

Volume 28
Number 18
June 1, 2011
Pages 1041 - 1078

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules



Mary Fallin, Governor
V. Glenn Coffee,
Secretary of State
Peggy Coe, Editor-in-Chief

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ISSN 0030-1728

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State Department of REHABILITATION Services	612		
Board of Regents of ROGERS State College (<i>exempted 11-1-98</i>)	615		
Board of Regents of ROSE State College (<i>exempted 11-1-98</i>)	620		

Gubernatorial Approvals

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

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

TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-581]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
5:2-1-2 [AMENDED]

GUBERNATORIAL APPROVAL:

April 26, 2011

[OAR Docket #11-581; filed 4-28-11]

TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 11. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-582]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Abstract Licenses, Certificates of Authority,
and Permits

5:11-3-2 [AMENDED]

5:11-3-3 [AMENDED]

5:11-3-9 [AMENDED]

Subchapter 5. Regulation of Licensees, Certificate Holders,
and Permit Holders

5:11-5-3 [AMENDED]

Subchapter 7. Application for Permit to Develop Abstract
Plant

5:11-7-1 [AMENDED]

5:11-7-2 [AMENDED]

Subchapter 9. Application for Certificate of Authority

5:11-9-1 [AMENDED]

Subchapter 11. Temporary Certificate of Authority

5:11-11-1 [AMENDED]

5:11-11-2 through 5:11-11-7 [NEW]

GUBERNATORIAL APPROVAL:

April 26, 2011

[OAR Docket #11-582; filed 4-28-11]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

[OAR Docket #11-577]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 7. Declaratory Rulings
140:1-7-2 [AMENDED]

GUBERNATORIAL APPROVAL:

April 12, 2011

[OAR Docket #11-577; filed 4-26-11]

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

[OAR Docket #11-576]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 10. Acupuncture

140:15-10-1 [AMENDED]

140:15-10-2 [AMENDED]

Subchapter 11. Homeopathy

140:15-11-1 [AMENDED]

140:15-11-2 [AMENDED]

Subchapter 12. Naturopathy

140:15-12-1 [AMENDED]

140:15-12-2 [AMENDED]

GUBERNATORIAL APPROVAL:

April 12, 2011

[OAR Docket #11-576; filed 4-26-11]

Gubernatorial Approvals

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-583]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

360:1-1-1.5. [AMENDED]

Subchapter 3. The Board

360:1-3-8. [AMENDED]

Subchapter 5. Grievance Panel Authority and Hearing
Procedures

360:1-5-1. [AMENDED]

360:1-5-7. [AMENDED]

360:1-5-8. [AMENDED]

GUBERNATORIAL APPROVAL:

March 29, 2011

[OAR Docket #11-583; filed 4-29-11]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #11-584]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

360:10-1-2. [AMENDED]

Subchapter 3. Administration of Plans

360:10-3-24. [AMENDED]

360:10-3-24.1. [AMENDED]

360:10-3-25. [AMENDED]

GUBERNATORIAL APPROVAL:

March 29, 2011

[OAR Docket #11-584; filed 4-29-11]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-590]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 9. Compliance with Section 504 of the
Rehabilitation Act of 1973

612:1-9-3. Required statement on DRS printed documents
[AMENDED]

Subchapter 11. Compliance with the Americans with
Disabilities Act of 1990

Part 3. Reasonable Accommodation

612:1-11-16. Providing reasonable accommodations
[AMENDED]

Subchapter 13. Civil Rights and Nondiscrimination on
Basis of Race, Color, National Origin, Sex, Age or
Disability

612:1-13-5. Awareness [AMENDED]

Subchapter 15. Department Manual, Rules, and
Declaratory Rulings

612:1-15-2. Availability of manual [AMENDED]

612:1-15-4. Relationship of DRS manual to Oklahoma
Administrative Code [REVOKED]

GUBERNATORIAL APPROVAL:

April 26, 2011

[OAR Docket #11-590; filed 5-5-11]

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

[OAR Docket #11-590A]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

612:10-1-1. Purpose [AMENDED]

612:10-1-1.1. Legal Authority [NEW]

612:10-1-2. Definitions [AMENDED]

612:10-1-3. Basic purpose and philosophy of rehabilitation
programs [AMENDED]

612:10-1-3.1. Procedural exceptions [NEW]

612:10-1-3.2. Pilot projects [NEW]

612:10-1-4. Consultants (medical, dental, and
psychological) [AMENDED]

Subchapter 3. Client Participation in Cost of Services

612:10-3-1. Guidelines for determining client participation
in service costs [REVOKED]

- 612:10-3-3. Client participation in service costs and financial status determination [AMENDED]
- 612:10-3-5. Basic living requirements [AMENDED]
- 612:10-3-6. Income, Assets and Liabilities [AMENDED]
- 612:10-3-7. Liabilities [REVOKED]
- Subchapter 7. Vocational Rehabilitation and Visual Services
- Part 1. Scope of Vocational Rehabilitation and Visual Services
- 612:10-7-1. Overview of Vocational Rehabilitation and Visual Services [AMENDED]
- 612:10-7-4. Basic eligibility requirements for vocational rehabilitation services [REVOKED]
- 612:10-7-5. Factors affecting eligibility [REVOKED]
- 612:10-7-6. Assessment for determining eligibility [REVOKED]
- 612:10-7-7. Evidence of ineligibility [REVOKED]
- 612:10-7-8. Order of selection [REVOKED]
- 612:10-7-11. Counseling and guidance [REVOKED]
- Part 3. Case Processing Requirements
- 612:10-7-21. Processing incoming referrals [NEW]
- 612:10-7-21.1. Information and referral system [NEW]
- 612:10-7-22.1. Application [NEW]
- 612:10-7-23. General health checklist [REVOKED]
- 612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [NEW]
- 612:10-7-24.2. Assessment for determining eligibility [NEW]
- 612:10-7-24.3. Trial Work Experience and Extended Evaluation [NEW]
- 612:10-7-24.4. Ineligibility procedures [NEW]
- 612:10-7-24.5. Closed - Not Accepted for Services [NEW]
- 612:10-7-25.1. Order of selection [NEW]
- 612:10-7-26. Evaluation [REVOKED]
- 612:10-7-31. Transfer of cases [AMENDED]
- 612:10-7-34. Case finding and referrals [REVOKED]
- 612:10-7-35. Processing of referrals and the information and referral system [REVOKED]
- Part 5. Case Status and Classification System
- 612:10-7-45. Case statuses and case flow [AMENDED]
- 612:10-7-47. Application Status [REVOKED]
- 612:10-7-48. Trial Work Experience and Extended Evaluation [REVOKED]
- 612:10-7-49. Closed - Not Accepted for Services [REVOKED]
- 612:10-7-50. Eligibility Status—accepted for services and ~~IPE under development~~ [AMENDED]
- 612:10-7-50.1. Assessment for determining rehabilitation needs [NEW]
- 612:10-7-51. Individualized Plan for Employment [AMENDED]
- 612:10-7-52. Provision of Services [AMENDED]
- 612:10-7-55. Job Ready [AMENDED]
- 612:10-7-56. Employment [AMENDED]
- 612:10-7-58. Closed Rehabilitated [AMENDED]
- 612:10-7-61. Ineligibility reviews [REVOKED]
- 612:10-7-62. Post-Employment services [AMENDED]
- 612:10-7-63. Post-Employment services completed [AMENDED]
- Part 9. Actions Requiring Review and Approval
- 612:10-7-87. Actions requiring supervisor's approval [AMENDED]
- Part 11. Physical and Mental Restoration Services
- 612:10-7-98. General guidelines for physical and mental restoration services [AMENDED]
- 612:10-7-99. Braces [REVOKED]
- 612:10-7-100. Chiropractic treatment [REVOKED]
- 612:10-7-102. Dental services [REVOKED]
- 612:10-7-103. Dialysis or treatment of end-stage renal disease [REVOKED]
- 612:10-7-104. Drugs and supplies [REVOKED]
- 612:10-7-105. Hearing aids [REVOKED]
- 612:10-7-106. Hospitalization [REVOKED]
- 612:10-7-107. Intercurrent illnesses [REVOKED]
- 612:10-7-108. Laboratory work and X-rays [REVOKED]
- 612:10-7-109. Low vision service [REVOKED]
- 612:10-7-110. Medical examinations [REVOKED]
- 612:10-7-112. Nursing services [REVOKED]
- 612:10-7-113. Physical therapy [REVOKED]
- 612:10-7-114. Post-operative care of cataract patients [REVOKED]
- 612:10-7-115. Prosthetic eyes, glasses and other optical aids [REVOKED]
- 612:10-7-116. Prosthetic limbs [REVOKED]
- 612:10-7-117. Psychiatric and psychological treatment [REVOKED]
- 612:10-7-118. Speech therapy/training [REVOKED]
- 612:10-7-119. Surgery and medical treatment [REVOKED]
- 612:10-7-120. Wheelchairs and other durable medical equipment [REVOKED]
- Part 13. Supportive Services
- 612:10-7-131. Transportation [AMENDED]
- Part 15. Training
- 612:10-7-142. General guidelines for training services [AMENDED]
- 612:10-7-144. Training to meet individual needs [REVOKED]
- 612:10-7-145. Counseling activities during training program [REVOKED]
- 612:10-7-146. Training progress reports [REVOKED]
- 612:10-7-148. Types of training [REVOKED]
- 612:10-7-149. College and university training [AMENDED]
- 612:10-7-150. Continued eligibility for college or university training [AMENDED]
- 612:10-7-151. Duration of college and university training [REVOKED]
- 612:10-7-152. Payment of tuition and fees at colleges and universities [AMENDED]
- 612:10-7-153. Textbook allowance for college and university students [REVOKED]

