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Brad Henry, Governor
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Secretary of State
Peggy Coe, Managing Editor

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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 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING DISTRICT

[OAR Docket #09-1289]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. Zoning Regulations for Capitol-Medical Center Improvement and Zoning District [AMENDED]

SUMMARY:

On May 7, 2009, the Oklahoma Supreme Court issued its mandate in *Musgrove Mill, LLC, v. Capitol-Medical Center Improvement and Zoning Commission, et al.*, Docket No. 104,374. The court's decision overturned A.G. Opinion 74-149, which had concluded that the rulemaking requirements of the Administrative Procedures Act ("APA") did not apply to the Capitol-Medical Center Improvement and Zoning Commission ("Commission"). The court's decision essentially invalidates the majority of the Commission's existing rules, which were promulgated under 73 O.S. secs. 82.1 - 83.14, rather than the APA. Without its rules, the Commission cannot function; it cannot issue building permits, approve plans and specifications, rezone property, or issue citations for zoning code violations. These permanent rules are to replace the emergency rules promulgated by the Commission and approved by the Governor on June 22, 2009, in order to continue to perform its legislative functions.

The rules establish regulations and provide information related to zoning requirements in compliance with Title 73, Section 82.1 and in support of the recommended policies and goals of the Capitol-Medical Center Improvement and Zoning District Master Plan.

Subchapter 11 creates the State Capitol Historical Preservation and Landmark board of Review within the Commission, providing membership, duties and powers of the Board. Criteria for the Historic Preservation District or Historical Landmark District are included in this Subchapter, including procedures for requesting and approval of permits by the Commission for such district.

Subchapter 13 provides information and procedures related to District building permits, conditional uses, and certificates

of occupancy reviewed and approved by the Commission. Appeal procedures related to decisions by the Commission are included in this subchapter.

AUTHORITY:

Capitol-Medical Center Improvement and Zoning Commission, 73 O.S., Section 83.4

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so before 5:00 p.m. on December 17, 2009, at the following address: Gerry Smedley, Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, P.O. Box 53218, Oklahoma City, OK 73152-3218; or email gerry_smedley@dcs.state.ok.us.

PUBLIC HEARING:

A public hearing will be held at the Department of Central Services, Will Rogers Office Building, Suite 102/104, 2401 N. Lincoln Boulevard, Oklahoma City, OK, on Friday, December 18, 2009 at 8:15 a.m. Anyone who wishes to speak must sign in by 8:05 a.m. on that day.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the Department with information, including, if possible, direct and indirect costs by type with dollar amounts that a business entity may incur for rule compliance. Business entities may submit the information in writing by the conclusion of the public comment period and public hearing on December 18, 2009 at the Department of Central Services, Administration, P.O. Box 53218, Oklahoma City, OK 73152-3218.

COPIES OF PROPOSED RULES:

Copies of proposed rules are available from the Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, P.O. Box 53218, Oklahoma City, OK 73152-3218 and the agency website at www.dcs.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be available for review on and after November 17, 2009 at the Department of Central Services, Administration, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK.

CONTACT PERSON:

Gerry Smedley, Administrative Rules Liaison (405) 522-8519

[OAR Docket #09-1289; filed 10-9-09]

Notices of Rulemaking Intent

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #09-1276]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Permitting of Oversize, Overweight and
Special Combination Vehicles

730:30-9-16 [NEW]

Appendix B. Minimum Axles, Axle Spacing and Inner
Bridge Dimensions [REVOKED]

SUMMARY:

The proposed addition to Subchapter 9 is in response to 2009 O.S.L. § 59 (H.B. 2054) that creates the structure under which the Department of Public Safety may issue annual vehicle permits for the movement of oversize or overweight loads that cannot reasonable be dismantled. The proposed rule will reflect the eligibility criteria and conditions to be followed for issuance and use of these permits. It is the intent of the Oklahoma Transportation Commission to insure that the traveling public is protected from traffic hazards and to assure that state owned transportation facilities are protected while facilitating the legal permitted operation of vehicles eligible to use this permit.

AUTHORITY:

Oklahoma Department of Transportation; 47 O.S. §§ 14-101 et seq., 14-118(a), 1129; 69 O.S. § 303; 23 U.S.C. 127.

COMMENT PERIOD:

Persons may submit written and oral comments to Mary C. Brewington, 200 N.E. 21st Street, Room B1-7, Oklahoma City,

OK 73102 or mbrewington@odot.org during the period from November 2, 2009 to December 10, 2009.

PUBLIC HEARING:

A public hearing will be held at 2:00 p.m. on Monday, December 14, 2009 at the Oklahoma Department of Transportation Commission Room, 200 N.E. 21st Street, Oklahoma City, Oklahoma. Anyone wishing to speak must sign in at the door by 2:05 p.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Mary Brewington at the above address during the period from before the close of the comment period on December 10, 2009.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained on-line from the ODOT website; www.okladot.state.ok.us or by phoning Mary C. Brewington at (405)522-6002.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared and may be obtained at www.okladot.state.ok.us or from ODOT at the above address beginning November 17, 2009.

CONTACT PERSON:

Mary C. Brewington, Legislative Analyst, (405) 522-6002

[OAR Docket #09-1276; filed 10-6-09]

Withdrawn Rules

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

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

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

**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 50. INCOME**

[OAR Docket #09-1275]

RULEMAKING ACTION:

Withdrawal of EMERGENCY rulemaking

WITHDRAWN RULES:

Subchapter 15. Oklahoma Taxable Income
Part 7. Credits Against Tax
710:50-15-81 [AMENDED]

DATES:

Adoption:

September 17, 2009 (Order 2009-09-17-03)

Submitted to Governor:

September 21, 2009

Submitted to House:

September 21, 2009

Submitted to Senate:

September 21, 2009

Withdrawn:

October 1, 2009 (Order 2009-10-01-02)

[OAR Docket #09-1275; filed 10-1-09]

Emergency Adoptions

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

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

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

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

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

[OAR Docket #09-1288]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 52. Advanced Placement Incentive Program
210:40-52-5. Equipment and materials grants and vertical teaming grants
[AMENDED]

AUTHORITY:

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

DATES:

Adoption:

August 27, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The purpose of the proposed rule amendments is to inform school districts at the beginning of the 2009-2010 school year in order to prepare their grant applications as well as to be advised that their expenditure report will be due to the Advanced Placement Office at the State Department of Education by August 1, 2010.

ANALYSIS:

The proposed rule amendments will include programs that include middle schools across the state. Language will include programs that train teachers where currently the grant language only encompasses materials and equipment. Districts that do not spend their grant money will have funds withheld from AP incentive funds rather than state aid.

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 52. ADVANCED PLACEMENT INCENTIVE PROGRAM

210:40-52-5. Equipment and materials grants and vertical teaming grants

(a) At such point in the legislative session that state funds are appropriated for this competitive grant program to be awarded by the State Board of Education, and administered by the State Department of Education, a notification letter will be sent to each district superintendent announcing the availability of application forms.

(1) The notification will clearly state those grant programs for which applications are being solicited and state the name and telephone number of the contact person at the Department who administers the program.

(2) The original grant application and three (3) copies will be submitted to the grant administrator. A specific deadline date will be clearly stated in the application solicitation letter. This date may vary from year to year depending on the point in the legislative session that grant funds are appropriated.

(3) The signature of the Chief Executive Officer of the local educational agency must appear on the application.

(4) The Oklahoma Advanced Placement Incentives Program grants are site based. A school site may apply for a one-time equipment and materials grant of up to \$5000 for each Advanced Placement or International Baccalaureate course. (Two sections of a course such as Advanced Placement Calculus are considered to be one course.)

(5) Additional grants may be awarded to school sites demonstrating successful implementation of the Advanced Placement or International Baccalaureate course for which the original equipment and materials grant was awarded. Successful implementation may be demonstrated by, but is not limited to:

(A) The class having been reported on the Application for Accreditation Coded Class Schedule.

(B) A student having completed the relevant Advanced Placement or International Baccalaureate examination.

(C) A student having scored three or better for Advanced Placement or four or better on International Baccalaureate on the relevant examination.

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- (D) Evidence of activities to prepare growing numbers of students for the challenges offered by the Advanced Placement or International Baccalaureate classes.
- (6) Vertical team grants for the purpose of enabling school districts to prepare growing numbers of students for the challenges offered by the Advanced Placement or International Baccalaureate classes. Vertical team grants are content area and team-based. A school district may apply for a vertical team grant for a content area team from a high school and its feeder middle level school(s). The vertical team shall include at least one representative from each grade level in the content area for grades seven (7) through twelve (12).
- (7) Grants for the purpose of implementing a program that supports training for the development or continuation of Advanced Placement (AP) or Pre-AP classes at a public middle or high school.
- (b) The evaluation of the grant applications will take place following the submission deadline. Grant applications shall be read, evaluated, and scored by a committee of outside evaluators.
- (1) Each evaluation committee member shall possess expertise relative to the content area of the grant.
- (2) Selection committee members will not evaluate an application from his or her own site.
- (3) Each application for an equipment and materials grant will be scored in the following areas:
- (A) Rationale demonstrating understanding of program and need for funds
- (B) Teacher quality relevant to preparation for teaching a challenging course and willingness to participate in professional development opportunities relative to Advanced Placement or International Baccalaureate curriculum
- (C) Budget meets intent of the grant
- (4) Each application for a vertical team grant will be scored in the following areas:
- (A) Abstract briefly summarizing the grant proposal.
- (B) Significance of the project answering the question, "How will the proposed vertical team address the program purpose?"
- (C) Project design describing the steps to be taken to organize the Vertical Team as well as the steps to be taken to develop and sustain the Vertical Team.
- (D) Vertical team make-up describing the staff positions to be included on the Vertical Team and describing the training of these persons.
- (E) Program quality describing the degree to which the Advanced Placement or International Baccalaureate program has been implemented as defined in the grant application.
- (F) Budget consistent with intent of the grant. Allowable expenditures include but are not limited to:
- (i) Release time for vertical team members
- (ii) Vertical team resources

- (G) Expenditures which are not allowed include but are not limited to:
- (i) Facilities
- (ii) Training which is otherwise available through the Oklahoma Advanced Placement Incentives Program
- (iii) Expenditures related to Internet access
- (H) Program evaluation describing how the proposed vertical team will be evaluated in relation to the program purpose.
- (c) After evaluation, a recommendation will be made to the State Board of Education those applications determined to be eligible for funding.
- (d) As a final report, each grantee shall agree to send an Oklahoma Cost Accounting System printout for the appropriate code showing proper expenditure of funds. Data collected will be compiled and submitted as requested by the State Department of Education. Grant funds spent for purposes or items other than those approved by the State Board of Education or the grant administrator will be withheld in like amount in ~~state~~ AP Incentive funds to that district. For the purpose of this funding opportunity, "materials" are defined as instructional items (i.e., books, manipulatives, etc.) and "equipment" is any necessary device (i.e., graphing calculators and overhead models, etc.) directly related to Advanced Placement or International Baccalaureate course(s).

[OAR Docket #09-1288; filed 10-9-09]

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

[OAR Docket #09-1281]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-22. [AMENDED]

(Reference APA WF # 09-38)

AUTHORITY:

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

DATES:

Adoption:

August 26, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, 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 amend policy to reflect that providers may use

prenatal assessment forms which cover the same elements as the American College of Obstetricians and Gynecologist (ACOG). Currently rules specify that the ACOG assessment form must be used. This narrow specification is impeding providers' ability to utilize electronic records and forms with the same information. Quality of treatment may be affected due to providers forgoing use of required OHCA prenatal psychosocial assessment forms since they are unable to seek reimbursement without use of the ACOG assessment form.

ANALYSIS:

Rules are being revised to allow flexibility in the types of prenatal assessment forms that may be used. Currently rule specifies that American College of Obstetricians and Gynecologist (ACOG) assessment form must be used.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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 5. INDIVIDUAL PROVIDERS AND SPECIALITIES

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) - (8) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form or form covering same elements as ACOG 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 ultrasonography.

(B) One ultrasound after the first trimester will be covered. This ultrasound must be performed by a board certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography.

(C) Additional ultrasounds, including detailed ultrasounds and re-evaluations of previously identified or suspected fetal or maternal anomalies must be performed by an active candidate or Board Certified diplomat in Maternal-Fetal Medicine. Up to six repeat ultrasounds are allowed after which, prior authorization is required.

(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.

(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 diplomat in Maternal Fetal Medicine.

(8) Nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who

Emergency Adoptions

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) Additional non stress tests, unless the pregnancy is determined medically high risk. 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 surgeon for obstetrical procedures 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.

