAR Docket #08-1289; filed 10-21-08]

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

[OAR Docket #08-1290]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Credited Service

590:10-3-14. Elected official service credit [NEW]

Subchapter 7. Retirement Benefits

590:10-7-18. Post-retirement employment - eligibility [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees, pursuant to 74 O.S. §§901, 909, 913.4 and 914

DATES:

Public hearing:

August 21, 2008

Adoption:

August 21, 2008

Approved by Governor:

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Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Agency finds that an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule, amendment, revision, or revocation of an existing rule. This emergency rule is necessary as a result of recently enacted legislation in Enrolled Senate Bill 1641, amending 74 O.S. § 913.4, and Enrolled House Bill 3112, amending 74 O.S. §914, from the 2nd Session of the 51st Oklahoma Legislature.

ANALYSIS:

The amendment to §913.5, which became effective on August 22, 2008, changes the calculation of credited service for elected officials first elected after the effective date of the legislation and those individuals who first join the System after the effective date of the legislation. The new language affects those elected officials who have both elected service credit and non-elected service credit. Certain elected officials will be immediately affected by this legislation. The new rule implements the provisions of this legislation.

The amendment to §914, which became effective July 1, 2008, prohibits a retiree from being rehired by his or her former employer, or entering into an employment contract with a former employer, for a period of one (1) year after retiring from such employer. The prohibition does not apply if the retiree waives his or her benefit pursuant to law and returns as a bona fide employee. The amendment immediately affects any retiree returning to work for a former employer. The amendment to the rule implements the provisions of this legislation.

CONTACT PERSON:

Joseph A. Fox (405) 858-6737

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

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-14. Elected official service credit

(a) First elected service on or after August 22, 2008. Any member of the System before August 22, 2008, who is first elected or appointed on or after August 22, 2008, and who retires as an elected official with at least six (6) years in elected office, may count all of his or her non-elected service which occurred prior to the elected service, if any, as if it were elected service. The applicable contribution rate selected by the elected official shall apply and the calculation of the benefit shall be made in accordance with the provisions of 74 O.S. §913.4. However, in no event shall the retirement benefits be more than one hundred percent (100%) of his or her highest contiguous twelve (12) months of compensation earned as an elected official or as a non-elected member.

(b) Joining System on or after August 22, 2008. Any member who first joins the System on or after August 22, 2008, shall have elected and non-elected service separately calculated as follows:

(1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.

(2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.

(3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.

(4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.

(c) Elected service prior to August 22, 2008. The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.

(d) Effective date. The authorizing legislation for determining elected official service credit provided by this section is Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008. The internal references to July 1, 2008, in 74 O.S. §913.4(C)(3) and (4), shall be interpreted to mean August 22, 2008.

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-18. Post-retirement employment - eligibility

(a) Retiree subject to restrictions. Returning to work for a participating employer may affect the retirement benefit of a retiree. A retiree returning to work for a participating employer is subject to various state and federal restrictions, including, but not limited to, the requirements set forth in 74 O.S. § 914 and certain Internal Revenue Service regulations.

(b) Bona fide termination of employment. Prior to the payment of any retirement benefit to a member, the participating employer shall certify in writing to the System that the member has terminated their employment. Termination of employment shall be governed by guidelines and regulations set forth by the Internal Revenue Service, and shall generally mean the member must have experienced a bona fide separation, severance or termination of employment or service in which the employer and employee relationship is completely severed. Changing from full-time to part-time employment with the same participating employer does not qualify as a bona fide termination.

(c) Returning to work for former employer. A retiree may not be rehired in any capacity by the retiree's same participating employer for a period of one (1) year after the retiree's initial retirement from such same participating employer. A retiree may not enter into an employment contract of any kind, including through a third party, with the same participating employer for a period of one (1) year after retiring from such same participating employer. The provisions of this subsection shall not apply if the retiree waives his or her benefit as provided under 74 O.S. §914(E)(2).

(ed) Pre-arranged rehires. If any agreement is made between the employee and the employer prior to the retirement of the employee which would allow the employee to return to work for the same participating employer, the retirement of such employee shall not be considered a bona fide termination of employment. Upon discovery of such an agreement, the employee shall be subject to having the retirement benefits stopped pursuant to 74 O.S. § 914(D).

(de) Independent contractors.