Gubernatorial Approvals

612:10-7-157. Out-of-state training [AMENDED]
612:10-7-158. Training for individuals in custody of the Department of Corrections [AMENDED]
612:10-7-159. Privately owned business and trade schools [REVOKED]
612:10-7-160. Payment of tuition and fees at privately owned business and trade schools [REVOKED]
612:10-7-161. Public and private vocational schools [AMENDED]
612:10-7-162. ~~Supplies and training tools for business, vocational and trade schools~~ Textbooks, supplies, training tools and equipment [AMENDED]
612:10-7-164. Personal and work adjustment training [AMENDED]
612:10-7-166. Tutorial training [AMENDED]
Part 17. Supported Employment Services
612:10-7-179. Overview of Supported Employment Services [AMENDED]
612:10-7-181. Integrated settings [AMENDED]
612:10-7-182. Competitive employment for supported employment clients [AMENDED]
612:10-7-183. Ongoing support services [AMENDED]
612:10-7-184. Extended services [AMENDED]
612:10-7-185. Provision of supported employment services [AMENDED]
Part 18. Employment and Retention Services
612: 10-7-186. Overview of Employment and Retention Services [AMENDED]
612:10-7-188. Provision of employment and retention services [AMENDED]
612:10-7-189. Competitive employment for Employment and Retention [NEW]
Part 19. Special Services for ~~Individual~~ Individuals who are Blind, Deaf, or have other Significant Disabilities
612:10-7-195. Personal assistance services [AMENDED]
612:10-7-199. Reader/recording services [AMENDED]
612:10-7-200. Library for the Blind and Physically Handicapped [REVOKED]
612:10-7-202. Merchandising services [REVOKED]
612:10-7-204. Specialist on aging [REVOKED]
612:10-7-206. ~~Rehabilitation~~ Assistive technology—and prescribed adaptive aids and devices services for individuals with visual impairments [AMENDED]
Part 21. Purchase of Equipment, Occupational Licenses and Certificates
612:10-7-220. Vehicle modification services [AMENDED]
612:10-7-221. Housing Modification [AMENDED]
612:10-7-222. Rehabilitation technology and prescribed adaptive aids and devices [NEW]
Part 23. Self-Employment Programs and Other Services
612:10-7-231. Services to groups of persons with disabilities [REVOKED]
612:10-7-232. Placement [AMENDED]
612:10-7-234. Computers and high tech electronic equipment [AMENDED]
612:10-7-235. Support Services for Employment [NEW]

Part 25. Transition from School to Work Program
612:10-7-244. Overview of transition from school to work services [AMENDED]
612:10-7-245. Definitions [AMENDED]
612:10-7-246. Cooperative agreements for transition services [AMENDED]
612:10-7-248. Coordination of Individualized Education Program and Individualized Plan for Employment [AMENDED]
612:10-7-249. Counselor responsibilities in the Transition from School to Work Program [REVOKED]
Subchapter 9. Rehabilitation Teaching Services
Part 1. General Provisions
612:10-9-2. Consumer rights [AMENDED]
612:10-9-3. ~~Rehabilitation of the Blind~~ Specialist's teacher's role [AMENDED]
Part 3. Case Processing and Recording
612:10-9-13. Case recording ~~standards~~ [AMENDED]
612:10-9-15. Case status [AMENDED]
612:10-9-17. Application Status [AMENDED]
612:10-9-18. Closure from Application [AMENDED]
612:10-9-19. Eligibility Status [AMENDED]
612:10-9-20. Service Status [AMENDED]
612:10-9-25. Post-Employment Service Status [AMENDED]
Part 5. Services
612:10-9-32. Diagnosis and evaluation for homemaker cases [AMENDED]
612:10-9-33. Communication [AMENDED]
612:10-9-34. Personal management [AMENDED]
612:10-9-34.1. Visual efficiency [NEW]
612:10-9-34.2. Indoor mobility [NEW]
612:10-9-34.3. Other adaptive skills [NEW]
612:10-9-35. Home management [AMENDED]
612:10-9-36. Counseling and guidance [AMENDED]
612:10-9-37. Referral for Support Services [AMENDED]
612:10-9-38. Vocational rehabilitation [AMENDED]
Subchapter 11. Independent Living Services for Older Individuals Who are Blind
Part 1. Scope of Services
612:10-11-1. Purpose [AMENDED]
612:10-11-2. Basic eligibility requirements [AMENDED]
612:10-11-6. Client participation in cost of OB services [AMENDED]
Part 3. Case Processing
612:10-11-17. Case processing [AMENDED]
612:10-11-19. Application Status [REVOKED]
612:10-11-20. Closure from Application Status [REVOKED]
612:10-11-21. Eligibility Status [REVOKED]
612:10-11-22. Service Status [AMENDED]
612:10-11-24. Successful Closure Status [AMENDED]
612:10-11-25. Unsuccessful Closure Status [AMENDED]
612:10-11-26. Previously closed cases [AMENDED]
612:10-11-27. Inter-program transfers [AMENDED]
612:10-11-29. Post OB Closure Status [REVOKED]

Part 5. Provision of Services
612:10-11-37.1. Assessment [NEW]
612:10-11-42. Interpreter services [amended]
Subchapter 13. Special Services for the Deaf and Hard of Hearing
Part 1. Service Programs
612:10-13-1. Mission of the program [AMENDED]
612:10-13-4. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders [AMENDED]
Part 3. Certification of Interpreters
612:10-13-15. Certification levels [AMENDED]
612:10-13-16. Evaluation [AMENDED]
612:10-13-17. Evaluation team [AMENDED]
612:10-13-20. Certification maintenance [AMENDED]
612:10-13-21. ~~Code of ethics~~ Ethical standards [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2011

[OAR Docket #11-590A; filed 5-5-11]

**TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 15. OKLAHOMA LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED (OLBPH)**

[OAR Docket #11-591]

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

612:15-1-2. Definitions [AMENDED]
612:15-1-3. Library functions and legal basis [AMENDED]
Subchapter 3. OLBPH Services
612:15-3-2. Application and certification [AMENDED]
612:15-3-3. Reading materials [AMENDED]
612:15-3-4. Volunteer services [AMENDED]
612:15-3-5. Services for students [REVOKED]
612:15-3-6. Descriptive video service [REVOKED]
Subchapter 5. Library Loan Policy
612:15-5-1. Loan policies and procedures; responsibilities of borrower [AMENDED]

GUBERNATORIAL APPROVAL:
April 26, 2011

[OAR Docket #11-591; filed 5-5-11]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 25. COIN OPERATED VENDING DEVICES**

[OAR Docket #11-592]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
710:25-1-9. [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2011

[OAR Docket #11-592; filed 5-5-11]

Permanent Final Adoptions

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

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

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

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

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

[OAR Docket #11-654]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Lifelong Learning

210:10-9-6. General educational development (GED) testing program

[AMENDED]

AUTHORITY:

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

DATES:

Comment period:

January 18, 2011 through February 23, 2011

Public hearing:

February 24, 2011

Adoption:

February 24, 2011

Submitted to Governor:

February 28, 2011

Submitted to House:

February 28, 2011

Submitted to Senate:

February 28, 2011

Gubernatorial approval:

March 31, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 22, 2011

Final adoption:

April 22, 2011

Effective:

June 11, 2011

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 9. Lifelong Learning

210:10-9-6. General educational development (GED) testing program

[AMENDED]

Gubernatorial approval:

May 12, 2010

Register Publication:

27 Ok Reg 1665

Docket Number:

10-933

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

The rule will increase user fees for GED testing and administrative services.