[OAR Docket #09-1281; filed 10-7-09]

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

[OAR Docket #09-1280]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-42.11. [AMENDED]

(Reference APA WF # 09-34)

AUTHORITY:

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

DATES:

Adoption:

August 26, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, 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 amend policy to provide clarification that observation services are not covered as part of another service i.e. post operative monitoring; recovery after diagnostic testing or concurrently with therapeutic services such as chemotherapy. Without the revisions to the rule providers will not have clarification of when observation services are not covered.

ANALYSIS:

Agency rules are modified to provide clarification for providers billing for observation/treatment services. The modification provides examples of outpatient observation services that are not covered when they are provided. This change provides clarification and education to providers.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-42.11. Observation/treatment

(a) Payment is made for the use of a treatment room associated with outpatient observation services. Observation services must be ordered by a physician or other individual authorized by state law. Observation services are furnished by the hospital on the hospital's premises and include use of the bed and periodic monitoring by hospital staff. Observation services must include a minimum of 8 hours of continuous care. Outpatient observation services are not covered when they are provided:

(1) On the same day as an emergency department visit.

(2) Prior to an inpatient admission, as those observation services are considered part of the inpatient DRG.

(3) For the convenience of the member, member's family or provider.

(4) When specific diagnoses are not present on the claim.

(5) As part of another service, i.e. for post operative monitoring; recovery after diagnostic testing or concurrently with therapeutic services such as chemotherapy.

(b) Payment is made for observation services in a labor or delivery room. Specific pregnancy-related diagnoses are required. During active labor, a fetal non-stress test is covered in addition to the labor and delivery room charge.

[OAR Docket #09-1280; filed 10-7-09]

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

[OAR Docket #09-1279]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95. [AMENDED]

(Reference APA WF # 09-29)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes, Section 1-702 of Title 63

DATES:

Adoption:

August 26, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, 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 amend policy to allow an exception for hospitals and residential psychiatric treatment centers that are operated by the state mental health department. Currently persons between the ages of 18-21 are eligible to receive residential psychiatric treatment services but the residential licensing agency in the State of Oklahoma is only able to license facilities for persons up to the age of 18.

ANALYSIS:

Behavioral Health rules are revised to allow licensing requirements exceptions for hospitals and residential psychiatric treatment centers that are operated by the state mental hospital. Persons between the ages of 18-21 currently are eligible to receive residential psychiatric treatment services but the licensing agency in Oklahoma is only able to license facilities for persons up to the age of 18. OHCA rules deem that facilities have to be licensed. Title 63 O.S. Section 1-702 exempts hospitals operated by the federal government, state mental hospitals and community-based structured crisis centers from licensing requirements.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

**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 5. INDIVIDUAL PROVIDERS
AND SPECIALITIES**

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

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

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

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

(1) **"AOA"** means American Osteopathic Accreditation.

(2) **"CARF"** means the Commission on Accreditation of Rehabilitation Facilities.

(3) **"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.

(4) **"Licensed independent practitioner (LIP)"** means any individual permitted by law and by the licensed hospital to provide care and services, without supervision, within the scope of the individual's license and consistent with clinical privileges individually granted by the licensed hospital. Licensed independent practitioners may include Advanced Practice Nurses (APN) with prescriptive authority and Physician Assistants.

(5) **"Psychiatric Residential Treatment Facility (PRTF)"** means a facility other than a hospital.

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

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

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

(1) appropriately licensed and surveyed by the state survey agency;

(2) accredited by JCAHO; and

(3) contracted with the Oklahoma Health Care Authority (OHCA).

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(d) **Psychiatric Residential Treatment Facility (PRTF).** A PRTF is any non-hospital facility contracted with the OHCA to provide inpatient services to SoonerCare eligible members under the age of 21. To enroll as a hospital-based or freestanding PRTF, the provider must be appropriately state licensed pursuant to Title 40 O.S. 402 10 O.S. Section 402 and approved by the OHCA to provide services to individuals under age 21. Distinct PRTF units of state operated psychiatric hospitals serving individuals ages 18-22 are exempt from licensure pursuant to Title 63 O.S. Section 1-702. Out-of-state PRTFs should be appropriately licensed in the state in which they do business. In addition, the following requirements must be met:

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

(2) **Attestation letter.** The attestation letter at a minimum must include:

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

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

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

[OAR Docket #09-1279; filed 10-7-09]

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

[OAR Docket #09-1282]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.2. [AMENDED]

(Reference APA WF # 09-43)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Senate Bill 987 of the 1st Session of the 52nd Oklahoma Legislature (2009)

DATES:

Adoption:

August 26, 2009

Approved by Governor:

October 2, 2009

Effective:

November 1, 2009

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to comply with Senate Bill 987 of the 1st Session of the 52nd Oklahoma Legislature (2009). Senate Bill 987 increased certain burial trust account thresholds from \$7,500 to \$10,000 effective November 1, 2009. In order for the agency to have rules in place to reflect the higher burial amount exemption by November 1, 2009, emergency rules must be promulgated at this time.

ANALYSIS:

SoonerCare eligibility rules are revised to comply with Senate Bill 987 of the 1st Session of the 52nd Oklahoma Legislature (2009) by increasing certain burial trust account thresholds from \$7,500 to \$10,000 effective November 1, 2009. Oklahoma law provides that purchasers of a prepaid funeral contract may elect to make the contract irrevocable. Current rules stipulate that the face value amount in an irrevocable contract cannot exceed \$7,500 plus accrued interest. When the amount is in excess of \$7,500, the individual is ineligible for SoonerCare. Senate Bill 987 increases the irrevocable burial contract limit from \$7,500 to \$10,000 effective November 1, 2009. Therefore, rule revisions are needed to increase the threshold to \$10,000.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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 NOVEMBER 1, 2009:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41.2. Miscellaneous Personal property

(a) **Property used to produce goods and services.** Personal property necessary to perform daily activities or to produce goods for home consumption is excluded if the equity value does not exceed \$6000. An equity value in excess of \$6000 is a countable resource. The property does not have to produce a 6% annual return. The \$6000 equity maximum includes all such resources in total and does not pertain to each item separately. Examples of property used to produce goods and services are tractors, wildcatting tools, mechanized equipment for gardening, livestock grown for home consumption, etc.

(b) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a countable resource. The member's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the member does not have records to verify the amount on deposit, verification is obtained from bank records. Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the member or the Agency.

(1) Checking accounts may or may not represent savings. Current bank statements are evaluated with the member to establish what, if any, portion of the account represents savings. Any income which has been deposited during the current month is not considered unless it exceeds what is considered as ordinary maintenance expense for the month.

(2) Accounts which are owned jointly by the member and a person not receiving SoonerCare are considered available to the member in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the member is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.

(c) **Life insurance policies.** If the total face value of all life insurance policies owned by an individual is \$1500 or less, the policies (both face value and cash surrender value) are excluded as resources.

(1) If the total face value of all policies owned by an individual exceeds \$1500, the net cash surrender value of such policies must be counted as resources. Life insurance policies which do not provide a cash surrender value (e.g., term insurance) are not used in determining whether the total face value of all policies is over \$1,500.

(2) The face value of a life insurance policy which has been assigned to fund a prepaid burial contract must be evaluated and counted according to the policy on burial

funds or, if applicable, the policy on the irrevocable burial contract.

(3) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the member's possession or by use of the OKDHS Form 08MP061E, Request to Insurance Company.

(4) Dividends which accrue and which remain with the insurance company increase the amount of resource. Dividends which are paid to the member are considered as income.

(5) If an individual has a life insurance policy which allows death benefits to be received while living, and the individual meets the insurance company's requirements for receiving such proceeds, the individual is not required to file for such proceeds. However, if the individual does file for and receive the benefits, the payment will be considered as income in the month it is received and countable as a resource in the following months to the extent it is available. The payment of such benefits is not considered a conversion of a resource because the cash surrender value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.

(d) **Burial spaces.** The value of burial spaces for an individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources. "Burial spaces" means conventional grave sites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons. "Immediate family" means individual's minor and adult children, including adopted children and step-children; and individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member.

(e) **Burial funds.** Revocable burial funds not in excess of \$1500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the individual's spouse. Any amount in excess of \$1500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies.

(1) "Burial funds" means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the individual's or spouse's burial expenses.

(2) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (1) of this subsection.

(3) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the individual or spouse; and amounts in an irrevocable trust or other irrevocable arrangement.

(4) Interest earned or appreciation on the value of any excluded burial funds is excluded if left to accumulate and become a part of the burial fund.

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(5) If the member did not purchase his/her own prepaid burial, even if his/her money was used for the purchase, the member is not the "owner" and the prepaid burial funds cannot be considered a resource to him/her. However, if the member's money was used by another to purchase the prepaid burial, the rules on transfer of property must be applied since the purchaser (owner) could withdraw the funds any time.

(f) **Irrevocable burial contract.** Oklahoma law provides that a purchaser (buyer) of a prepaid funeral contract may elect to make the contract irrevocable. The irrevocability cannot become effective until 30 days after purchase. For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner). In instances where the OKDHS Form 08MA084E, Management of Recipient's Funds, is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the member.

(1) If the irrevocable election was made prior to July 1, 1986, and the member received assistance on July 1, 1986, the full amount of the irrevocable contract is not considered a countable resource. This exclusion applies only if the member does not add to the amount of the contract. Interest accrued on the contract is not considered as added by the member. Any break in assistance will require that the contract be evaluated at the time of reapplication according to rules in (2) of this subsection.

(2) If the effective date for the irrevocable election or application for assistance is July 1, 1986, or later:

(A) the face value amount ~~in~~ of an irrevocable burial contract cannot exceed ~~\$7,500~~ \$6,000 plus accrued interest through August 4, 1998.

(B) the face value amount of an irrevocable burial contract cannot exceed \$7,500 plus accrued interest for the period August 5, 1998, through October 31, 2009.

~~(B.C)~~ a member may exclude after November 1, 2009, state statute excludes the face value of an irrevocable burial contract, up to \$7,500 \$10,000. This exclusion includes , plus accrued interest in any combination of irrevocable contract, revocable pre-paid account, designated account or cash value in life insurance policies not used to fund the burial policy, regardless of the face value, provided the cash value in policies and designated accounts does not exceed \$1500. When the amount exceeds \$7,500 \$10,000, the member is ineligible for assistance. Accrued interest is not counted as a part of the \$7,500 \$10,000 limit regardless of when it is accrued.

~~(C.D)~~ the face value of life insurance policies used to fund burial contracts is counted towards the \$7,500 \$10,000 limit.

~~(3) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner).~~

~~(4) In instances where the OKDHS Form 08MA084E, Management of Recipient's Funds, is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the member.~~

(g) **Medical insurance.** If a member is covered by insurance other than SoonerCare, then SoonerCare is the payer of last resort and should not be bill until all other payers have paid. If payment is made directly to the member, the member must reimburse OHCA up to the amount paid by SoonerCare. Any amount remaining after payment to OHCA is considered as an available resource.

[OAR Docket #09-1282; filed 10-7-09]

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

[OAR Docket #09-1278]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-42. [AMENDED]

Subchapter 10. Medical Aid to Families with Dependent Children

Part 5. Income

317:35-10-26. [AMENDED]

(Reference APA WF # 09-22)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Sections 1902(r)(2) and 1931 of the Social Security Act

DATES:

Adoption:

August 26, 2009

Approved by Governor:

October 2, 2009

Effective:

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Register publication:

26 Reg 1768

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09-907

Gubernatorial approval:

April 28, 2009

(Reference APA WF # 09-15A)

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-42. [AMENDED]

Subchapter 10. Medical Aid to Families with Dependent children

Part 5. Income

317:35-10-26. [AMENDED]

Gubernatorial approval:

April 28, 2009

Register publication:

26 Ok Reg 1968

Docket number:

09-907

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 disregard the earned income from temporary census employment when determining eligibility for SoonerCare benefits. The agency submitted a state plan amendment to disregard this income and rule revisions are necessary to bring agency rules in line with the approved state plan.

ANALYSIS:

Agency eligibility rules are revised to disregard the earned income from temporary census employment. Every ten years, the Census Bureau conducts the decennial census. For the 2010 Census, the Census Bureau expects to hire more than 900,000 employees over the course of the census. Most of these employees are enumerators that conduct fieldwork who are hired very locally and who only work for a brief period of time. States are given the option by CMS to disregard this temporary income, which Oklahoma has done for the last several decennial censuses. This disregard has been added to our state plan and rules must be revised to agree with the plan.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) General. The term income is defined as that gross gain or gross recurrent benefit which is derived from labor, business, property, retirement and other benefits, and many other forms which can be counted on as currently available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income.