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(1) A retired member who provides services as an independent contractor to a participating employer shall not participate in the System. However, the employer must submit a copy of the contract to OPERS for approval in advance of the effective date of the contract. The contract must be a true contract labor situation where the individual engages to perform certain services according to his or her own method and manner, free from control and direction of the employer in the performance of the service except the result thereof. Review of the contract shall include, but not be limited to:

- (A) the degree of the right to control or supervise the work of the individual;
- (B) payment of self-employment taxes;
- (C) whether any benefits or leave time are paid;
- (D) the nature and length of the contract;
- (E) whether the work is part of the regular business of the employer, and;
- (F) the right of either party to terminate the relationship without liability.

(2) If an individual after retirement is doing the same work for the same employer as the individual did prior to retirement, the System will consider the individual to be an employee and not an independent contractor. In no event will an employment contract be accepted by the System if it is determined that the contract was arranged or agreed to prior to the retirement of the employee. In such cases, the System will consider the relationship to be that of employer and employee, and the employer and employee will be subject to the laws and rules regarding post-retirement employment.

[OAR Docket #08-1290; filed 10-21-08]

TITLE 650. OKLAHOMA CENTER FOR THE ADVANCEMENT OF SCIENCE AND TECHNOLOGY CHAPTER 18. OKLAHOMA NANOTECHNOLOGY APPLICATIONS PROJECT

[OAR Docket #08-1282]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- 650:18-1-1. [NEW]
- 650:18-1-2. [NEW]
- 650:18-1-3. [NEW]
- 650:18-1-4. [NEW]
- 650:18-1-5. [NEW]
- 650:18-1-6. [NEW]
- 650:18-1-7. [NEW]
- 650:18-1-8. [NEW]
- 650:18-1-9. [NEW]
- 650:18-1-10. [NEW]
- 650:18-1-11. [NEW]
- 650:18-1-12. [NEW]
- 650:18-1-13. [NEW]
- 650:18-1-14. [NEW]

650:18-1-15. [NEW]

AUTHORITY:

Title 74 O.S., Section 5060.9; The Oklahoma Science and Technology Research and Development Board.

DATES:

Adoption:

August 26, 2008

Approved by Governor:

October 7, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The rules for the Oklahoma Nanotechnology Applications Project have been developed for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 5060.43 et seq. and in compliance with House Bill 2356 which legislatively mandated the creation of this new project.

ANALYSIS:

The Oklahoma Nanotechnology Applications Project Rules and Regulations are intended for compliance by the Oklahoma Center for the Advancement of Science and Technology (OCAST) with the Administrative Procedures Act, 75 O.S., Section 250 et seq. House Bill No. 2356 of the 2006 Legislative Session enacted the Oklahoma Nanotechnology Applications Project, amending 74 O.S. 2001, Sections 5060.43, creating a program with components in applied nanotechnology research. The Oklahoma Nanotechnology Applications Project is designed to assist Oklahoma companies, universities, and non-profit organizations who are developing new nanotechnology applications as well as those with existing applications. The Project requires that the research lead to innovation, new knowledge or technology, have a high probability of leading to commercially successful products, processes or services within a reasonable period of time, are technically sound and will produce a measurable result, and have a reasonable probability to enhance employment opportunities within Oklahoma.

CONTACT PERSON:

Jessica Vinson, 405-319-8412

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

650:18-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250 et seq. This project, known as the Oklahoma Nanotechnology Applications Project, shall assist in the accelerated development of technology in the State by supporting nanotechnology research activities in new and existing applications in nanotechnology whose results:

- (1) are technically sound and will produce a measurable result
- (2) lead to innovation, new knowledge or technology and have a high probability of leading to commercially successful products, processes or services within a reasonable period of time
- (3) have reasonable probability to enhance employment opportunities within Oklahoma

(4) enhance services to Oklahoma manufacturers or Oklahoma for-profit companies that are in the process of applying nanotechnology.

650:18-1-2. Statutory citations

Citations to statutes in this Chapter refer to the most recent codification of the statute.

650:18-1-3. Statutory definitions

The following terms are defined in 74 O.S., Section 5060.43:

- (1) applied research,
- (2) enterprise,
- (3) institutions of higher education,
- (4) investigator,
- (5) nanotechnology,
- (6) new technology,
- (7) nonprofit research institution,
- (8) product,
- (9) professional service contract and
- (10) technology transfer.