CONTACT PERSON:

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN O. S. 75,
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JUNE 11, 2011:**

SUBCHAPTER 9. LIFELONG LEARNING

210:10-9-6. General educational development (GED) testing program

(a) The Lifelong Learning Section of the State Department of Education has responsibility for directing the GED Testing Program in Oklahoma and for issuing high school diplomas to those who successfully complete the GED Tests.

(b) An applicant shall be 18 years of age or older, except beginning August 1, 1995, persons having attained the age of 16, but who are not yet 18, must be permitted to take the GED Tests provided the applicant meets the residency requirements and submits along with the application to take the GED Tests, a notarized joint written agreement between the school administrator of the school district in which the applicant resides, and the parent, guardian, or custodian, stating that it has been determined that such action is in the best interest of the child and community.

(c) An applicant shall be a resident of the State of Oklahoma.

(d) The GED Tests shall be administered by one of the many local GED Testing Centers in Oklahoma approved by the GED Testing Service, Washington, D.C.

(e) To become eligible to take the GED Tests, an application must be made to the Lifelong Learning Section of the State Department of Education online or through an approved local GED Testing Center. A fee will be charged by the local testing center at the time the tests are taken.

(f) The State Department of Education will contract with an independent scoring service approved by the GED Testing Service for the scoring of GED Tests. The local GED Testing Centers shall send the ~~tests~~ test answer sheets to the contracted scoring service for scoring. ~~Lifelong Learning Section for scoring by the approved scoring service.~~

(g) An applicant shall make the minimum score required for passing the GED Tests, as established by the GED Testing Service.

(h) A high school diploma shall be awarded by the State Department of Education to those who make a passing score on the GED Tests. This credential certifies that the holder has shown evidence of general educational development equivalent to a high school education, as revealed by scores made on the GED Tests.

Permanent Final Adoptions

(i) ~~The Lifelong Learning Section will collect a \$19 fee from each local GED Testing Center for scoring the GED Tests, for processing the original GED Diploma and for the \$6 first-time test taker fee required by the GED Testing Service. The Lifelong Learning Section will collect a \$10 fee for processing the initial application for GED Testing and the original GED Diploma. This fee is in addition to the fees required by the GED Testing Service for first-time test takers and the scoring fee.~~ Payment will be in the form of a school or institution check.

(j) ~~A \$10 fee will be required on a retest for scoring and processing by the Lifelong Learning Section. If the retest is for only the essay or objective tests, a \$5 fee is required. The Lifelong Learning Section will collect a fee of \$5 to score and process the writing test; a fee of \$5 to score and process one or more of the science, social studies, reading, or math tests; and a fee of \$10 to score and process a combination of the writing test plus one or more of the other four tests.~~

(k) ~~The Lifelong Learning Section will require a minimum fee of \$5\$20 for a duplicate GED Diplomas and Diploma with transcript and a fee of \$10 for an official GED transcripttranscript. Payment will be made in the form of a certified check, money order, or cash.~~

(l) Only scores from the 2002 GED Tests will count toward earning a GED Diploma from January 1, 2002, forward.

(m) ~~The Lifelong Learning Section will collect a \$25 fee from the local GED Testing Center for processing a form repeat error. The local GED Testing Center may not collect this fee from the test-taker for whom the error occurred since this is an administrative error.~~

[OAR Docket #11-654; filed 5-6-11]

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

[OAR Docket #11-653]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Student Assessment

210:10-13-21. Academic Assessment Monitoring Program (AAMP)
[NEW]

AUTHORITY:

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

DATES:

Comment period:

January 18, 2011 through February 23, 2011

Public hearing:

February 24, 2011

Adoption:

February 24, 2011

Submitted to Governor:

February 28, 2011

Submitted to House:

February 28, 2011

Submitted to Senate:

February 28, 2011

Gubernatorial approval:

March 31, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 22, 2011

Final adoption:

April 22, 2011

Effective:

June 11, 2011

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 13. Student Assessment

210:10-13-21. Academic Assessment Monitoring Program (AAMP)
[NEW]

Gubernatorial approval:

May 10, 2010

Register Publication:

27 Ok Reg 1666

Docket Number:

10-932

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

The rule establishes an Academic Assessment Monitoring Program (AAMP) for federal and state required academic assessments, to be in compliance with regulations as established by the United States Department of Education (USDE), Student Achievement and School Accountability Programs (SASA) for Formula Grant Programs, No Child Left Behind (NCLB) Act, Title I, §1001, Part A, Title III § 3102, and 70 O.S., § 1210.505 Student Assessment, Oklahoma School Testing Program (OSTP), and Oklahoma Administrative Code (OAC) 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20. The proposed rule provides a process for the Office of Accountability and Assessments to monitor academic assessment administration practices of all public elementary and secondary schools, local education agencies, and public charter schools, which are subject to the Oklahoma State Testing Program.

CONTACT PERSON:

Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-21. Academic Assessment Monitoring Program (AAMP)

(a) **Purpose.** The Oklahoma State Department of Education (OSDE) shall establish and implement the Academic Assessment Monitoring Program (AAMP) to evaluate school district implementation and compliance with both Federal and State law and regulations related to academic assessments. The rules will bring the state into compliance with the following state and federal statutes and regulations:

(1) Student Achievement and School Accountability Programs (SASA) for Formula Grant Programs,

(2) Elementary Secondary Education Act (ESEA) Section 9304 (a) (1) requires that a State Education Agency (SEA) ensure that programs authorized under the ESEA are administered in accordance with all applicable statutes, regulations, program plans, and applications,

(3) ESEA Section 9304 (a) (B) requires that an SEA adopt and use proper methods of administering each

ESEA program, including the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation.

(4) Section 80.40 of the Education Department General Administrative Regulations (EDGAR) requires an SEA to monitor grant and sub-grant activities to ensure compliance with applicable Federal requirements, and Title 70 O.S. § 1210.505 Student Assessment, Oklahoma School Testing Program (OSTP), and Oklahoma Administrative Codes (OAC) 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20.

(5) This monitoring program is intended to:

(A) Ensure the testing of all eligible students, proper training of school district staff is conducted, test security is maintained, assessments are administered consistently and in a uniform manner as mandated in the Oklahoma Administrative Codes (OAC) 210:10-13-2, 4, 6, 7, 9, 10, and 11;

(B) Ensure that the OSDE receives from districts data of the highest quality, as mandated in the Oklahoma Administrative Code (OAC) 210:10-13-4, 18, and 20, and;

(C) Assist the staff of the OSDE to better advise and partner with districts regarding accountability and assessments.

(b) **Applicable entities.** These rules are applicable to all public schools, districts, and other educational entities within the state that participate in the OSTP.

(c) **Schedule of district monitoring.** All public school districts will be monitored at least once during the five (5) year cycle.

(1) School districts shall be scheduled for monitoring using a random selection process. Of the districts to be monitored within a particular year, five (5) percent will be randomly selected for site monitoring. The remaining ninety-five (95) percent will be monitored using a desk monitoring procedure.