- (1) If it appears the applicant or SoonerCare member is eligible for any type of income (excluding SSI) or resources, he/she must be notified in writing by the Agency of his/her potential eligibility. The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within 30 days from the date of the notice will result in a determination of ineligibility.
(2) If a husband and wife are living in their own home, the couple's total income and/or resource is divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.
(3) If only one spouse in a couple is eligible and the couple ceases to live together, consider only the income

and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month which they ceased to live together are considered.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (14 - 94 cents is rounded down, and 504 - 994 cents is rounded up). For example, an individual's weekly earnings of \$99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar (\$99.90 x 4.3 = \$429.57 rounds to \$430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify OASDI benefits.

(b) Income disregards. In determining need, the following are not considered as income:

- (1) The coupon allotment under the Food Stamp Act of 1977;
(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
(3) Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;
(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Form 08AD103E, Loan Verification, form should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E Loan Verification form are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.

(C) Proceeds of a loan secured by an exempt asset are not an asset;

- (5) One-third of child support payments received on behalf of the disabled minor child;
(6) Indian payments (including judgement funds or funds held in trust) distributed per capita by the Secretary of the Interior (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from

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tribal business investments, etc., as long as the payments are made per capita. For purposes of this Subchapter, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;

(7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;

(8) Title III benefits from State and Community Programs on Aging;

(9) Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the national School Lunch Act;

(12) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;

(14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;

(15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;

(17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) LIHEAP payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(19) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange product liability litigation*, M.D.L. No. 381 (E.D.N.Y.);

(20) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries

or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(21) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;

(22) Income of a sponsor to the sponsored eligible alien;

(23) The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual member, guardian or conservator, such funds are considered as available income. If the BIA determines the funds are not available, they are not considered in determining eligibility. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as unearned income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual member, guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual member, guardian or conservator. When the county office is unable to resolve the situation with the BIA, the county submits a referral to the appropriate section in OKDHS Family Support Services Division (FSSD). The referral must include specific details of the situation, including the county's efforts to resolve the situation with the BIA. If FSSD cannot make a determination, a legal decision regarding availability will be obtained by FSSD, and then forwarded to the county office by FSSD. When a referral is sent to FSSD, the funds are considered as unavailable with a legal impediment until the county is notified otherwise.

(C) At each reapplication or redetermination, the worker is to contact BIA to obtain information regarding any changes as to the availability of the funds and any information regarding modifications to the IIM account. Information regarding prior disbursements is also obtained at this time. All of this information is reviewed for the previous six or twelve-month period, or since the last contact if the contact was within the last certification or redetermination period.

(D) When disbursements have been made, the worker determines whether such disbursements were made to the member or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income

to the member. Workers should obtain documentation to verify services rendered and payment made by BIA.

(E) Amounts disbursed directly to the members are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received;

(24) Income up to \$2,000 per year received by individual Indians, which are derived from leases or other uses of individually-owned trust or restricted lands;

(25) Income that is set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of income excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(26) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(27) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;

(28) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;

(29) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

(30) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183); and

(31) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);

(32) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009; and

(33) Wages paid by the Census Bureau for temporary employment related to Census activities.

(c) **Determination of income.** The member is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility.

(1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.

(2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income; (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of ~~medical assistance~~ SoonerCare and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the ~~medical assistance~~ SoonerCare benefit and SSP case. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.

(3) Some of the more common income sources to be considered in determining eligibility are as follows:

(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.

(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:

- (I) seeing the member's award letter or warrant;
- (II) obtaining a signed statement from the individual who cashed the warrant; or
- (III) by using BENDEX and SDX.

(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS ~~Appendix C-2-A~~ Form 08AX011E.

(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.

(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:

(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third party resources and do not

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affect the income eligibility or the vendor payment of the member.

(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.

(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to \$90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to \$90 per month. None of the \$90 may be used in computing any vendor payment or spenddown. In these instances, the nursing home resident is entitled to the \$90 reduced VA pension as well as the regular nursing facility maintenance standard. Any vendor payment or spenddown will be computed by using other income minus the monthly nursing facility maintenance standard minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.

(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for the mentally retarded or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(C) **Lump sum payments.**

(i) Any income received in a lump sum (with the exception of SSI lump sum) covering a period of more than one month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, including SSI (with the exception of dedicated bank accounts for disabled/blind children under age 18), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, retroactive OASDI, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.

(ii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age

18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.

(iii) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.

(iv) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.

(D) **Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.

(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six months' royalty income is computed and used to determine income eligibility. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two month's royalty income is averaged to compute countable monthly income.

(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from rent property is treated as unearned income.

(iii) When property rental is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.

(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services;

e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.

(i) Advance payments of EITC or refunds of EITC received as a result of filing a federal income tax return are considered as earned income in the month they are received.

(ii) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.

(iii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business expense and appropriate earned income disregards.

(iv) Self-employment income is determined as follows:

(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount as well as the allowable deductions are the same as can be claimed under the Internal Revenue code for tax purposes.

(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.

(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted

for by the work related expense deduction given in OAC 340:10-3-33(1)).

(v) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(F) **Inconsequential or irregular income.** Inconsequential or irregular receipt of income in the amount of \$10 or less per month or \$30 or less per quarter is disregarded. The disregard is applied per individual for each type of inconsequential or irregular income. To determine whether the income is inconsequential or irregular, the gross amount of earned income and the gross minus business expense of self-employed income are considered.

(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.

(ii) **Weekly.** Income received weekly is multiplied by 4.3.

(iii) **Twice a month.** Income received twice a month is multiplied by 2.

(iv) **Biweekly.** Income received every two weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(d) **Computation of income.**

(1) **Earned income.** The general income exclusion of \$20 per month is allowed on the combined earned income of the eligible individual and eligible or ineligible spouse. See paragraph (6) of this subsection if there are ineligible minor children. After the \$20 exclusion, deduct \$65 and one-half of the remaining combined earned income.

(2) **Unearned income.** The total gross amount of unearned income of the eligible individual and eligible or

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ineligible spouse is considered. See paragraph (6) of this subsection if there are ineligible minor children.

(3) **Countable income.** The countable income is the sum of the earned income after exclusions and the total gross unearned income.

(4) **Deeming computation for disabled or blind minor child(ren).** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age 18.

(A) A mentally retarded child living in the home who is ineligible for SSP due to the deeming process may be approved for ~~Medical Assistance~~ SoonerCare under the Home and Community Based Services Waiver (HCBW HCBS) Program as outlined in OAC 317:35-9-5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(5) **Premature infants.** Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents' income ~~are~~ is not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(6) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS ~~Appendix C-1 Form 08AX001E~~, Schedule VII. C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.

(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

(7) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense

need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three broad categories:

- (A) transportation to and from work;
- (B) job performance; and
- (C) job improvement.

SUBCHAPTER 10. MEDICAL AID TO FAMILIES WITH DEPENDENT CHILDREN

PART 5. INCOME

317:35-10-26. Income

(a) General provisions regarding income.

(1) The income of categorically needy individuals who are related to AFDC or Pregnancy does not require verification, unless questionable. If the income is questionable the worker must verify the income. The worker views all data exchange screens on all individuals included in the household size. If the data exchange screen reveals conflicting information, the worker must resolve the conflicting information and if necessary, request verification.

(2) All available income, except that required to be disregarded by law or OHCA's policy, is taken into consideration in determining need. Income is considered available both when actually available and when the applicant or member has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. The member is responsible for reporting all income, the source, amount and how often received.

(A) Income received on behalf of a member of the benefit group by another individual such as, but not limited to, a guardian or conservator, is considered available to the benefit group.

(B) Money received and used for the care and maintenance of a third party who is not included in the benefit group is not counted as income if it can be identified and verified as intended for third party use.

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income or benefits, the benefit group must be notified in writing by the Oklahoma Department of Human Services (OKDHS). The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within 30 days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by

either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to a SSI recipient's income in computing eligibility for the AFDC or Pregnancy related unit.

(E) Income which can reasonably be anticipated to be received is considered to be available for the month its receipt is anticipated.

(F) Income produced from resources must be considered as unearned income.

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the member or an interview with the employer. Pay stubs may only be used for verification if they have the member's name and/or social security number indicating that the pay stubs are in fact the member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received any wages, verification (if necessary) of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

(4) Monies received in a lump sum from any source are considered income in the month received. Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment. Exception: lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded.

(A) A nonrecurring lump sum payment considered as income includes payments based on accumulation of income and payments which may be considered windfall in nature and may include but are not limited to TANF grant diversion, VA or Social Security lump sum payments, inheritance, gifts, worker's compensation payments, cash winnings, personal injury awards, etc. Retirement benefits received in a lump-sum are considered as unearned income. A non-recurring lump sum SSI retroactive payment, made to an AFDC or pregnancy related recipient who is not currently eligible for SSI, is not counted as income.

~~(B) The worker must ask applicants if they have received a lump sum payment during the month of application, any month during the application process or anticipate to receive a lump sum in the future. Members are asked at the time of periodic redetermination~~

~~if the benefit group has received or is expecting to receive a lump sum. The worker provides an oral explanation, including examples of lump sum payments, how the rule affects other benefits and the importance of reporting anticipated receipt of a lump sum payment. The worker also offers counseling when there is indication of anticipated receipt, including voluntary withdrawal of the application or case closure and availability of free legal advice.~~

~~(C) Lump sum payments (minus allowable deductions related to establishing the lump sum payment) which are received by AFDC/Pregnancy related individuals or applicants are considered as income. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose which may include, but are not limited to, attorney's fees and court costs that are identified in the lump sum settlement, medical or funeral expenses for the immediate family, etc. "Earmarked" means that such expense is specifically set forth in the settlement or award.~~

~~(D) When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy.~~

~~(E) When a third party reveals that a lump sum payment has been received or is expected to be received by the applicant or member, adverse action notification is given or mailed to the applicant/member and appropriate action taken.~~

~~(F) Recurring lump sum income received from any source for a period covering more than one month, that is received in a lump sum recurrently (such as annual rentals from surface or minerals, Windfall Profits tax refund, etc.) is prorated over a period of time it is intended to cover, beginning with the month of receipt of a lump sum payment.~~

~~(G) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six months, will be averaged and considered as income for the next six months. In instances where an applicant or a member receives new income from oil and gas production and verification for the past six months is not available, the worker accepts the available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company.~~

(5) Income that is based on the number of hours worked, as opposed to income based on regular monthly wages, must be computed as irregular income. The income received irregularly or in varying amounts will be averaged using the past two months to establish the amount to be anticipated and considered for prospective budgeting.

(6) A caretaker relative can only be included in the benefit group when the ~~natural or biological or adoptive~~ parent

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is not in the home. A stepparent can be included when the biological or adoptive parent is either incapacitated or not in the home.

(A) Consideration is not given to the income of the caretaker relative or the income of his or her spouse in determining the eligibility of the children regardless of whether the caretaker relative's needs are or are not included. However, if that person is the stepparent, the policy on stepparent liability is applicable.

(B) If a caretaker relative is married and living with the spouse who is an SSI or SSP recipient, the spouse or spouse's income is not considered in determining the eligibility of the ~~relative~~ caretaker relative. The income of the caretaker relative and the spouse who is not an SSI or SSP recipient must be considered. Only one caretaker relative is eligible to be included in any one month.

(7) A stepparent can be included when the ~~natural or biological or adoptive~~ parent is either incapacitated or not in the home. The income of the stepparent is counted if the stepparent's needs are being included.

(8) When there is a stepparent or person living in the home with the ~~natural biological~~ or adoptive parent who is not a spouse by legal marriage to or common-law relationship with the own parent ~~but who is acting in the role of a spouse~~, the worker determines the amount of income that will be made available to meet the needs of the child(ren) and the parent. Only contributions made in cash directly to the benefit group can be counted as income. In-kind contributions are disregarded as income. When the individual and the member state the individual does not make a cash contribution, further exploration is necessary. This statement can only be accepted after clarifying that the individual's contributions are only in-kind.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Payments made for accumulated annual leave/vacation leave, sick leave or as severance pay are considered as earned income whether paid during employment or at termination of employment. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed. Income received as a one-time nonrecurring payment is considered as a lump sum payment. Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income. Gross earned income is used to determine eligibility. Gross earned income

is defined as the ~~true~~ wage" prior to payroll deductions and/or withholdings.

(1) **Earned income from self-employment.** If the income results from the ~~individual's~~ individual's activities primarily as a result of the ~~individual's~~ individual's own labor from the operation of a business enterprise, the "earned income" is the total profit after deducting the business expenses (cost of the production). Money from the sale of whole blood or blood plasma is also considered as self-employment income subject to necessary business expense and appropriate earned income exemptions.