650:18-1-4. Additional definitions

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

"Applicant organization(s)" means the employer of the investigator(s) preparing the application.

"Application" means the proposal for an Oklahoma Nanotechnology Applications Project award and all completed required forms from the solicitation as submitted to The Oklahoma Center for the Advancement of Science and Technology (OCAST).

"Contractor(s)" means the institution(s) or enterprise(s) that is awarded an OCAST Nanotechnology Applications Project contract.

"Solicitation" means a request containing the detailed information concerning the specifications of the Oklahoma Nanotechnology Applications Project.

650:18-1-5. Project administration

(a) OSTRaD Board, OCAST shall administer the Oklahoma Nanotechnology Applications Project under the governance of the statutorily created Oklahoma Science and Technology Research and Development Board (OSTRaD Board) [74 O.S., Section 5060.6]. OSTRaD will approve all funding awards.

- (1) The OSTRaD Board shall approve all specifications of the Oklahoma Nanotechnology Applications Project and any changes made thereto.
- (2) All information regarding these projects shall be available at the principal offices of OCAST, as referenced in 650:1-3-1.

(b) Oklahoma Nanotechnology Applications Committee. The OSTRaD Board shall establish an Oklahoma Nanotechnology Applications Committee (ONAC). The ONAC shall act in an advisory capacity to the OSTRaD Board and OCAST

staff in the development of project specifications, organization and evaluation of peer reviews, awarding of contracts and on-going evaluation of contract performance.

650:18-1-6. Project description

The Oklahoma Nanotechnology Applications Project shall provide funds for nanotechnology applications projects recommended by the ONAC and approved by the OSTRaD Board and described in the solicitation.

650:18-1-7. Eligibility

(a) **Applicants.** Eligible applicants for funding under the Oklahoma Nanotechnology Applications Project shall be:

- (1) Oklahoma public or private colleges and universities, when the project involves an Oklahoma for-profit business or manufacturer,
- (2) Oklahoma nonprofit research organizations, when the project involves an Oklahoma for-profit business or manufacturer or,
- (3) Oklahoma for-profit businesses or manufacturers [74 O.S., Section 5060.19].

(b) **Preference.** The OSTRaD Board may assign preference to a class(es) of applicants for any funding competition.

(c) **Investigators.** The investigator(s) submitting applications shall be employed by or affiliated with an eligible applicant organization(s) and must be a resident of the State of Oklahoma.

650:18-1-8. Funding terms

(a) **Competition dates.** Dates for funding competitions shall be announced in the solicitation.

(b) **Allocations.**

- (1) The ONAC shall recommend, and the OSTRaD Board approve, the amount allocated for each funding competition.
- (2) If minimum and maximum levels for Oklahoma Nanotechnology Applications Projects are established, they shall be approved by the OSTRaD Board and announced in the solicitation.

(c) **Contract periods.** The length of a contract shall not be less than one (1) year. The maximum contract period shall be recommended by the ONAC and approved by the OSTRaD Board.

650:18-1-9. Application process

(a) **Solicitations.** The Oklahoma Nanotechnology Applications Project solicitation shall be used to apply for funding under this project. Solicitations shall be available at the OCAST principal office. No application fee shall be required.

- (1) **Application deadlines.** Application submission date(s) and time(s), shall be listed in the solicitation. Any application not submitted by the designated submission date and time shall be returned without consideration.
- (2) **Completion/submission requirements.** Requirements for application completion and submission shall be included in the solicitation.

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(b) **Applications.**

(1) **Matching funding.** The application shall specify the total amount of matching funds the organization will provide to meet the requirements of the matching funding.

(2) **Required information.** The application shall include:

(A) a description of the potential commercial application of the Oklahoma Nanotechnology Applications Project and plan for commercialization strategy.

(B) a recommendation from the applicant organization, and

(C) other information that may be required by the OSTRaD Board.

(3) **Documentation.** It shall be the responsibility of the investigator(s) and the applicant organization(s) to ascertain and certify compliance with all applicable state and federal requirements or regulations as specified in the application in order to engage in the proposed research.

(4) **Returned applications.** Incomplete or inappropriately completed applications may be returned without review.

650:18-1-10. Review process

(a) **Peer review.** Applications for funding shall be reviewed by peer reviewers, a majority of whom reside outside of the State of Oklahoma, who are nominated and approved by the ONAC.