(2) Additional school districts may receive a special desk or on-site monitoring and compliance review based on any of the following criteria:

(A) Observed statistical irregularities or discrepancies with student assessment data Oklahoma Administrative Code (OAC) 210:10-13-18, and 20 (e.g., statistical improbable growth in the percentage of student scoring proficient, questionable erasure analysis, and/or unusual change in student demographics);

(B) An established pattern of testing violations identified in the Oklahoma Administrative Code (OAC) at 210:10-13-2, 4, 6, 7, 9, 10, 11, 18, and 20 or irregularities as reported to the OSDE (e.g., vendor reports, invalidations, improper test administration, failure to attend or conduct yearly training);

(C) Documented concerns (e.g., parent and community, noncompliance issues from prior years, other technical assistance requests), and/or;

(D) Testing irregularities discovered through previous annual random monitoring.

(d) **Notification of monitoring schedule.** The monitoring schedule will be updated on an annual basis and posted to the

OSDE Web site. Any new school site and/or district will be added to the cycle when the yearly update occurs. School sites and or districts that cease operation within the state shall be removed from the list. The Office of Accountability and Assessments will notify the superintendent of the school district in writing at least ten (10) working days prior to the opening of the testing window that the school district will be monitored during the upcoming testing window and will identify whether the monitoring will be on-site or desk monitoring. Additional schools monitored under (c) (2) of these rules, will be notified in writing at least twenty (20) working days before the opening of the testing window.

(e) **Monitoring procedures.**

(1) **On-site monitoring.**

(A) OSDE will send the district an On-site Monitoring Checklist ten (10) working days before the opening of a testing window to the District Superintendent and District Test Coordinator of the school district to be monitored.

(B) The superintendents of districts receiving an on-site monitoring notification letter will submit the district and site testing schedules to the OSDE, Office of Accountability and Assessments five (5) working days prior to the opening of the testing window. If a change in the testing schedule occurs by the district, prior to on-site monitoring, the district must notify the OSDE, Office of Accountability and Assessments immediately.

(C) The OSDE, Office of Accountability and Assessments notification letter of monitoring will indicate which site(s) within the district have been selected for monitoring.

(D) At a minimum, one elementary school, one middle school, and one high school site within the district will be monitored as applicable.

(E) If charter schools have been established within the school district, these sites may also be monitored.

(2) **Desk monitoring.**

(A) The staff of the Office of Accountability and Assessments will analyze across a 4 year period all pertinent testing and educational data for the school district being monitored (e.g., percent of students tested across cohort).

(B) The Desk Monitoring notification letter will indicate which site(s) within the district have been selected for monitoring.

(C) At a minimum, one elementary school, one middle school and one high school site within the same district will be monitored as applicable.

(D) If charter schools have been established within the school district, these sites may also be monitored.

(E) District Superintendents and District Test Coordinators of the school district to be monitored will receive a Desk Monitoring Checklist, ten (10) working days before the opening of a testing window. The

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section of the checklist titled, "District Provided Documentation" must be completed and documents returned to the Office of Accountability and Assessments of the Oklahoma State Department of Education within twenty (20) working days from the last testing day of the End-of-Instruction (EOI) online assessment window.

(f) Failure to comply with state and federal regulations related to Academic Assessment.

(1) The Office of Accountability and Assessments will provide monitoring results to the district superintendent forty-five (45) working days from the end of the 20 day submission date of the On-Site or Desk Monitoring documents from the school district being monitored. The monitoring results will inform a district that they have met or not met requirements of Subsection (a) of these rules related to student academic testing. Districts will be designated as in compliance if all requirements have been met, or if any monitored area is found deficient then the district and the school will be designated as noncompliant. If a district is designated as noncompliant, the Office of Accountability and Assessment staff will annually conduct monitoring activities until the district is in compliant status.

(2) Districts that remain in noncompliance for two consecutive years will receive a deficiency on their accreditation report.

[OAR Docket #11-653; filed 5-6-11]

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

[OAR Docket #11-652]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Priority Academic Student Skills
Part 21. Information Literacy
210:15-3-172. Overview [AMENDED]
210:15-3-173. Information literacy [AMENDED]

AUTHORITY:

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

DATES:

Comment period:

January 18, 2011 through February 23, 2011

Public hearing:

February 24, 2011

Adoption:

February 24, 2011

Submitted to Governor:

March 1, 2011

Submitted to House:

March 1, 2011

Submitted to Senate:

March 1, 2011

Gubernatorial approval:

March 31, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2011

Final adoption:

April 27, 2011

Effective:

June 11, 2011

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 3. Priority Academic Student Skills
Part 21. Information Literacy
210:15-3-172. Overview [AMENDED]
210:15-3-173. Information literacy [AMENDED]

Gubernatorial approval:

June 21, 2010

Register Publication:

27 Ok Reg 2641

Docket Number:

10-1128

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

The purpose of the rule is to bring the Information Literacy *Priority Academic Student Skills (PASS)* up-to-date to address the new challenges and opportunities of digital media.

CONTACT PERSON:

Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 21. INFORMATION LITERACY

210:15-3-172. Overview

~~(a) Information literacy, the ability to find and use information, is basic to student learning. Information literacy standards are to be taught as an integral part of curriculum content in math, science, social studies, language arts, reading, etc.~~

~~(b) Students are best served when these are taught in collaboration and cooperation between the classroom teacher and the library media specialist. The classroom teacher and media specialist should provide opportunities for students to use information literacy skills in completion of class assignments.~~

(a) Information literacy is no longer a simple matter of being able to locate information in reference books. Digital information has increased the complexity of information literacy to include digital, visual, and technological literacy, in addition to textual literacy. These literacy skills are essential to success in the modern world.

(b) STANDARDS FOR THE 21ST-CENTURY LEARNER, by the American Association of School Librarians (AASL) (2007), addresses the new complexity of information literacy. Because these standards outline the skills our students will need for future success, they have been adopted as the PRIORITY ACADEMIC STUDENT SKILLS for Information Literacy

with the permission of AASL. These standards consist of skills, dispositions, responsibilities, and self-assessment strategies. Skills are the key abilities needed for understanding, learning, thinking, and mastering subjects (AASL). Dispositions are ongoing beliefs and attitudes that guide thinking and intellectual behavior that can be measured through actions taken (AASL). Responsibilities are common behaviors used by independent learners in researching, investigating, and problem solving (AASL). Self-assessment strategies are reflections of one's own learning to determine that the skills, dispositions, and responsibilities are effective (AASL). Taken together, these four strands, or components, outline the knowledge and skills a student must possess to become a responsible digital citizen.

(c) Information literacy standards are to be taught as an integral part of curriculum content in science, social studies, language arts, reading, etc. To facilitate the identification of information literacy skills, a book icon follows each standard or objective within the curriculum document which has information literacy embedded within the curriculum. Students are best served when these are taught in collaboration and cooperation between the classroom teacher and the library media specialist. The classroom teacher and media specialist should provide opportunities for students to use information literacy skills in completion of class assignments.

(d) Specific benchmarks for each of the standards are provided in the Benchmarks for Information Literacy document. This document is excerpted from STANDARDS FOR THE 21ST CENTURY LEARNER IN ACTION by the American Association of School Librarians (2009). This publication is considered an essential tool for library media specialists and should be part of the professional collection for all school libraries.

210:15-3-173. Information literacy

(a) Information literacy.