(A) Allowable costs of producing self-employment income include, but are not limited to, the identifiable cost of labor, stock, raw material, seed and fertilizer, interest payments to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(i) The federal or state income tax form for the most recent year is used for calculating the income, ~~if necessary~~, only if it is representative of the individual's current situation. The individual's business records beginning the month income became representative of the individual's current situation is used if the income tax information does not represent the individual's current situation.

(ii) If the self-employment enterprise has been in existence for less than a year, the income is averaged over the period of time the business has been in operation to establish the monthly income amount.

(iii) Self-employment income which represents an annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(B) **Items not considered.** The following items are not considered as a cost of producing self-employed income:

(i) The purchase price and/or payments on the principal of loans for capital assets, equipment, machinery, and other durable goods;

(ii) Net losses from previous periods;

(iii) Depreciation of capital assets, equipment, machinery, and other durable goods; and

(iv) Federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation. These expenses are accounted for by the work related expense deduction.

(C) **Room and/or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as a business expense. If the earned income includes payment for room and board, 50% of the gross amount received is considered as a business expense.

(D) **Rental property.** Income from rental property is to be considered income from self employment if none of the activities associated with renting the property is conducted by an outside-person or agency.

(2) **Earned income from wages, salary or commission.** If the income is from wages, salary or commission, the "earned income" is the gross income prior to payroll deductions and/or withholdings. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as any other earned income.

(3) **Earned income from work and training programs.** Earned income from work and training programs such as the Job Training Partnership Act (JTPA) received by an adult as wages is considered as any other earned income. Also, JTPA earned income of a dependent child is considered when received in excess of six months in any calendar year.

(4) **Individual earned income exemptions.** Exemptions from each individual's earned income include a monthly standard work related expense and child care expenses the individual is responsible for paying. Expenses cannot be exempt if paid through state or federal funds or the care is not in a licensed facility or home. Exempt income is that income which by law may not be considered in determining need.

(A) **Work related expenses.** The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member of the benefit group.

(B) **Child care expenses.** Disregard of child care expense is applied after all other income disregards.

(i) Child care expense may be deducted when:

(I) suitable care for a child included in the benefit group is not available from responsible persons living in the home or through other alternate sources; and

(II) the employed member whose income is considered must purchase care.

(ii) Child care expenses must be verified and the actual amount per month, as paid, up to a maximum of \$200 for a child under the age of two or \$175 for a child age two or older may be deducted.

~~In considering the care expense, only actual work hours and travel time between work and the child care facility or child care home will be allowed.~~

~~(iii) In explaining child care expenses, the worker informs the individual that payment for care is the responsibility of the member and any changes in the plan for care must be reported immediately.~~

~~(iv) Oklahoma law requires all child care centers and homes be properly approved or licensed; therefore, child care expenses can only be~~

~~deducted if the child is in a properly licensed facility or receiving care from an approved in-home provider. However, in cases where licensed dependent care facilities and/or approved in home providers are not available (e.g., night employment), and the member arranges for care outside the home, an immediate referral is made by OKDHS Form K 13 to the licensing worker for a licensing decision. The cost of child care can be considered until the worker receives notification from the licensing worker that the home does not meet licensing standards or registration. If licensing or registration is denied, the member will be allowed 30 days after notification to make other child care arrangements, during which time the child care exemption will continue to be allowed.~~

~~(v) Child care provided by another person in the household who is not a member of the benefit group may be considered as child care expenses as long as the home meets applicable standards of State, local or Tribal law.~~

~~(vi) Documentation is made of the child care arrangement indicating the name of the child care facility or the name of the in-home provider, and the documentation used to verify the actual payment of child care per month.~~

(5) **Formula for determining the individual's net earned income.** Formulas used to determine net earned income to be considered are:

(A) **Net earned income from employment other than self-employment.** Gross Income minus work related expense minus child care expense equals net income.

(B) **Net earned income from self-employment.** Gross income minus allowable business expenses minus work related expense and child care expense equals net income.

(c) **Unearned income.**

(1) **Capital investments.** Proceeds, i.e., interest or dividends from capital investments, such as savings accounts, bonds (other than U.S. Savings Bonds, Series A through EE), notes, mortgages, etc., received constitute income.

(2) **Life estate and homestead rights.** Income from life estate or homestead rights, constitute income after deducting actual business expenses.

(3) **Minerals.** If the member owns mineral rights, only actual income from minerals, delayed rentals, or production is considered. Evidence is obtained from documents which the member has in hand. When the member has no documentary evidence of the amount of income, the evidence, if necessary, is secured from the firm or person who is making the payment.

(4) **Contributions.** Monetary contributions are considered as income except in instances where the contribution is not made directly to the member.

(5) **Retirement and disability benefits.** Income received monthly from retirement and disability benefits

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is are considered as unearned income. Information as to receipt and amount of OASDI benefits is obtained, if necessary, from BENDEX, the member's award letter, or verification from SSA. ~~If the individual states that he/she does not receive OASDI, has a pending application or has been denied OASDI, this can be verified, if necessary, by use of TPQYC computer transaction.~~ Retirement benefits received as a lump sum payment at termination of employment are considered as income. Supplemental Security Income (SSI) does not fall under these types of benefits.

(6) **Unemployment benefits.** Unemployment benefits are considered as unearned income.

(7) **Military benefits.** Life insurance, pensions, compensation, servicemen dependents' allowances and the like, are all sources of income which the member and/or dependents may be eligible to receive. In each case under consideration, information is obtained as to whether the member's son, daughter, husband or parent, has been in any military service. Clearance is made with the proper veterans' agency, both state and federal, to determine whether the benefits are available.

(8) **Casual and inconsequential gifts.** Monetary gifts which do not realistically represent income to meet living expenses, e.g., Christmas, graduation and birthday gifts, not to exceed \$30 per calendar quarter for each individual, are disregarded as income. The amount of the gifts are disregarded as received during the quarter until the aggregate amount has reached \$30. At that time the portion exceeding \$30 is counted as lump sum income. If the amount of a single gift exceeds \$30, it is not inconsequential and the total amount is therefore counted. If the member claims that the gift is intended for more than one person in the family unit, it is allowed to be divided. Gifts between members of the family unit are not counted.

(9) **Grants.** Grants which are not based on financial need are considered income.

(10) **Funds held in trust by Bureau of Indian Affairs (BIA).** The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the social worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual member, guardian or conservator, such funds are considered as available income. If the BIA determines the funds are not available, they are not considered. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual member,

guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual member, guardian or conservator.

(C) When disbursements have been made, the worker verifies whether such disbursements were made to the member or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income to the member. Workers obtain documentation to verify services rendered and payment made by BIA.

(D) Amounts disbursed directly to the members are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is counted in the month received.

(d) **Income disregards.** Income that is disregarded in determining eligibility includes:

(1) Food Stamp benefits;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Education Grants (including work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) is required to indicate that the loan is bona fide. If the loan agreement is not written, OKDHS Form ~~Adm 103~~ 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form ~~Adm 103~~ 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(5) Indian payments (including judgement funds or funds held in trust) which are distributed per capita by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

- (6) Special allowance for school expenses made available upon petition in writing from trust funds of the student;
 - (7) Benefits from State and Community Programs on Aging under Title III of the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;
 - (8) Unearned income received by a child, such as a needs based payment, cash assistance, compensation in lieu of wages, allowance, etc., from a program funded by the Job Training and Partnership Act (JTPA) including Job Corps income. Also, JTPA earned income received as wages, not to exceed six months in any calendar year;
 - (9) Payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);
 - (10) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;
 - (11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
 - (12) Any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native, which are exempt from taxation under the Settlement Act;
 - (13) If an adult or child from the family group is living in the home and is receiving SSI, his/her individual income is considered by the Social Security Administration in determining eligibility for SSI. Therefore, that income cannot be considered as available to the benefit group;
 - (14) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;
 - (15) Earnings of a child who is a full-time student are disregarded;
 - (16) The first \$50 of the current monthly child support paid by an absent parent. Only one disregard is allowed regardless of the number of parents paying or amounts paid. An additional disregard is allowed if payments for previous months were paid when due but not received until the current month;
 - (17) Government rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;
 - (18) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training, and uniform allowances if the uniform is uniquely identified with company name or logo;
 - (19) Low Income Home and Energy Assistance Program (LIHEAP) and Energy Crisis Assistance Program (ECAP) payments;
 - (20) Advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;
 - (21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
 - (22) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
 - (23) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments and disaster assistance organizations;
 - (24) Interests of individual Indians in trust or restricted lands;
 - (25) Income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands;
 - (26) Any home produce from garden, livestock and poultry utilized by the member and his/her household for their consumption (as distinguished from such produce sold or exchanged);
 - (27) Any payments made directly to a third party for the benefit of a member of the benefit group;
 - (28) Financial aid provided to individuals by agencies or organizations which base their payment on financial need;
 - (29) Assistance or services received from the Vocational Rehabilitation Program, such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and an other such complimentary payments; ~~and~~
 - (30) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;
 - (31) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-214);
 - (32) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);
 - (33) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);
 - (34) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009; and
 - (35) Wages paid by the Census Bureau for temporary employment related to Census activities.
- (e) In computing monthly income, cents will be carried at all steps until the monthly amount is determined and then will be rounded to the nearest dollar. These rounding procedures apply to each individual and each type of income. Income

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which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

- (1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplies by 4.3.
- (2) **Weekly.** Income received weekly is multiplied by 4.3.
- (3) **Twice a month.** Income received twice a month is multiplied by 2.
- (4) **Biweekly.** Income received every two weeks is multiplied by 2.15.

[OAR Docket #09-1278; filed 10-7-09]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #09-1283]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Vocational Rehabilitation and Visual Services
Part 15. Training
612:10-7-163 [AMENDED]

AUTHORITY:

The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, sections 701 through 791; Oklahoma Statute Title 74, Section 166.1 et seq.

DATES:

Adoption:

August 28, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

There is no effect on the public health, safety or welfare with these proposed policy changes; however, there is a compelling public interest of [not losing out on these stimulus funds which will be used for job creation for the disabled in Oklahoma].

ANALYSIS:

The change to this policy section involves the Department's expenditure of 7 million dollars of federal monies received in the federal government's stimulus package. This money was given to the Department to use as reimbursement for on the job training and as such requires the Department to change this policy to allow for use of the funds for job creation or lose the stimulus money.

CONTACT PERSON:

Ray Leard, Policy Development Administrative Programs Officer,
Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma
City, OK 73112 (405) 951-3406

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 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 15. TRAINING

612:10-7-163. On-the-job training

(a) When on-the-job training will best suit the client's needs, this type of training can be considered. This service does not require client participation in cost of services.

(b) In selecting on-the-job training sites, the counselor must assure the items in (1) - (6) of this Subsection are met:

- (1) The individual or business must have enough work to provide the client sufficient training.
- (2) The business or individual must be able to provide proper equipment.
- (3) The individual who actually does the training must be the employer, or an employee of the business, have the knowledge, skill, and ability to train the client.
- (4) Time must be devoted daily to the training of the client.
- (5) It is expected the client will be employable after a reasonable period of training.
- (6) The trainer must be willing to pay the client for work done after an initial period of training.

(c) The counselor must ensure the client does not become merely a subsidized employee. The client can be expected to do some productive work, but the trainer must realize the primary goal is to learn a vocation.

(d) There is no specific length of time for on-the-job training, as the length of time needed for training will vary with the complexity of the job being learned.

(e) Individuals and businesses which provide on-the-job training are expected to abide by the Wage and Hour Laws applicable to their particular businesses. If the business is subject to the Wage and Hour Law, the trainer must pay the client the applicable minimum wage unless the counselor issues a sub-minimum wage certificate. This permits the employer to pay less than the minimum wage for a specified period of time if the client has a severe disability.

(f) On-the-job training payments are ~~not to be used as reimbursement for, or in lieu of wages or~~ and ~~benefits paid by the employer. There is no relation between~~ the tuition rate paid to the employer and wages paid to the client. ~~Tuition~~ Reimbursement is paid to the ~~trainer~~ employer who pays the client just like his or her own employees. It is not permissible for the trainer to endorse the ~~tuition~~ reimbursement check and give it to the client in lieu of wages.

(g) ~~Tuition~~ Reimbursement for on-the-job training is paid on a monthly basis.

[OAR Docket #09-1283; filed 10-7-09]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #09-1285]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Public Policy
Part 3. Taxpayer Identification
710:1-3-6 [AMENDED]

AUTHORITY:

68 O.S. § 203; Oklahoma Tax Commission

DATES:

Adoption:

August 25, 2009 (Commission Order No. 2009-8-25-02)

Approved by Governor:

October 1, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Compelling public interest exists in the need for emergency implementation of this rule requiring the full social security number or taxpayer identification number of corporate officers on franchise tax returns due to inadequate computer systems of the Tax Commission's which are unable to process the returns in the manner prescribed in the rule at this time.