(b) **Evaluation criteria.** The peer review panel shall review and rank all applications for funding according to evaluation criteria specified in the solicitation.

650:18-1-11. Award provisions

(a) **Funding subject to availability.** Funding of applications recommended for approval by the ONAC shall be subject to availability of resources and approval of the OSTRaD Board.

(b) **Matching funds; documentation.** All applications shall include:

(1) **Higher education or nonprofit institutions.** Documentation, if the proposal is from an institution of higher education or nonprofit research institutions that not less than fifty percent (50%) of the total direct cost of the proposed project will be provided by sources other than OCAST and other than state-appropriated money. Machinery or equipment may be considered as part of the matching funds [74 O.S., Section 5060.19]. If machinery or equipment serves as part of the matching requirement, the applicant organization(s) shall provide documentation as specified in 74 O.S., Section 5060.19.

(2) **Private enterprises.** Documentation, if the proposal is from a private enterprise, that not less than fifty percent (50%) of the total direct cost of the proposed project will be provided by sources other than OCAST and other than state-appropriated money [74 O.S., Section 5060.19]. No portion of the matching funds from a private enterprise may be provided by in-kind services performed by the enterprise. [74 O.S., Section 5060.19]

(3) **Funds from grants or contracts.** Funds received from federal or private grants or contracts, to be used as matching funds, shall be allowed throughout the life of the contract.

(c) **Additional award provisions.** Any additional award provisions shall be approved by the OSTRaD Board and announced in the solicitation.

650:18-1-12. Contract provisions

(a) **Professional service contract.** The mechanism for funding approved applications shall be a professional service contract between OCAST and the applicant organization(s).

(b) **Verification of matching funds.** Professional service contracts shall be awarded contingent upon documentation that the matching funds and/or machinery or equipment to be matched by OCAST has been received by the applicant organization(s). The period of time allowed for verification of receipt of matching funds shall be approved by the OSTRaD Board and announced in the solicitation.

(c) **Fiscal agent.** If more than one applicant organization participates in a contract, one organization shall be designated as the fiscal agent.

(d) **Contractor obligations.**

(1) **Records and accounts.** The contractor, or designated fiscal agent, shall maintain records and accounts that properly document and account for the source and application of all project funds, and all such records and accounts shall be made available on demand by OCAST for inspection and use in carrying out its responsibilities for administration of the funds.

(2) **Access and examination.** The contractor, or designated fiscal agent, shall as OCAST deems necessary, permit authorized representatives of OCAST and the State of Oklahoma full access, and the right to fully examine, all projects records and accounts.

(3) **Audits.** The contractor, or designated fiscal agent, shall comply with the audit policy of OCAST. The contractor, or designated fiscal agent, shall provide OCAST timely reports on any audits that include funds received from OCAST. In the event an audit results in the determination that the contractor, or designated fiscal agent, has expended contract funds on unallowable costs, the contractor, or designated fiscal agent, shall reimburse OCAST in full for all such costs.

650:18-1-13. Confidentiality

(a) **Applications.** OCAST will treat all records in accordance with applicable OCAST statutes. There shall be no guarantee that the contents of any application will remain confidential.

(b) **Intent to Submit Forms; Abstracts.** Unless specifically requested otherwise by the applicant organization, OCAST may use the contents from Intent to Submit Forms and Abstracts from the proposal or subsequent annual progress reports, for the required OCAST Annual Report or other publications without obtaining permission from the investigator(s) or applicant organization(s).

650:18-1-14. Notification process

OCAST may announce funding solicitations through various means to disseminate notice to possible funding applicants.

650:18-1-15. Appeals process

Appeals related to this Chapter shall be processed in accordance with the procedures referenced in OAC 650:1-3-4.

[OAR Docket #08-1282; filed 10-15-08]

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

1:2008-46.

EXECUTIVE ORDER 2008- 46

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. Severe wildfires beginning on February 25, 2008 and continuing through June 30, 2008 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 is 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 severe wildfires in the State of Oklahoma that threatened 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:

Caddo, Comanche, Dewey, Ellis, Kiowa, and Woodward.

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. The Executive Order shall terminate at the end of sixty (60) 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 17th day of October, 2008.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:

M. Susan Savage
Secretary of State

[OAR Docket #08-1291; filed 10-21-08]