(1) ~~Standard. The student who is information literate accesses information efficiently and effectively. (AASL, Information Power)~~

(A) ~~The student will demonstrate he/she understands the need for information.~~

(B) ~~The student will demonstrate he/she knows in order to make decisions accurate information is needed.~~

(C) ~~The student will be able to identify and use a range of information sources.~~

(D) ~~The student will demonstrate he/she knows how to access information from a variety of sources print, nonprint and electronic.~~

(E) ~~The student will demonstrate he/she knows how the library media center is arranged, how to locate materials using the catalog, and how to retrieve information from print, nonprint and electronic materials in order to solve a problem or answer a question.~~

(2) ~~Standard. The student who is information literate evaluates information critically and competently. (AASL, Information Power)~~

(A) ~~The student will make distinctions between fact, fiction and biased information.~~

(B) ~~The student will be able to determine accuracy and credibility of authorship and content of a document.~~

(C) ~~The student will be able to determine relevancy of information to his/her needs.~~

(3) ~~Standard. The student who is information literate uses information accurately and creatively. (AASL, Information Power)~~

(A) ~~The student will be able to organize the information in a manner that meets the need of the assignment or problem.~~

(B) ~~The student will assimilate new information into his/her existing knowledge.~~

(C) ~~The student will know how to use the information to communicate ideas and take appropriate action.~~

(b) Independent learning.

(1) ~~Standard. The student who is an independent learner is information literate and pursues information related to personal interests. (AASL, Information Power) The student will be able to locate, select and utilize resources independently for personal enjoyment or use.~~

(2) ~~Standard. The student who is an independent learner is information literate and appreciates literature and other creative expressions of information. (AASL, Information Power)~~

(A) ~~The student will select and appreciate literature in a variety of genres to satisfy personal interests.~~

(B) ~~The student will understand information presented in a variety of formats.~~

(3) ~~Standard. The student who is an independent learner is information literate and strives for excellence in information seeking and knowledge generation. (AASL, Information Power)~~

(A) ~~The student will recognize the difference between accurate and inaccurate information.~~

(B) ~~The student will combine new information with previous knowledge to generate new knowledge.~~

(C) ~~The student will continue to seek and revise until his/her information need is met and communicated accurately and appropriately.~~

(c) Social responsibility

(1) ~~Standard. The student who contributes positively to the learning community and to society is information literate and recognizes the importance of information to a democratic society. (AASL, Information Power)~~

(A) ~~The student will recognize and respect differing opinions in discussions as well as print and visual resources.~~

(B) ~~The student will proactively seek to understand different perspectives in order to have an informed opinion.~~

(C) ~~The student returns loaned materials responsibly showing respect for others' needs.~~

(2) ~~Standard. The student who contributes positively to the learning community and to society is information~~

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literate and practices ethical behavior in regard to information and information technology. (AASL, Information Power)

- (A) The student acknowledges and honors ownership of information.
- (B) The student understands copyright issues and adheres to copyright laws.
- (C) The student gives credit to sources.
- (D) The student follows guidelines in acceptable use policies and guidelines for technology usage.

(3) **Standard.** The student who contributes positively to the learning community and to society is information literate and participates effectively in groups to pursue and generate information. (AASL, Information Power)

- (A) The student will demonstrate the ability to be a contributing member of a group by locating, using and communicating information to solve a need or problem.
- (B) The student will respect diversity of thoughts and backgrounds of group members. The nine Information Literacy Standards are from Information Power: Building Partnerships for Learning by American Association of School Librarians and Association for Educational Communications and Technology. Copyright 1998 American Library Association and Association for Educational Communications and Technology. Reprinted by the Oklahoma State Department of Education by permission of the American Library Association.

(a) **Standard 1: Inquire, think critically, and gain knowledge.** (American Association of School Librarians [AASL], STANDARDS FOR THE 21ST-CENTURY LEARNER)

(1) **Skills.**

- (A) Follow an inquiry-based process in seeking knowledge in curricular subjects, and make the real world connection for using this process in own life.
- (B) Use prior and background knowledge as context for new learning.
- (C) Develop and refine a range of questions to frame the search for new understanding.
- (D) Find, evaluate, and select appropriate sources to answer questions.
- (E) Evaluate information found in selected sources on the basis of accuracy, validity, appropriateness for needs, importance, and social and cultural context.
- (F) Read, view, and listen for information presented in any format (e.g., textual, visual, media, digital) in order to make inferences and gather meaning.
- (G) Make sense of information gathered from diverse sources by identifying misconceptions, main and supporting ideas, conflicting information, and point of view or bias.
- (H) Demonstrate mastery of technology tools for accessing information and pursuing inquiry.
- (I) Collaborate with others to broaden and deepen understanding.

(2) **Dispositions.**

- (A) Display initiative and engagement by posing questions and investigating the answers beyond the collection of superficial facts.
- (B) Demonstrate confidence and self-direction by making independent choices in the selection of resources and information.
- (C) Demonstrate creativity by using multiple resources and formats.
- (D) Maintain a critical stance by questioning the validity and accuracy of all information.
- (E) Demonstrate adaptability by changing the inquiry focus, questions, resources, or strategies when necessary to achieve success.
- (F) Display emotional resilience by persisting in information searching despite challenges.
- (G) Display persistence by continuing to pursue information to gain a broad perspective.

(3) **Responsibilities.**

- (A) Respect copyright/ intellectual property rights of creators and producers.
- (B) Seek divergent perspectives during information gathering and assessment.
- (C) Follow ethical and legal guidelines in gathering and using information.
- (D) Contribute to the exchange of ideas within the learning community.
- (E) Use information technology responsibly.

(4) **Self-Assessment Strategies.**

- (A) Monitor own information-seeking processes for effectiveness and progress, and adapt as necessary.
- (B) Use interaction with and feedback from teachers and peers to guide own inquiry process.
- (C) Monitor gathered information, and assess for gaps or weaknesses.
- (D) Seek appropriate help when it is needed.

(b) **Standard 2: Draw conclusions, make informed decisions, apply knowledge to new situations, and create new knowledge.** (American Association of School Librarians [AASL], STANDARDS FOR THE 21ST-CENTURY LEARNER)

(1) **Skills.**

- (A) Continue an inquiry-based research process by applying critical-thinking skills (analysis, synthesis, evaluation, organization) to information and knowledge in order to construct new understandings, draw conclusions, and create new knowledge.
- (B) Organize knowledge so that it is useful.
- (C) Use strategies to draw conclusions from information and apply knowledge to curricular areas, real-world situations, and further investigations.
- (D) Use technology and other information tools to analyze and organize information.
- (E) Collaborate with others to exchange ideas, develop new understandings, make decisions, and solve problems.

- (F) Use the writing process, media and visual literacy, and technology skills to create products that express new understandings.
- (2) **Dispositions.**
- (A) Demonstrate flexibility in the use of resources by adapting information strategies to each specific resource and by seeking additional resources when clear conclusions cannot be drawn.
- (B) Use both divergent and convergent thinking to formulate alternative conclusions and test them against the evidence.
- (C) Employ a critical stance in drawing conclusions by demonstrating that the pattern of evidence leads to a decision or conclusion.
- (D) Demonstrate personal productivity by completing products to express learning.
- (3) **Responsibilities.**
- (A) Connect understanding to the real world.
- (B) Consider diverse and global perspectives in drawing conclusions.
- (C) Use valid information and reasoned conclusions to make ethical decisions.
- (4) **Self-Assessment Strategies.**
- (A) Determine how to act on information (accept, reject, modify).
- (B) Reflect on systematic process, and assess for completeness of investigation.
- (C) Recognize new knowledge and understanding.
- (D) Develop directions for future investigations.
- (c) **Standard 3: Share knowledge and participate ethically and productively as members of our democratic society.** (American Association of School Librarians [AASL], STANDARDS FOR THE 21ST-CENTURY LEARNER)
- (1) **Skills.**
- (A) Conclude an inquiry-based research process by sharing new understandings and reflecting on the learning.
- (B) Participate and collaborate as members of a social and intellectual network of learners.
- (C) Use writing and speaking skills to communicate new understandings effectively.
- (D) Use technology and other information tools to organize and display knowledge and understanding in ways that others can view, use, and assess.
- (E) Connect learning to community issues.
- (F) Use information and technology ethically and responsibly.
- (2) **Dispositions.**
- (A) Demonstrate leadership and confidence by presenting ideas to others in both formal and informal situations.
- (B) Show social responsibility by participating actively with others in learning situations and by contributing questions and ideas during group discussions.
- (C) Demonstrate teamwork by working productively with others.
- (3) **Responsibilities.**
- (A) Solicit and respect diverse perspectives while searching for information, collaborating with others, and participating as a member of the community.
- (B) Respect the differing interests and experiences of others, and seek a variety of viewpoints.
- (C) Use knowledge and information skills and dispositions to engage in public conversation and debate around issues of common concern.
- (D) Create products that apply to authentic, real-world contexts.
- (E) Contribute to the exchange of ideas within and beyond the learning community.
- (F) Use information and knowledge in the service of democratic values.
- (G) Respect the principles of intellectual freedom.
- (4) **Self-Assessment Strategies.**
- (A) Assess the processes by which learning was achieved in order to revise strategies and learn more effectively in the future.
- (B) Assess the quality and effectiveness of the learning product.
- (C) Assess own ability to work with others in a group setting by evaluating varied roles, leadership, and demonstrations of respect for other viewpoints.
- (d) **Standard 4: Pursue personal and aesthetic growth.** (American Association of School Librarians [AASL], STANDARDS FOR THE 21ST-CENTURY LEARNER)
- (1) **Skills.**
- (A) Read, view, and listen for pleasure and personal growth.
- (B) Read widely and fluently to make connections with self, the world, and previous reading.
- (C) Respond to literature and creative expressions of ideas in various formats and genres.
- (D) Seek information for personal learning in a variety of formats and genres.
- (E) Connect ideas to own interests and previous knowledge and experience.
- (F) Organize personal knowledge in a way that can be called upon easily.
- (G) Use social networks and information tools to gather and share information.
- (H) Use creative and artistic formats to express personal learning.
- (2) **Dispositions.**
- (A) Demonstrate curiosity by pursuing interests through multiple resources.
- (B) Demonstrate motivation by seeking information to answer personal questions and interests, trying a variety of formats and genres, and displaying a willingness to go beyond academic requirements.
- (C) Maintain openness to new ideas by considering divergent opinions, changing opinions or conclusions when evidence supports the change, and seeking information about new ideas encountered through academic or personal experiences.