ANALYSIS:

This rulemaking action is undertaken to provide for the use of all 9 digits of a taxpayer's social security number on returns, applications, and forms required to be filed with the Oklahoma Tax Commission.

CONTACT PERSON:

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

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

SUBCHAPTER 3. PUBLIC POLICY

PART 3. TAXPAYER IDENTIFICATION

710:1-3-6. Use of Federal Employer Identification Numbers, Social Security Numbers and other identification numbers mandatory

(⊕) All returns, applications, and forms required to be filed with the Oklahoma Tax Commission (Commission) in the

administration of this State's tax laws shall bear the **Federal Employer's Identification Number(s)**, the **Social Security Account Number**, the **Taxpayer Identification Number**, and/or other government issued identification number of the person, firm, or corporation filing the item and of all persons required by law or agency rule to be named or listed. If more than one number has been issued to the person, firm, or corporation, then all numbers will be required.

(b) ~~The requirement to provide the Social Security Account Number, the Taxpayer Identification Number, or other government issued identification number of corporate officers required on the Franchise Tax Return and corporate officers and members, who are natural persons, of limited liability companies required on the Business Registration Application can be satisfied by providing only the last four digits of the applicable number in the format 000-00-1234.~~

[OAR Docket #09-1285; filed 10-8-09]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES**

[OAR Docket #09-1286]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 9. Motor Vehicle License Agents/Agencies
Part 13. ~~Special Provisions For Motor License Agent Application, Qualification, and Appointment And Agency Operation Applicable To Certain Motor License Agents And Agencies~~ [AMENDED]

710:60-9-130 [REVOKED]

710:60-9-130.1 [NEW]

710:60-9-131 [AMENDED]

710:60-9-133 [AMENDED]

710:60-9-134 [AMENDED]

710:60-9-135 [REVOKED]

710:60-9-137 [AMENDED]

AUTHORITY:

68 O.S. § 203; 47 O.S. § 1140; Oklahoma Tax Commission

DATES:

Adoption:

August 25, 2009 (Commission Order No. 2009-8-25-03)

Approved by Governor:

October 1, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Compelling public interest was found to warrant emergency promulgation of these rules to implement the changes to the motor license agents' application and appointment process authorized by the 52nd Legislature, 1st Regular Session, and effective July 1, 2009.

ANALYSIS:

The rule changes reflect the provisions of SB 888 which eliminates the population threshold relating to appointment procedures for motor license agents. The bill also permits currently appointed motor license agents to continue serving until such agent vacates the position. Senate Bill 888 establishes that the statutorily provided qualifications and requirements set

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forth in 47 O.S. § 1140 apply to all motor license agent applicants regardless of the population of the applicant's respective city or county.

CONTACT PERSON:

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

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

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 13. SPECIAL PROVISIONS FOR MOTOR LICENSE AGENT APPLICATION, QUALIFICATION, AND APPOINTMENT AND AGENCY OPERATION APPLICABLE TO CERTAIN MOTOR LICENSE AGENTS AND AGENCIES

710:60-9-130. Appointment/operation of motor license agents/agencies in municipalities having a population in excess of 8,500, located in a county having a population in excess of 130,000 [REVOKED]

~~In municipalities having a population in excess of Eight Thousand Five Hundred (8,500), located in a County having a population in excess of One Hundred Thirty Thousand (130,000), the appointment of Motor License Agents and the operation of Motor License Agencies shall be subject to additional requirements set out in Part 13 of this Subchapter.~~

710:60-9-130.1. Purpose

The provisions of this Part have been promulgated to facilitate the application and appointment guidelines for motor license agents appointed on or after July 1, 2009, pursuant to the Oklahoma Vehicle License and Registration Act (47 O.S. § 1140 et seq.), which are in addition to all other requirements and restrictions set forth in this Subchapter.

710:60-9-131. Application for the position of a motor license agent

- (a) The applicant must not have been convicted of a felony and/or no felony charges may be pending against the applicant.
- (b) The applicant must submit an authorization for release of criminal history and credit history along with a personal financial statement in a manner prescribed by the Tax Commission.
- (c) The applicant must be in compliance with all tax laws of the state of Oklahoma.
- (d) Prior to appointment as a ~~Motor License Agent~~ motor license agent, applicants for an appointment must submit an estimated budget, including the number of agency employees, for approval by the Oklahoma Tax Commission.

(~~e~~) As a condition precedent to appointment as a ~~Motor License Agent~~ motor license agent, applicant must obtain a faithful performance surety bond as provided by law. The applicant is to contact the Oklahoma Tax Commission for the amount of the bond required for the location of the agency. A commitment by the bonding company to issue the required bond in the amount specified by the Oklahoma Tax Commission or an affidavit that the applicant will provide a cash bond, must be attached to the applicant for the appointment as a ~~Motor License Agent~~ motor license agent.

(~~e~~) The application ~~with a~~ and the non-refundable statutory application fee is to be submitted to the Motor Vehicle Division of the Oklahoma Tax Commission.

710:60-9-133. Primary source of income

The Effective July 1, 2009, the compensation from the agency must be the primary source of income for all appointed motor license agents. The ~~Motor License Agent~~ motor license agent shall annually submit an affidavit that the income from the agency is ~~his or her~~ the motor license agent's primary source of income. The Commission may confirm the accuracy of that affidavit by examining income information from Commission files, or from an outside state or federal agency. By accepting appointment as a motor license agent, the appointee expressly grants consent to the Commission to examine the appointee's tax records, and other appropriate income-related information, for this purpose.

710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours

- (a) The location of the applicant's agency shall not be within a three (3) mile radius of an existing agency unless the applicant assumes the location of an existing agency. The Oklahoma Tax Commission may, at its discretion, approve the relocation of an existing agency within a three mile radius of another existing agency only if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three (3) miles of roadway by the most direct route.
- (b) No motor license agent shall select a location owned by a member of the Oklahoma Legislature or to any person related to a member of the Oklahoma Legislature within the third degree of consanguinity (by blood relation) or affinity (by marriage).
- (c) The number of agency employees is to be determined by the motor license agent subject to the Oklahoma Tax Commission's approval.
- (d) The motor license agent shall maintain adequate equipment to accommodate the employees of the agency and sufficient seating arrangements for the taxpayers as determined by the Oklahoma Tax Commission.
- (e) The Oklahoma Tax Commission shall determine the amount of office space the motor license agent shall maintain to provide a working area for the employees which is separate from the waiting area of the public. However, the amount of such office space shall not be less than Eight Hundred (800) square feet.

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[OAR Docket #09-1287]

(f) The Oklahoma Tax Commission shall determine the amount of public parking the motor license agent shall maintain. However, the number of parking spaces shall not be less than five (5) with at least one (1) space reserved for disabled persons. It shall be the responsibility of the motor license agent to ensure compliance with all applicable local and ADA (Americans with Disabilities Act) parking and customer access requirements.

(g) In addition to the payment of costs required by OAC 710:60-9-131(f) for new agents, existing motor license agents shall be responsible for all costs incurred by the Tax Commission when relocating an existing agency. Such payment may be waived by the Tax Commission in case of emergency or unforeseen business conditions beyond the control of the agent.

(h) The motor license agent shall provide and maintain, within the agency, a personal computer with internet access for use during normal business hours. The personal computer equipment provided by the motor license agent must satisfy the technical requirements established for such equipment by the Commission. Should those technical requirements change, it shall be the responsibility of the motor license agent to upgrade or replace their personal computer equipment as necessary to remain in continuous compliance.

710:60-9-135. Minimum office hours [REVOKED]

The Motor License Agent shall operate the Motor License Agency forty (40) hours a week of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours, may be reduced by the Oklahoma Tax Commission upon written application by the Motor License Agent.

710:60-9-137. Appointment

(a) Based upon the findings of a feasibility study performed by the Commission and other information as may be deemed applicable, the Administrator of the Commission may, at the Administrator's discretion, make motor license agent appointment recommendations to the Commission.

(b) The successful applicant will be furnished a letter of appointment after the interview has been conducted and the Oklahoma Tax Commission has received all the required information and documentation.

(c) If the applicant is rejected, the applicant will be forwarded a notification of rejection within ten (10) days along with the reason for rejection.

(d) The successful applicant must accept or reject the appointment, in writing, within thirty (30) days of the appointment letter.

(e) If the applicant accepts the appointment, he/she the applicant will be required to open his/her the agency within fifteen (15) days after acceptance of the appointment, unless a time extension is granted by the Commission.

[OAR Docket #09-1286; filed 10-8-09]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 18. Sourcing Pursuant To the Streamlined Sales and Use Tax Administration Act 710:65-18-5 [AMENDED]

AUTHORITY:

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

DATES:

Adoption:

September 10, 2009 (Commission Order No. 2009-9-10-02)

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Compelling public interest was found to warrant emergency promulgation of this rule to show compliance with the Streamlined Sales and Use Tax Administration Act; [68 O.S. §§ 1354.14 et seq].

ANALYSIS:

The rule change reflects the Streamlined Sales and Use Tax Administration Act which provides for the sale of an ancillary telecommunication service to be sourced to the customer's place of business.

CONTACT PERSON:

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

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

SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

710:65-18-5. Sourcing of telecommunications and other related services

(a) Definitions. The following words and terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

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(3) **"Communications channel"** means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(4) **"Customer"** means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. **"Customer"** does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(5) **"Customer channel termination point"** means the location where the customer either inputs or receives the communications;

(6) **"End user"** means the person who utilizes the telecommunications service. In the case of an entity, **"end user"** means the individual who utilizes the service on behalf of the entity. [68 O.S. Supp. 2003, § 1354.30(A)(6)]

(7) **"Home service provider"** means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act. [68 O.S. Supp. 2003, § 1354.30(A)(7)]

(8) **"Mobile telecommunications service"** means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act;

(9) **"Place of primary use"** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, **"place of primary use"** must be within the licensed service area of the home service provider;

(10) **"Post-paid calling service"** means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunications service;

(11) **"Prepaid calling service"** means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(12) **"Prepaid wireless calling services"** means a telecommunications wireless service that provides the right to utilize mobile wireless service as well as other nontelecommunication services, including the download of

digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount. [68 O.S. Supp 2007 1354.30(A)(12)]

(13) **"Private communication service"** means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and

(14) **"Service address"** means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in (A) of this paragraph is not known, **"service address"** means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and,

(C) If the locations in (A) and (B) of this paragraph are not known, **"service address"** means the location of the customer's place of primary use.

(b) **Services sold on a call-by-call basis.** Except for those telecommunications services defined in (d) of this Section, sales of telecommunications which are sold on a "call-by-call" basis are sourced in accordance with the following:

(1) When the call both originates and terminates in the same jurisdiction, the call is sourced to that jurisdiction.

(2) The jurisdiction in which the service address is located when the call either originates or terminates in that jurisdiction.

(c) **Services sold on a basis other than on a call-by-call basis.** For those telecommunications services sold on a basis other than on a call-by-call basis, and except for those services defined in (d) of this Section, the sale is sourced to the customer's place of primary use.

(d) **Other telecommunication services.** The sale of the following services shall be sourced as in the following manner:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the provisions of Section 55001 of Title 68 of the Oklahoma Statutes;

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) The seller's telecommunications system, or

(B) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with 710:65-18-3. Provided, in the case of a sale of a prepaid wireless calling service, the provisions of paragraph (5) of 710:65-18-3 shall apply; and

(4) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located,

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located,

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty (50) percent in each level of jurisdiction in which the customer channel termination points are located, and

(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points. [68 O.S.Supp.2003, § 1354.30]

(e) Ancillary services. The sale of an ancillary service is sourced to the customer's place of primary use.

[OAR Docket #09-1287; filed 10-8-09]

**TITLE 715. TEACHERS' RETIREMENT
SYSTEM OF OKLAHOMA
CHAPTER 10. GENERAL OPERATIONS**

[OAR Docket #09-1284]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 19. Tax-Sheltered Annuity Program

715:10-19-1 [AMENDED]

715:10-19-2 [AMENDED]

715:10-19-3 [AMENDED]

715:10-19-4 [AMENDED]

715:10-19-5 [AMENDED]

715:10-19-7 [AMENDED]

715:10-19-8 [AMENDED]

715:10-19-9 [AMENDED]

715:10-19-11 [AMENDED]

715:10-19-12 [AMENDED]

715:10-19-13 [AMENDED]

AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106; Board of Trustees

DATES:

Adoption:

August 26, 2009

Approved by Governor:

October 2, 2009

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

none

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The rules will provide a more efficient administration of the System. These rules are necessary for continued compliance with the Internal Revenue Code.