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(D) Show an appreciation for literature by electing to read for pleasure and expressing an interest in various literary genres.

(3) Responsibilities.

(A) Participate in the social exchange of ideas, both electronically and in person.

(B) Recognize that resources are created for a variety of purposes.

(C) Seek opportunities for pursuing personal and aesthetic growth.

(D) Practice safe and ethical behaviors in personal electronic communication and interaction.

(4) Self-Assessment Strategies.

(A) Identify own areas of interest.

(B) Recognize the limits of own personal knowledge.

(C) Recognize how to focus efforts in personal learning.

(D) Interpret new information based on cultural and social context.

(E) Develop personal criteria for gauging how effectively own ideas are expressed.

(F) Evaluate own ability to select resources that are engaging and appropriate for personal interests and needs.

[OAR Docket #11-652; filed 5-6-11]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #11-651]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-103. Career development plan to teach early childhood - infants, toddlers, and three-year-olds [NEW]

AUTHORITY:

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

DATES:

Comment period:

January 18, 2011 through February 23, 2011

Public hearing:

February 24, 2011

Adoption:

February 24, 2011

Submitted to Governor:

March 1, 2011

Submitted to House:

March 1, 2011

Submitted to Senate:

March 1, 2011

Gubernatorial approval:

March 31, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2011

Final adoption:

April 27, 2011

Effective:

June 11, 2011

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-103. Career development plan to teach early childhood - infants, toddlers, and three-year-olds [NEW]

Gubernatorial approval:

May 10, 2010

Register Publication:

27 Ok Reg 1668

Docket Number:

10-931

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

The proposed rule is to adopt a career development program for individuals with a bachelor's degree in family relations/child development or a related major/degree from an accredited higher education institution recognized by the Oklahoma State Board of Education to be eligible to teach infants, toddlers, and three-year-olds, not including pre-kindergarten age four.

CONTACT PERSON:

Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-103. Career development plan to teach early childhood - infants, toddlers, and three-year-olds

(a) The Oklahoma State Department of Education (OSDE) shall issue a credential to teach infants, toddlers, and three-year-olds, when the following requirements are met:

(1) Bachelor's degree in the area of child development or family relations with an emphasis in the development of infants and toddlers through age three (3) from a regionally accredited higher education institution recognized by the Oklahoma State Board of Education,

(2) Pass the Oklahoma General Education Test, and

(3) Pass the Federal Bureau of Investigation (FBI) criminal history check.

(b) The Oklahoma State Department of Education shall issue a standard teaching certificate when the following requirements are met:

(1) Complete three (3) semester hours in reading instruction from a regionally accredited higher education institution recognized by the Oklahoma State Board of Education.

(2) Documentation of successful completion of 180 days of employment by the program/site director.

[OAR Docket #11-651; filed 5-6-11]

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM**

[OAR Docket #11-580]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 240:10-1-2. Definitions [AMENDED]
- Subchapter 3. Benefits
- Part 5. Eligibility
- 240:10-3-23. Claims for total unemployment benefits [AMENDED]
- 240:10-3-29. Employer leave due to illness or disability [NEW]
- Subchapter 5. Contributions
- Part 3. Rates
- 240:10-5-15. Successor acquiring the experience rating account of predecessor [AMENDED]
- Part 19. Maintenance and Production of Work Records
- 240:10-5-91. Employer's Quarterly Contribution Wage Reports [AMENDED]
- 240:10-5-96. Application for Oklahoma UI Tax Account Number [NEW]
- Subchapter 11. Assessment Board Procedures
- Part 5. Hearings
- 240:10-11-20. Notice of hearings [AMENDED]
- 240:10-11-22. Conduct of hearings [AMENDED]
- 240:10-11-25. Motion to reopen after failure to appear [AMENDED]
- Subchapter 13. Appeal Tribunal Procedures
- Part 5. Hearings
- 240:10-13-33. ~~Notices~~Notice of hearing [AMENDED]
- 240:10-13-40. Reopen [AMENDED]
- 240:10-13-42. Conduct of hearings [AMENDED]

AUTHORITY:

40 O.S. §§1-226, 2-210, 2-604, 3-102, 3-111, 3-115, 4-302; and the Oklahoma Employment Security Commission.

DATES:

Comment period:

November 16, 2010 through December 14, 2010

Public hearing:

None held or requested

Adoption:

March 1, 2011

Submitted to Governor:

March 1, 2011

Submitted to House:

March 1, 2011

Submitted to Senate:

March 1, 2011

Gubernatorial approval:

March 29, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 27, 2011

Final adoption:

April 27, 2011

Effective:

June 15, 2011

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 5. Contributions
- Part 19. Maintenance and production of work records
- 240:10-5-91. Reports [AMENDED]

Gubernatorial approval:

June 21, 2010

Register Publication:

27 Ok Reg 2623

Docket number:

10-1079

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

These amendments will give definitions for the terms "full-time work" and "part-time work". They will clarify the rule on the effective date of a re-opened claim. A new rule will better define when an employee is deemed job attached and not separated from employment. There will be clarification for the wording of the successorship rule. The rule on report filing will require large employers and third party administrators to file through the Internet, while small employers can file through the Internet or on paper forms. A new rule will set out the requirements for obtaining an Oklahoma account number. Rules for the Assessment Board and the Appeal Tribunal will clarify when notices of hearings are required to be sent out, will standardize the formats for evidence through audio, video or electronic images, and will extend the time period to reopen a case for failure to appear from five to ten days.

CONTACT PERSON:

Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146. E-Mail address: Melissa.Copenhaver@oesc.state.ok.us .

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

240:10-1-2. Definitions

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

"**Commuting distance**" means an automobile driving distance of fifty (50) miles from a claimant's place of residence.

"**Full-time work**" means employment in thirty-two (32) or more hours of work per week.

"**Good cause**" means reasons beyond the control of the party seeking relief.

"**Independent contractor**" means:

(A) Any person who performs services according to their own methods and without control except as to results is an independent contractor, if they are:

- (i) Customarily engaged in an independently-established business; or
- (ii) Performing service outside the usual course of the contractor's business and outside the places of such business.

(B) In order to be considered "without control" the individual providing the service shall:

- (i) Provide their own tools and equipment;
- (ii) Pay their own ordinary and customary business expenses;
- (iii) Risk losing money from the contract;
- (iv) Be free to hire their own assistants; and
- (v) Be responsible for obtaining and maintaining all business, tax registrations and all business

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occupational licenses required by federal, state, or local laws or ordinances.

(C) A written contract relating to such services shall be considered under 40 O.S. Section 1-210 (14), along with all other pertinent evidence in determining employment status and shall not be accorded any greater weight than any other evidence.

(D) This definition shall not be interpreted or construed as conflicting with Section 3304 (a) (6) (a) of the Federal Unemployment Tax Act.

"Interested Party" means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. §2-503 (E).

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal - the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

"Leases" and "Rents" [40:1-210(15)] mean a contract between an owner of a business, building, or property and a leasee, in which:

(A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the leasee;

(B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and

(C) Is not based upon a percentage of income or revenue earned in the trade or business.

"Mail", "Mailed", and "Mailing", as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. §7520(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

"Part-time work" means employment of less than thirty-two (32) hours of work in a week.

"Profiling" means:

(A) A systematic computer generated process that:

- (i) Identifies those claimants most likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
- (ii) Refers identified claimants to reemployment services; and
- (iii) Collects follow-up information relating to the services received.

(B) Data elements which may be used in the identification process for profiling are:

(i) Recall status;

(ii) Union hiring hall agreement;

(iii) Education;

(iv) Job tenure;

(v) Industry;

(vi) Occupation;

(vii) Unemployment rate;

(viii) Number of prior UI claims; and

(ix) Maximum weekly benefit amount.

(C) Data elements prohibited for usage in profiling are:

(i) Age;

(ii) Race or ethnic group;

(iii) Sex;

(iv) Color;

(v) National origin;

(vi) Disability;

(vii) Religion;

(viii) Political affiliation; and

(ix) Citizenship.

"Reasonable cash value" [40:1-218] means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

"Reemployment Services" means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

"Temporary Layoff" means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date.

"Wages"

(A) "Gratuities or Tips" The employer shall include as wages all monies paid as gratuities or tips actually received by an individual in the course of his work [40:1-218] or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) "Noncash remuneration" Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services unless such meals and lodging are furnished on the business premises of the employer for the convenience of the employer. [40:1-218(4)]

"Wages paid"

(A) The term "wages paid" [40:1-219] shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

"Week"

(A) For the purpose of paying benefits and for the purpose of this Chapter, a "week" [40:1-220] shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.

(B) Provided that the Commission, upon its own initiative or upon application by any employer, may prescribe that with regard to individuals involved in a temporary layoff with a specified date to return to work and whose assigned work week consists of consecutive work days within two different calendar weeks, the definition of a "week" shall be the work week as assigned by the employer.

(C) For the purposes of determining full time work, "week" means a period of seven consecutive days that is established by an employer as its regular work week.

calendar days from the week ending date of the claim or within fourteen (14) calendar days from the date the continued claim is furnished to the claimant.

(f) **Determination of eligibility for benefits.** The OES Act prescribes the following requirements:

(1) A Commission representative shall determine claimant's eligibility for benefits.

(2) A Commission representative shall accept written and verbal statements from the claimant and the employer.

(3) A Commission representative shall take any action necessary to determine the facts and to determine the rights of both the employer and claimant.

(4) A Commission representative shall write a determination which must include the following:

(A) An explanation of the parties' appeal rights;

(B) A summary of pertinent facts;

(C) The reasons for allowing or denying benefits; and

(D) The conclusion or legal results of the decision.

(5) Any interested party may appeal a determination. The appeal shall be filed with the Commission. When the appeal is filed, all interested parties shall be notified.

(g) In computing any period of time described in this rule, the day of the event from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included. Claimants required to make a filing on a day in which the offices of the Commission are not open shall make the filing through the Internet or by telephone through the Interactive Voice Response system. Failure to file for a claim within the time allowed will result in denial of benefits for that week.

SUBCHAPTER 3. BENEFITS

PART 5. ELIGIBILITY

240:10-3-23. Claims for total unemployment benefits

(a) **Definition.** An individual shall be defined as in "total unemployment" during a week whenever:

(1) the individual has been separated from employment with his/her last regular employer; and

(2) the individual has not during the week performed services in employment for any employer; or

(3) the individual has worked less than full time for some employer and earned less than his/her weekly benefit amount plus \$100.00. [40:1-217]

(b) **Initial claim.** The initial claim may serve as a registration for work.

(c) **Effective date.** The effective date of an initial claim, or additional initial claim, or a reopened claim shall be the first day of the calendar week in which the individual first files the initial claim, or additional initial claim, or reopened claim.

(d) **Failure to report/good cause.** When the Commission representative determines that a claimant had good cause for failure to report as directed, a claim may be accepted at a later date, not to exceed seven (7) calendar days from the date originally specified for his/her reporting.

(e) **Continued claim.** A claimant who is filing for benefits under the mail claim system, the Interactive Voice Response System, or the Internet may file a continued claim provided the claimant files the continued claim within fourteen (14)

240:10-3-29. Employer leave due to illness or disability

If an employer places an employee on leave due to the illness or disability of the employee or the employee's immediate family member as defined by the Employment Security Act of 1980 at 40 O.S. §2-210, and the employer will allow the employee to return to work once the employee is released to work by the employee's physician or the assistance to the employee's immediate family member is no longer required, then the employee will be deemed to be job attached and not separated from employment.

SUBCHAPTER 5. CONTRIBUTIONS

PART 3. RATES

240:10-5-15. Successor acquiring the experience rating account of predecessor

(a) **Notification to transferring employer.** When any employing unit acquires a portion of the experience rating account of an employer under the provisions of 40 O.S. Section

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3-111(C)(B), and makes written application for ~~such~~ a transfer as provided by the Act, written notice of ~~such~~ the application for partial transfer shall be mailed or delivered to the transferring employer by a duly authorized Commission representative ~~within fifteen (15) days~~ after receipt of ~~such~~ the application.

(b) **Protesting partial transfer.** Within twenty (20) days after the date of mailing or delivery by a ~~duly authorized Commission representative~~ of ~~such~~ the written notice, the transferring employer may file a written protest to ~~such~~ the transfer and request an oral hearing to present evidence in support of ~~such~~ the protest. ~~Such~~ The hearing shall be conducted in the manner prescribed in 40 O.S. Section 3-305. Pending a final determination of ~~such~~ the protest, no transfer of experience rating account shall be made. If it is determined that a transfer of a partial experience history should be ~~but if pursuant to such final determination a transfer of experience rating account is made,~~ then the accounts and contributions of the transferring and acquiring employers shall be adjusted in accordance with ~~such~~ the transfer.

(c) **Partial transfer to subject employer.** In the event of a partial transfer of the experience rating account of an employer to an acquiring employing unit, who was not an employer prior to ~~such~~ the acquisition, the contribution rate of the acquiring employing unit shall be determined in accordance with the provisions of 40 O.S., Article 3, Part I, based upon ~~that~~ the portion of the experience rating account ~~so~~ that was transferred. ~~That~~ The portion of the experience rating account ~~so~~ that was transferred shall not thereafter be used to compute an experience rating contribution rate for the transferring employer. The contribution rate ~~so~~ computed after the transfer shall be applicable to ~~such~~ the acquiring employing unit as of the date of the acquisition.

(d) **Partial transfer to non-subject employer.** If the acquiring employing unit was an employer prior to ~~such~~ the acquisition and transfer, then the experience rating account ~~so~~ that was transferred shall be consolidated with the employer's experience rating account prior to ~~such~~ the acquisition, and a contribution rate computed on the combined experience under the provisions of 40 O.S., Article 3, Part I. The contribution rate ~~so~~ computed after the transfer shall be applicable to ~~such~~ the employer beginning with the first day of the calendar quarter in which ~~such~~ the acquisition occurred. ~~That~~ The portion of the experience rating account ~~so~~ that was transferred shall not be used in computing an experience rating ~~contribution rate~~ for the transferring employer for any year subsequent to the year in which the transfer was effective.