ANALYSIS:

715:10-19-1 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-2 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-3 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-4 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-5 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-7 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-8 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b). Additionally, this rule is being amended to clarify that 403(b) funds may be used to purchase permissive service credit.

715:10-19-9 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-11 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-12 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

715:10-19-13 is being amended to ensure continued compliance with Internal Revenue Code Section 403(b)

CONTACT PERSON:

Kim Bold, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-2223.

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 19. TAX-SHELTERED ANNUITY PROGRAM

715:10-19-1. Authority for program

The TRS Tax-Sheltered Annuity Program ("Program") is designed to meet the requirements of ~~sections~~section 403(b) of the Internal Revenue Code ("Code") and 401(g) of the Internal Revenue Code. The TRS Tax Sheltered Annuity the federal regulations that have been promulgated to implement Code Section 403(b), specifically including Treasury Regulations Sections 1.403(b)-1 through 1.403(b)-11. The Program is administered by the Board of Trustees. However, the Board can retain a third-party to administer the Program, including providing investment options. Code Section 403(b) of the Federal Internal Revenue Code authorizes tax-sheltered annuity programs, setting forth requirements that must be

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followed. Failure to follow these requirements may cause penalties to be imposed on the individual member or cause the tax-sheltered status of the Oklahoma Teachers' Retirement System program to be disallowed. Changes to ~~this section of the tax code Code Section 403(b)~~ by Congress or ~~changes to the federal regulations~~ usually affect the ~~program's~~ Program's administration; therefore, this ~~program~~ Program will change as often as Congress amends or revises ~~Code Section 403(b) of the IRS Code~~ and as changes are made to related federal regulations. Title 70 O.S. 17-108 allows members of TRS Teachers' Retirement System of Oklahoma ("TRS") to participate in the ~~TRS Tax-sheltered Annuity Program~~. ~~In~~ However, ~~in~~ making deposits to this ~~program~~ Program, the member and the employing school must comply with all applicable aspects of the ~~IRS Code~~. Internal Revenue Code. The provisions of the Program described in this Subchapter 19 are effective as of January 1, 2009, except as otherwise noted in this Subchapter.

715:10-19-2. General description

The following is a general description of the ~~tax-sheltered annuity plan available from Teachers' Retirement Program~~ available from TRS. (Where the term "TRS" is used in this subchapter, the term includes, where appropriate, a third-party administrator or other service provider selected by TRS to perform services with respect to the Program.) The member should be aware that tax-sheltered annuity ~~plans~~ plan investment options are also offered by ~~most~~ many major insurance companies to ~~through the employees of member's employing Oklahoma public schools~~ school.

(1) The ~~403(b) program's~~ Program's primary purpose is to enable eligible members to contribute to a supplemental retirement program in preparation for retirement.

(2) An eligible employer makes salary reduction contributions on behalf of an ~~employee~~ a member to the ~~403(b) program~~ Program at the election of that ~~employee~~ member. Employers cannot require contributions to the ~~program~~ Program as a condition of employment. ~~How-~~ever, an employer may establish an auto enrollment feature in accordance with federal law. The member's employer deducts tax-sheltered ~~monies~~ contributions from the member's salary and forwards the deductions to TRS. TRS places the monies in the member's ~~Program~~ account and ~~debits or credits earnings monthly~~. The accounts are debited or credited with earnings according to the member's investment selection. Statements are mailed to the member's home address on a quarterly basis.

(3) Each participating member receives an immediate vested and nonforfeitable interest in the amounts credited to his or her ~~tax-sheltered Program~~ account. The ~~participating~~ member is precluded from selling, assigning, or pledging his or her funds in the ~~tax-sheltered Program~~ account to another person or party, except to designate a beneficiary in the event of death. ~~However, TRS will honor qualified domestic relations orders within the meaning of 70 O.S. 17-109, OAC 715:10-25-1 et seq. and Code Section 414(p).~~

(4) ~~Participant's~~ Member accounts are ~~not~~ may be assessed ~~administration~~ investment management fees by

~~TRS for services rendered by TRS. However, investment management fees are deducted from gross earnings prior to earnings being applied to member accounts.~~

(5) Monies in this ~~program~~ Program are not insured in the same manner as deposits are insured with various privately operated financial institutions, (i.e. FDIC). ~~TRS may establish a recordkeeping account for each member by TRS.~~ Deposits are kept separate from the member's regular retirement account, ~~but are invested in the same manner, using the same investment practices and policies used to invest the other assets of TRS.~~ TRS may select investment options, including a default fund, and may establish procedures related to the transfer of funds among investment options, including mapping instructions and black-out periods. TRS has in general delegated investment authority to each member to select among investment options determined by TRS.

(6) Money deposited in the ~~Teachers' Retirement System Tax Sheltered Annuity Program~~ will not be matched by the State of Oklahoma.

715:10-19-3. Eligible employees

To participate in the ~~403(b) program~~ Program, a member must be an active ~~or retired~~ employee of a qualifying educational organization, ~~one within the meaning of section 170(b)(1)(A)(ii) of the Internal Revenue Code~~ which normally maintains a regular faculty, curriculum, and a regular organized body of students in attendance at the place where its educational activities are conducted. ~~Oklahoma Department of Education employees are eligible to participate in the program because they perform services for educational organizations. Employees of organizations that are tax exempt because they are organized and operated exclusively for educational purposes are also eligible to participate if the organizations are governmental.~~ University regents or trustees and members of boards of education are not eligible ~~employees to participate in the Program~~ since they are elected or appointed. Employees of the Oklahoma Teachers' Retirement System are also not eligible to participate in the Program. Retired members who are employed full-time or part-time by a public school in Oklahoma are eligible to participate in the ~~tax-sheltered annuity program~~ Program.

715:10-19-4. Program requisites

The Internal Revenue Service has ruled that money deposited in the ~~Teacher Deposit Fund Program~~ may be tax-sheltered, provided the following steps are taken:

(1) A board of education or other governing board of ~~an eligible employer~~ adopts a resolution making the ~~TRS Tax-sheltered Annuity Program~~ available to its employees. ~~Once this action is taken, this subchapter and 70 O.S. 17-108 shall be deemed to be part of the employer's written plan document under Treasury Regulations § 1.403(b)-3(b)(3).~~

(2) The member signs an amended contract with the board of education or governing board for the express

purpose of ~~buying an annuity with the Teachers' Retirement System, making elective deferrals to the Program.~~ This is done by either taking a reduction in salary or waiving a salary increase. The salary reduction agreement must be entered into prior to the date contributions are to commence and may only apply to amounts earned by the member after the agreement is effective. Nothing in this section shall be construed to prohibit an employer from implementing auto enrollment pursuant to federal law.

(3) An eligible employer permitting any TRS member to contribute to the ~~tax sheltered annuity program Program~~ must permit all eligible TRS members to contribute to the ~~program, and other employees to contribute to other 403(b) programs~~ Program in accordance with section 403(b)(12)(A)(ii) of the Internal Revenue Code and the Income Tax Regulations thereunder.

715:10-19-5. Contributions

After a member enters into the salary reduction agreement (completing an amended contract and any other payroll requirement specified by the eligible employer), the eligible employer shall make payroll deductions in lieu of the member receiving cash compensation on a monthly basis, in accordance with the agreement. The eligible employer shall submit the contributions for all members in the school district to ~~TRS, on TRS Form 42 and TRS Form 17, showing the member's name, social security number and amount contributed on behalf of each member. (No substitute reporting form is accepted by TRS)~~ the TRS service provider in the manner prescribed by the service provider.

(1) All contributions to the Program must be salary reductions. Members cannot make direct payments to the ~~403(b) program Program~~. If the contributions are not salary reductions, tax-deferral will not be possible. As a result, the ~~TRS program Program~~ will only accept employer payments ~~for employees of salary reduction contributions for members.~~ Nothing in this provision prohibits a member from making a rollover contribution to the Program.

(2) Employers should forward ~~tax sheltered salary reduction~~ contributions in a timely manner, but in no event later than fifteen (15) business days following the end of the month in which the amount would have otherwise been paid to the member. Employers are also responsible for ensuring that members do not contribute more than the maximum amount allowed by federal tax law. Salary reduction agreements are ~~determined by the limits limited~~ under the Internal Revenue Code, as described in the following:

(A) The amount of ~~deferrals salary reduction contributions~~ made in a member's taxable year under the ~~Tax Sheltered Annuity~~ Program, and any other plans, contracts, or arrangements of the employer, may not exceed the amount of the limitation in effect under Internal Revenue Code Section 402(g)(1), as increased by Internal Revenue Code Sections 402(g)(4) and 402(g)(8) 402(g)(7) and 414(v), for such taxable year.

(B) Contributions to the ~~403(b) plan Program~~ and to any other section 403(b) plan (or, if required by Internal Revenue Code Section 415 and the Income Tax Regulations thereunder, to any other defined contribution plan) made in a calendar year (unless another twelve (12) month period ending within the calendar year is elected) with respect to an employee may not exceed limitations under Code Section 415(c) for such calendar year. The limitation on annual additions set forth in Internal Revenue Code 415(c) for any calendar year is the lesser of: (i) Forty Thousand Dollars (\$40,000), adjusted for cost-of-living to the extent provided under section 415(d) of the Code; or (ii) one hundred percent (100%) of the Participant's Includible Compensation.

(C) For purposes of this Section, "annual addition" has the meaning provided in section 415(c) of the Code, as modified by sections 415(l)(1) and 419A(d)(2) of the Code. In general, section 415(c) of the Code defines the annual addition as the sum of the following amounts credited to a member's accounts for any calendar year under this Program and to any section 403(b) plan (or, if required by section 415 of the Code and the Income Tax Regulations thereunder, to any other defined contribution plan): (1) employer contributions; (2) employee contributions; and (3) forfeitures. Annual additions shall not include: (1) any elective deferrals made by a member who is age fifty (50) or older in accordance with, and subject to, section 414(v) of the Code; (2) excess elective deferrals distributed in accordance with section 1.402(g)-1(e)(2) of the Income Tax Regulations; or (3) rollover contributions.

(D) "Includible compensation" means a member's compensation received from the employer that is includible in the member's gross income for federal income tax purposes (computed without regard to Internal Revenue Code Section 911) for the most recent period that is a year of service. Includible compensation also includes any amount contributed or deferred by the employer at the election of the member that would be includible in the gross income of the member but for the rules of section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code. The amount of Includible compensation is determined without regard to any community property laws. Includible compensation does not include any amounts "picked-up" by the employer within the meaning of Internal Revenue Code 414(h). Includible compensation includes differential pay as defined in Internal Revenue Code Section 414(u). Includible compensation includes any compensation described in paragraphs (E) or (F), provided the compensation is paid by the later of two and one-half (2 $\frac{1}{2}$) months after the member's severance from employment with the employer or the end of the calendar year in which the member has a severance from employment with the employer.

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(E) Any payment that would have been paid to the member prior to a severance from employment if the member had continued in employment with the employer and that is regular compensation for services outside the member's regular working hours (such as overtime or other similar payments).

(F) A payment for unused accrued bona fide sick, vacation, or other leave, but only if the member would have been able to use the leave if employment had continued and the payment would have been included in the definition of compensation if it was paid prior to the member's severance from employment.

(3) Each ~~employee~~ member shall specify in the salary reduction agreement the dollar amount or percentage by which the ~~employee's~~ member's salary is to be reduced by the employer. Each such agreement shall be legally binding and irrevocable as to the amounts earned while it is in effect. A member may change the salary reduction agreement during the member's taxable year. A member may terminate the agreement with respect to amounts not yet earned. Any member who wishes to change the amount contributed to the ~~tax-sheltered program~~ Program must complete a new amended contract. Contributions can be stopped at any time.

(4) Employers are required to report ~~403(b) information~~ salary reduction contributions made to the Program on the federal Form W-2. Employers should mark the "deferred compensation" block in the correct box of the W-2 and should put the amount of the contribution and the appropriate code in the specified box of the Form W-2.

(5) Employers should not withhold federal and state income taxes on tax-sheltered salary reduction contributions made to the Program. No other withholdings, including regular contributions to TRS and FICA taxes, should be ~~lowered by the tax-sheltered~~ affected or decreased by salary reduction contributions to the Program.

(6) Any active or retired member may roll over ~~or transfer funds from other 403(b) tax-sheltered annuity programs to the Program~~ an eligible rollover distribution as defined in section 402(c)(4) of the Internal Revenue Code from other section 403(b) plans or eligible retirement plans within the meaning of section 402(c)(8)(B) of the Internal Revenue Code subject to limitations in the Internal Revenue Code and/or pertinent sections of the U.S. Treasury Regulations, Income Tax Regulations. An eligible rollover distribution means any distribution of all or any portion of a member's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Internal Revenue Code. An eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b)

of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Written verification that the ~~roll-over or transfer is from a 403(b) plan or other allowable rollover is an eligible rollover distribution from an eligible retirement plan~~ must be received by TRS before any such monies will be accepted. Such rollover contributions shall be made in the form of cash only, not in-kind. A separate rollover account will be established for these rollovers.

(7) The minimum allowable salary reduction contribution is two hundred dollars Two Hundred Dollars (\$200) per taxable year of the member.

(8) The Internal Revenue Code has set limits on the amount a member can exclude from his or her income for tax purposes. It is each ~~employee's member's and the employing school's~~ his or her employer's responsibility to ensure that contributions do not exceed the maximum limitations set forth in the Internal Revenue Code. TRS does not compute the maximum allowable contribution for the ~~403(b) Program~~ Program participants and TRS is prohibited from entering into hold harmless agreements with participating ~~employees members~~ or employers.

(9) If TRS will distribute is notified of any excess deferral (within the meaning of Internal Revenue Code Section 402(g)), the excess deferral plus attributable income to the employee will be accounted for separately under Code Section 403(c) and if instructed will distribute the excess deferral plus interest to the member on or before April 15 of the year following April 15, the year of deferral. In the event of such a distribution, TRS will furnish the employee member with a Form 1099R form with respect to the distribution of the excess deferral and attributable income. The employee If distributed by April 15, the member should include the excess deferral refund in the employee's member's gross income for the year the excess contribution deferral was made, and refund of the attributable income in the year distributed. The employee may have to file an amended income tax return for the year the excess contribution was made. If the excess contribution is not distributed as provided in this subsection, by April 15, the distribution may not occur until a regular distribution would occur, and the employee must also include the refund in the employee's gross income for the year of deferral and the year of distribution. In this case the excess contribution deferral is taxed twice.

(10) A plan-to-plan transfer from another section 403(b) plan to this Program may be made on behalf of an active member if the following conditions are satisfied:

(A) The member is an employee of the employer for the transferring plan;

(B) The transferor plan provides for transfers; and

(C) The member whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated

benefit of that member immediately before the transfer.

(11) To the extent any amount transferred is subject to any distribution restrictions under section 1.403(b)-6 of the Treasury Regulations, the Program shall impose restrictions on distributions to the member whose assets are being transferred that are not less stringent than those imposed on the transferor plan. In addition, if the transfer does not constitute a complete transfer of the member's interest in the section 403(b) plan, the Program shall treat the amount transferred as a continuation of a pro rata portion of the member's interest in the section 403(b) plan.

(12) Notwithstanding any provisions of this subchapter, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and section 414(u) of the Internal Revenue Code. For this purpose, a member whose employment is interrupted by qualified military service under section 414(u) of the Internal Revenue Code or who is on a leave of absence for qualified military service under section 414(u) of the Internal Revenue Code may elect to make additional salary reduction contributions upon resumption of employment with the employer up to the maximum amount of salary reduction contributions that the member could have elected during that period if the member's employment with the employer had continued (at the same level of compensation) without the interruption or leave, reduced by the salary reduction contributions, if any, actually made for the member during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Internal Revenue Code, this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

715:10-19-7. Methods of computing maximum TSA Program contribution

(a) The elective deferral limit for 403(b) plans for Calendar Year 2008 is \$15,500. Elective deferral limits for future years will be set by the Internal Revenue Service. The maximum amount salary reduction contributions to the Program for any calendar year shall not exceed the applicable dollar amount in Internal Revenue Code Section 402(g)(1) for the year. The applicable dollar amount is Sixteen Thousand Five Hundred Dollars (\$16,500) for 2009 for all elective deferrals made by a member. The applicable dollar amount limit is adjusted for cost-of-living after 2009 to the extent provided under Internal Revenue Code Section 402(g).

(b) These contribution levels replace the 20% of compensation limitation with 100% of taxable compensation, not to exceed the applicable dollar limit. For persons age 50 or older, increased contribution amounts above the applicable deferral limits for Calendar Year 2008 is \$20,500. The applicable deferral limits for future years will be set by the Internal Revenue Service. A member who will attain age fifty (50) or older by the end of the calendar year may elect to make an additional

amount of salary reduction contributions to the Program in excess of the applicable dollar amount under Internal Revenue Code Section 402(g)(1). The maximum dollar amount of the age fifty (50) catch-up salary reduction contributions for a calendar year is Five Thousand Five Hundred Dollars (\$5,500) for 2009 for all elective deferrals made by a member. The maximum dollar amount of age fifty (50) catch-up salary reduction contributions is adjusted for cost-of-living after 2009 to the extent provided under Internal Revenue Code Section 414(v).

(c) A special catch-up provision allows members who have more than fifteen years of service with their employer to make additional contributions up to Three Thousand Dollars (\$3,000) per year. However, aggregate contributions of all years above the limits may not exceed Fifteen Thousand Dollars (\$15,000). In addition a member can no longer make catch-up contributions under this special catch-up provision once his or her prior years' contributions to any tax-sheltered annuity exceed Five Thousand Dollars (\$5,000) multiplied by the years of service (as defined in section 403(b)(4) of the Internal Revenue Code) with the employer.

(d) Salary reduction contributions in excess of the applicable dollar amount in Internal Revenue Code Section 402(g)(1) for the year shall be allocated first to the special catch-up provision under subparagraph (c) (if applicable) and next as an age fifty (50) catch-up contribution under subparagraph (b).

715:10-19-8. Distributions

(a) Distributions from members' accounts must be made in accordance with the Internal Revenue Code. TRS will distinguish pre-'87 and post-'86 account balances. Both account balances will be distributed in accordance with the applicable Internal Revenue Code provisions as they pertain to individual retirement accounts or annuities. The post-'86 account balance will include earnings after 1986 on the pre-'87 account balance. TRS will adjust each balance as required under IRS rules and regulations.

(b) Distribution of deposits made, or income earned, after December 31, 1988, will not be made to members except under one of the following circumstances:

- (1) Attainment of age fifty-nine and one-half (59 1/2).
- (2) Death.
- (3) Disability. — For the purpose of this section, a member is considered disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long continued and indefinite duration. Disability within the meaning of section 72(m)(7) of the Internal Revenue Code.
- (4) Separation from service (termination of employment). Severance from employment (with the member's employer). However, a severance from employment also occurs on any date on which a member ceases to be an employee of an educational organization, even though the member may continue to be employed by a related employer that is another unit of the State or local government that is not an educational organization or in a capacity that is not employment with an educational organization (e.g.,

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ceasing to be an employee performing services for an educational organization but continuing to work for the same state or local government employer).

(5) Retirement.

(6) Financial hardship (this distribution does not include accumulated earnings).

(7) Transfer to another ~~tax-sheltered annuity program~~ section 403(b) plan in accordance with subsection (n) of this section.

(8) Qualified reservist distribution under Code Section 72(t).

(9) Pursuant to a qualified domestic relations order.

(c) Distributions from this tax-sheltered annuity program are subject to federal and state income taxes. Certain distributions may also be subject to penalties and/or excise taxes under the Internal Revenue Code. Members should seek tax advice prior to requesting distributions.

(d) Upon filing a properly executed distribution request application, a portion or all of a member's tax-sheltered annuity balance that qualifies under Internal Revenue Code regulations, may be distributed. Distributions, other than required minimum distributions and hardship withdrawals, are subject to a mandatory federal withholding of twenty percent (20%). (Distribution of these deposits shall not affect membership status.)

(e) Members who have attained age ~~59 1/2~~ fifty-nine and one-half (59 1/2) are eligible to withdraw all or any portion of their deposits, subject to the provisions of subsection ~~(i)~~(h) of this section.

(f) Members who have not attained age ~~59 1/2~~ fifty-nine and one-half (59 1/2) and who have not ~~separated~~ had a severance from service employment (retired or terminated employment) may withdraw only contributions made prior to January 1, 1989, unless a financial hardship ~~exists~~. (See OAC 715:10-19-9.) Notwithstanding the foregoing sentence, a member may transfer his or her Program account to another section 403(b) plan subject to and in accordance with subsection (n) of this section. In addition, the restrictions of this section do not apply to amounts held in a separate rollover account.

~~(g) Members eligible to take a distribution may take up to 80% of their account balance at any time. For those desiring to close their accounts, they may do so after earnings from the previous month have been posted. No earnings will be paid during the month in which an account is closed.~~

~~(hg) Members who roll-over their tax-sheltered annuity Program accounts to another tax-sheltered annuity program may return section 403(b) plan may transfer these funds back to the Teachers' Retirement System's program Program at a later time- subject to and in accordance with paragraph 6 of OAC 715:10-19-5.~~

~~(ih) At termination or retirement Upon severance from employment,~~ a member may elect one of the following annuity distribution options subject to Internal Revenue ~~Service Code~~ requirements, including Code Section 403(b)(10), Code Section 401(a)(9), and the incidental death benefit requirements of Code Section 401(a);

(1) Minimum distribution option under Code Section 401(a)(9), with the post-1986 deferrals and all post-1986 earnings subject to the current Internal Revenue Service distribution rules and the pre-1987 account balance subject to the prior applicable Internal Revenue Service distribution rules.

(2) Lump sum surrender option, payable only to the member.

(3) Partial lump sum, where the member selects a specified lump sum payable to the member.

(4) A nontransferable fixed or variable annuity issued by an insurance company providing for periodic payments to a member and his/her beneficiary.

~~(j) Earnings on Teachers' Retirement System tax-sheltered annuity accounts are calculated each month end, based on accumulated deposits as of the first day of the month.~~

~~(ki) The beneficiary(ies) designated on a member's regular retirement account also shall serve as beneficiary(ies) for the tax-sheltered annuity Program account, unless otherwise designated by the member.~~

(j) In the calendar year following the calendar year of the member's death, if the member dies before distribution of the member's account, the member's account shall be paid to his or her designated beneficiary in a lump sum. Alternatively, if the designated beneficiary with respect to the member's account is a natural person, at the designated beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph.

~~(hk) In the event the member dies, and if the member's sole beneficiary is his or her spouse, the surviving spouse has the same privileges to the account as the member. In order to satisfy minimum distribution rules, if the sole designated beneficiary is the member's surviving spouse, distributions must commence on or before the later of: If the designated beneficiary is the member's surviving spouse, the distribution period is equal to the beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the designated beneficiary is not the member's surviving spouse, the distribution period is the beneficiary's life expectancy determined in the year following the year of the member's death using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the beneficiary's age on the beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year.~~

~~(1) the end of the calendar year immediately following the calendar year in which the member died; or~~

~~(2) the end of the calendar year in which the member would have attained age 70 1/2.~~

~~(ml) Non-spousal beneficiaries (individuals or trusts) must begin taking a required minimum distribution no later than December 31 of the year following the year of the member's death.—In the event there is no designated beneficiary, or if the member's estate or trust or a charitable organization is the designated beneficiary, the entire account balance must be distributed by the fifth year following the member's death. For any year, a beneficiary can elect distribution of a greater~~

amount (not to exceed the amount of the remaining account balance) in lieu of the amount calculated under this paragraph.

(m) In no event shall any distribution begin later than the later of (i) April 1 of the year following the calendar year in which the member attains age seventy and one-half (70 1/2) or (ii) April 1 of the year following the year in which the member retires or otherwise has a severance from employment. If distributions commence in the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 1/2) or the calendar year in which the severance from employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the member has a severance from employment and an amount equal to the annual installment payment for the year after severance from employment must also be paid before the end of the calendar year of commencement. For purposes of this paragraph, annual installment payments through the year of the member's death are calculated as the amount payable each year equal to a fraction of the member's account balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the member's age on the member's birthday for that year. If the member's age is less than age seventy (70), the distribution period is twenty-seven and four-tenths (27.4) plus the number of years that the member's age is less than age seventy (70). At the member's election, this annual payment can be made in monthly or quarterly installments. The account balance for this calculation (other than the final installment payment) is the account balance as of the end of the year prior to the year for which the distribution is being calculated. For any year, the member can elect distribution of a greater amount (not to exceed the amount of the remaining account balance) in lieu of the amount calculated using this formula. Notwithstanding anything to the contrary in this Section, distribution of elective deferrals made prior to January 1, 1987 (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age seventy-five (75).

(n) In all cases, distribution of a termination or retirement benefit must begin no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2 or retires. A plan-to-plan transfer from the Program to another section 403(b) plan may be made on behalf of an active member if the following conditions are satisfied:

- (1) The member is an employee of the employer for the receiving plan;
- (2) The receiving plan provides for the receipt of transfers;
- (3) The member whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that member immediately before the transfer;
- (4) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under section 1.403(b)-6 of the Income Tax Regulations, the receiving plan shall impose restrictions on distributions to the member whose assets are being transferred

that are not less stringent than those imposed on the Program; and

(5) If the transfer does not constitute a complete transfer of the member's interest in the Program, the receiving plan shall treat the amount transferred as a continuation of a pro rata portion of the member's interest in the Program.

(o) Permissive Service Credit Transfers.

(1) If a member is also a member in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the member, then the member may elect to have any portion of the member's account transferred to the defined benefit governmental plan. A transfer under this section may be made before the member has had a severance from employment.

(2) A transfer may be made under this section only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(3) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the member's or Beneficiary's interest in the transferor plan, the Program shall treat the amount transferred as a continuation of a pro rata portion of the member's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the member's or Beneficiary's interest in any after-tax employee contributions).

715:10-19-9. Withdrawals for financial hardship

(a) Financial hardship is defined as an immediate and heavy financial need experienced by the participant member, resulting from a sudden and unexpected illness or accident of the participant member or of a dependent of the participant member, loss of the participant's—member's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant- member. The circumstances that constitute a financial hardship will depend upon the relevant facts and circumstances of each case, but, in any case, payment may not be made to the extent that such financial hardship is or may be relieved:

- (1) through reimbursement or compensation by insurance or otherwise, or;
- (2) by liquidation of the participant's member's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship;
- (3) by cessation of deferral salary reduction contributions under the plan Program; or
- (4) by other distributions or and nontaxable (at the time of the loan) loans from plans maintained by the employer, by any other employer, the employer(s) of the participant's member's spouse, or by borrowing from commercial sources on reasonable commercial terms, in an amount sufficient to satisfy the need.

(b) Specific needs that are deemed to satisfy the requirements of a hardship withdrawal include, but are not limited to:

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- (1) Medical expenses incurred by the ~~partici-~~participant, the ~~participant's~~member's spouse or dependents which are not covered by insurance or other reimbursement;
- (2) Costs directly related to the purchase of a principal residence for the ~~participant~~member (excluding mortgage payments);
- (3) Payment of tuition, related educational fees, and room and board expenses, for the next twelve (12) months of post-secondary education for the ~~participant~~member, or the ~~participant's~~member's spouse or dependents; or
- (4) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage of that residence.
- (c) Withdrawal amounts are permitted only to the extent reasonably necessary to satisfy the financial hardship. Withdrawal of credited earnings in the member's account is not permitted.
- ~~(d) Once a member has satisfactorily completed a hardship application for withdraw, an administrative review will be conducted by a committee consisting of the Secretary Treasurer, Director of Operations and the administrative assistant responsible for the Tax Sheltered Annuity Program. The review committee will recommend to the Executive Secretary those applications that meet the requirement of a financial hardship.~~
- ~~(e) The Executive Secretary will have the authority to approve payment of qualifying requests. The Executive Secretary will also report all approved requests and denials to the Board of Trustees each month. The participating employer is responsible for the determination of hardship, in accordance with procedures established under the employer's plan.~~
- ~~(f) Distributions made via a hardship withdrawal request may be subject to an early distribution penalty of ten percent (10%).~~
- ~~(g) A member who receives a hardship withdrawal is required to cease salary reduction contributions for six (6) months following the withdrawal.~~
- ~~(h) In lieu of the provisions of this section, an employer may prescribe hardship withdrawal requirements.~~

715:10-19-11. Rollovers from ~~OTRS 403(b) program~~ Program to other eligible retirement plans

- (a) Notwithstanding any other provision of the administrative code, a member, a member's spouse, ~~or~~ a member's former spouse who is the alternate payee under a qualified domestic order, as defined in OAC 715:10-25-1, may elect at the time and in the manner prescribed by ~~the Board of Trustees TRS,~~ to have all or a portion of an eligible rollover distribution (as defined in Internal Revenue Code 402(c)(4) from the Program paid directly to another eligible retirement plan as ~~required~~ defined under Internal Revenue Code ~~Section 403(b)(10) 402(c)(8)(B)~~ and the regulations thereto. In addition, a designated beneficiary other than a surviving spouse may elect to roll over an eligible rollover distribution directly from the Program to an individual retirement plan that has been established on behalf of the beneficiary as an inherited individual retirement plan.

subject to and in accordance with section 408(d)(3)(C) of the Internal Revenue Code.

(b) The following definitions shall apply for purposes of the words and phrases used in this Section:

- (1) an "eligible rollover distribution" includes any distribution of all or any ~~taxable~~ portion of the tax-sheltered annuity benefit to the credit of a member, a member's spouse, ~~or~~ a member's former spouse who is the alternate payee under a qualified domestic order, as defined in OAC 715:10-25-1, or a deceased member's designated beneficiary except that an eligible rollover distribution does not include the following:

(A) any distribution that is one of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member or the member and the member's spouse.

(B) any distribution that is one of a series of substantially equal periodic payments for a specified period of ten years or more.

(C) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9).

~~(D) the portion of any distribution that is not includable in the gross income.~~

~~(E) any distributions during a year that are reasonably expected to total less than \$200.~~

- (2) an "eligible retirement plan" includes an individual retirement account or annuity described in Internal Revenue Code Sections 408(a) or (b) ~~or another, a qualified trust described in Internal Revenue Code 401(a), an annuity program described in Internal Revenue Code ~~Section 403~~ Sections 403(a) or 403(b), or an eligible governmental plan described in Internal Revenue Code 457(b)~~ that is willing to accept the distributee's eligible rollover distribution. In addition, an eligible retirement plan includes a Roth IRA under Internal Revenue Code Section 408A. However, in the case of an eligible rollover distribution to a beneficiary who at the time of the member's spouse, ~~an eligible retirement plan only includes~~ death was neither the spouse of the member nor the spouse or former spouse of the member who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or an individual retirement annuity ~~described in Internal Revenue Code Sections 408(a) or (b)~~ that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

- (c) Eligible rollover distributions may be paid to not more than two eligible retirement plans, as selected by the distributee, when a direct rollover is elected.

715:10-19-12. The Oklahoma Teachers' Deferred Savings Incentive Plan Fund

- (a) The Oklahoma Teachers' Deferred Savings Incentive Plan Fund, established and funded pursuant to Enrolled House Bill 1428 of the first session of the 47th Oklahoma State Legislature, shall be used for payment by ~~the Teachers' Retirement~~

~~System of Oklahoma (TRS) TRS~~ of matching contributions into the ~~TRS Tax Sheltered Annuity Program~~ accounts of active, contributing TRS members. Accounts eligible to receive matching contributions are those maintained by TRS in accordance with ~~Section section~~ 403(b) of ~~Title 26 of the United States the~~ Internal Revenue Code.

(b) ~~The Teachers' Retirement System~~ TRS shall hold and invest funds in the Oklahoma Teachers' Deferred Savings Incentive Plan Fund in the same manner as ~~funds managed in accounts of members contributing to an account established pursuant to Section 403(b) of the Internal Revenue Code of 1986, as amended determined by the Board of Trustees.~~

(c) If the Oklahoma Teachers' Deferred Savings Incentive Plan Fund is insufficiently funded to fully pay such contributions in any month, payments shall be suspended until sufficient monies are available.

715:10-19-13. Contributions from the Oklahoma Teachers' Deferred Savings Incentive Plan Fund into ~~Tax Sheltered Annuity Program~~ accounts of active contributing TRS members

Provided funds in the Oklahoma Teachers' Deferred Savings Incentive Plan Fund are sufficient to fully fund such contributions, ~~the Teachers' Retirement System of Oklahoma (TRS) TRS~~ shall contribute \$25.00 per month into the ~~Tax Sheltered Annuity Program~~ account of each active contributing TRS member who contributes at least \$25.00 per month into his or her ~~TRS Tax Sheltered Annuity Program~~ account maintained pursuant to ~~Section section~~ 403(b) of ~~Title 26 of the United States~~ Internal Revenue Code.

[OAR Docket #09-1284; filed 10-7-09]

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION
CHAPTER 37. MANUFACTURED HOME INSTALLERS**

[OAR Docket #09-1277]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 6. Definitions [NEW]
765:37-6-1 [NEW]
Subchapter 7. Installation Standards For Ground Sets
765:37-7-1 [AMENDED]
765:37-7-2 [AMENDED]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307

DATES:
Comment Period:
A comment period was not required or utilized.

Public Hearing:
August 11, 2009

Adoption:
August 11, 2009

Approved by Governor:
September 25, 2009

Effective:
Immediately upon Governor's approval

Expiration:
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

FINDING OF EMERGENCY:
The enactment of the proposed emergency rules is required by a change in regulations pertaining to mobile home installations by the United States Department of Housing and Urban Development (HUD). The Commission deems this situation a compelling extraordinary circumstance requiring emergency rules.

ANALYSIS:
Without the enactment of these rules, the state of Oklahoma would become a "default" state, resulting in HUD assuming primary responsibility for mobile home installers education, standards and enforcement. The state of Oklahoma would lose control of its program of education and enforcement, and establishing standards for mobile home installers which would result in additional cost to consumers, dealers and installers, and result in less responsive action when problems arise.

CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

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

SUBCHAPTER 6. DEFINITIONS

765:37-6-1. Terms used

(a) **Permanent installation.** Installation of a new manufactured home shall be deemed a permanent installation when the certificate of title to the home will be surrendered and the home is intended to be determined to be realty.

(b) **Temporary installation.** Installation of a new manufactured home not a permanent installation shall be deemed to be a temporary installation.

(c) **Generic Set.** Installation of a new or previously occupied manufactured home according to the standards set forth in Subchapter 7 hereinafter for temporary installations shall be deemed a generic set.

(d) **HUD Standards.** All references to "HUD Standards" or "HUD Rules" shall refer to any standard or rule implemented by the United States Department of Housing and Urban Development.

SUBCHAPTER 7. INSTALLATION STANDARDS FOR GROUND SETS

Emergency Adoptions

765:37-7-1. Acceptable procedure

(a) All new manufactured homes to be permanently installed in the State of Oklahoma shall be installed according to the installation standards set forth in the manufacturer's installation manual.

(b) Any new manufactured home to be temporarily installed in the state of Oklahoma may be installed according to the installation standards set forth in the manufacturer's installation manual or according to the installation standards set forth hereinafter (generic set) or an approved plan by a qualified professional licensed engineer (e.g. Manufactured Home Installation Manual).

(c) Use of an installer not licensed at the time of the installation by the Oklahoma Used Motor Vehicle and Parts Commission for the installation of any new or previously occupied manufactured home shall be deemed an unacceptable procedure and shall subject any dealer contracting with said unlicensed installer to any liabilities and penalties attributable to such unlicensed activity.

(d) In determining the applicable frost line for permanently installed manufactured homes, the installer shall use the ANSI 225.1 map. A frost line of three inches (3") is presumed in McCurtain County. A frost line of three to six inches (3-6") is presumed in Bryan, Choctaw, Atoka, Pushmataha, Latimer, LeFlore, Haskell and Sequoyah Counties. A frost line of ten to fifteen inches (10-15") is presumed in Woods, Major, Garfield, Alfalfa and Grant Counties. A frost line of six to ten inches (6-10") is presumed in all the remaining counties of the state.

An installer may rely on verifiable local standards in determining the frost line in any specific location. If a local standard cannot be ascertained the applicable frost line shall be deemed to be the maximum level stated in the county where the home is to be sited.

765:37-7-2. Site preparation

(a) ~~Responsibility~~ **Permanent installations.** Site preparations for all permanent installations shall conform to HUD standards.

(b) **Temporary installations.** The purchaser or homeowner shall bear the responsibility for adequate site preparation for any installation other than a permanent installation, including grading, drainage requirements and utilities connections.

(b)c) **Notice.** A manufactured home manufacturer and a manufactured home dealer shall notify ~~the~~ the purchaser by written notice signed by both parties of ~~said responsibility~~ the applicable site preparation standards. The dealer may act as the manufacturer's agent in providing said notice to the purchaser.

(e) ~~Regulation of site preparation.~~ Site preparation is an unregulated activity and is not the duty of either a manufactured home dealer or installer unless contracted for separately.

[OAR Docket #09-1277; filed 10-6-09]

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

1:2009-35.

EXECUTIVE ORDER 2009-35

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 storms and high winds beginning July 20, 2009 through July 21, 2009 caused extensive damage to public and private properties within Tillman County and the City of Frederick; and said damages have caused an undue hardship on the citizens of that County.
2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the severe storms and high winds in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The county and City included in this declaration is: Tillman County and the City of Frederick.
4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management

with comparable functions of the federal government and political subdivisions of the State.

5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 12th day of October 2009.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #09-1292; filed 10-13-09]