PART 19. MAINTENANCE AND PRODUCTION OF WORK RECORDS

240:10-5-91. Employer's Quarterly Contribution Wage Reports

(a) **Due date of report.** Each employer shall report both contributions and "wages paid" (as defined in OAC 240:10-1-2) on Form OES-3, Employer's Quarterly Contribution and Wage Report, for each quarterly period in which said employer is subject to the OES Act, on or before the last day of the month

following the calendar quarter to be reported. However, an employing unit which has not previously qualified as an employer under the OES Act and who first qualifies as an employer during a calendar year shall file Form OES-3, Employer's Quarterly Contribution and Wage Reports, for all past periods of that calendar year on or before the due date for the quarterly report for that quarter in which such employing unit becomes an employer subject to the OES Act. [40:4-503]

(b) **Information required.**

(1) All instructions furnished with the official forms must be followed.

(2) All information required on the official forms shall be given.

(c) **Date of filing.** The date of filing of the Employer's Quarterly Contribution and Wage Report shall be determined by the date that an employer's fully completed report form is submitted for filing with the Commission pursuant to 40 O.S. §1-224.

(d) **Report Filing.** ~~After January 1, 2011, all third party administrators or employers with 50 or more employees shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website and payment of taxes shall be through electronic fund transfer.~~

(1) This subsection shall apply to all Employer's Quarterly Contribution and Wage Reports that are due for filing after January 1, 2011.

(2) All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website, unless an exception is granted by the Commission.

(3) All third party administrators shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website for clients with an assigned Oklahoma SUTA account number, unless an exception is granted by the Commission.

240:10-5-96. Application for Oklahoma UI Tax Account Number

(a) Each employer must file an application for Oklahoma UI Tax Account Number, OES-1, in order to establish an Oklahoma UI Tax Account.

(b) All information requested in blocks 1, 2, 3, 4, and 5 of the form must be completed with all information requested including the social security number of the owners, directors, officers, partners, corporate officers or members of the entity filing the application.

(c) Blocks 6 through 17 must be truthfully filled out with all information that is applicable to the entity. The form must be signed by an owner, partner, director, officer or member of the entity in block 18 with the title of the signator and the date of signing specifically stated.

(d) If the Commission becomes aware of the existence of an employer that has failed or refused to file a form OES-1, the

Commission may file the form on behalf of the employer using any information the Commission has available to it.

**SUBCHAPTER 11. ASSESSMENT BOARD
PROCEDURE**

PART 5. HEARINGS

240:10-11-20. Notice of hearings

The initial notice of hearing with regard to any case shall be mailed by the Assessment Board to all interested parties no fewer than 10 days prior to the scheduled hearing, unless all interested parties waive their right to the 10 day notice. Notice of any subsequent hearings with regard to the same case may be given on the record, or by any other means reasonably calculated to provide reasonable notice of the hearing at any time before the hearing is to take place. ~~Board shall schedule the hearing and notify the protestant in writing of the date and place of the hearing at least ten (10) days prior to the hearing date. [40:3-305 (2)]~~

240:10-11-22. Conduct of hearings

(a) **Rules of evidence.** All hearings shall be conducted in accordance with 75 O.S. §310, except where OESC Rules or the Employment Security Act of 1980 provides for an alternative procedure, in which case the provisions of OESC Rules or the Employment Security Act of 1980 shall prevail.

(b) **Record of hearings.** All testimony shall be electronically recorded and the Board shall retain originals of all exhibits entered into evidence for as long as required by law.

(c) **Representation.** All protestants have the right to be represented by an attorney or other representative of his/her choice.

(d) Parties submitting audio, video or electronic images as evidence must do so in a standard format and must provide copies to the Assessment Board. The evidence must be provided in a manner that can be reviewed without special codes or software. The standard formats shall be published by the Assessment Board on the agency web site and updated periodically.

240:10-11-25. Motion to reopen after failure to appear

(a) If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within ~~five (5)~~ ten (10) days after the mailing of the Assessment Board's Order of Decision. The motion shall provide the reasons for the party's failure to appear and will become a part of the record.

(b) The Director of the Appellate Division, or a designee, shall review the Motion to Reopen the Hearing. For the purpose of ruling on the motion only, the Director or designee shall accept the facts offered in the motion as true. If the motion does not demonstrate good cause for failure to appear at the prior hearing as defined by OESC Rule 240:10-11-24, the Motion to Reopen the Hearing shall be denied. The Assessment Board shall issue a written order with appeal rights to district court.

(c) If the Director or designee finds that the motion demonstrates good cause or leaves a question as to whether good cause exists, the Chief Hearing Officer shall set the case for hearing on the issue of good cause for the non-appearance. All interested parties shall be notified of the newly scheduled hearing.

(d) After the hearing provided for subsection (c) above, if the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on the merits.

(e) After the hearing provided for subsection (c) above, if the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.

**SUBCHAPTER 13. APPEAL TRIBUNAL
PROCEDURE**

PART 5. HEARINGS

240:10-13-33. Notices Notice of hearing

~~Notices of Hearing shall be mailed by the Appeal Tribunal to all interested parties not later than ten (10) days prior to the scheduled hearings.~~ The initial notice of hearing with regard to any case shall be mailed by the Appeal Tribunal to all interested parties no fewer than 10 days prior to the scheduled hearing, unless all interested parties waive their right to the 10 day notice. Notice of any subsequent hearings with regard to the same case may be given on the record, or by any other means reasonably calculated to provide reasonable notice of the hearing at any time before the hearing is to take place.

240:10-13-40. Reopen

(a) If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within ~~five (5)~~ ten (10) days after the mailing of the Appeal Tribunal's Order of Decision. The motion shall provide reasoning for failure to appear and will become a part of the record.

(b) The Director of the Appellate Division, or a designee, shall review the Motion to Reopen the Hearing. For the purpose of ruling on the motion only, the Director or designee shall accept the facts offered in the motion as true. If the motion does not demonstrate good cause for failure to appear at the prior hearing as defined by all OESC Rule 240:10-13-37, the Motion to Reopen the Hearing shall be denied. The Appeal Tribunal shall issue a written order denying the motion with appeal rights to the Board of Review.

(c) If the facts offered in the motion demonstrate good cause or leave a question as to whether good cause exists, the Chief Hearing Officer shall set the case for hearing on the issue of good cause for the non-appearance. All interested parties shall be notified of the hearing to show good cause.

(d) After the hearing provided for subsection (c) above, if the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on its merits.

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(e) After the hearing provided for subsection (c) above, if the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.

(f) If the party who failed to appear at the originally scheduled hearing appears for the new hearing and the party who appeared at the originally scheduled hearing does not appear, testimony and evidence from the party present will be taken, the tape made at the original hearing played, and the decision shall be rendered based upon the sworn testimony and other evidence submitted at both the first hearing and the second hearing.

240:10-13-42. Conduct of hearings

(a) **Hearings (in-person and telephonic).** Hearings will be conducted in a manner to protect the substantial rights of the parties. Hearings will be in accordance with the requirements of the Employment Security Act of 1980 and the Administrative Procedures Act.

(b) Rules of evidence.

(1) The parties may present testimony and evidence in their own behalf and each party shall be allowed the right of cross examination. The hearing officer may also examine the parties and witnesses.

(2) All hearings shall be conducted in accordance with 75 O.S. §310, except where OESC Rules or the Employment Security Act of 1980 provides for an alternative procedure, in which case the provisions of OESC Rules or the Employment Security Act of 1980 shall prevail.

(c) Parties submitting audio, video or electronic images as evidence must do so in a standard format and must provide copies to the Appeal Tribunal. The evidence must be provided in a manner that can be reviewed without special codes or software. The standard formats shall be published by the Appeal Tribunal on the agency web site and updated periodically.

[OAR Docket #11-580; filed 4-28-11]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 510. CARE OF EYES FOR NEWBORN CHILDREN [REVOKED]

[OAR Docket #11-588]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General provisions [REVOKED]
- 310:510-1-1. Purpose [REVOKED]
- Subchapter 3. Approved Antiseptics [REVOKED]
- 310:510-3-1. Approved antiseptics [REVOKED]
- Subchapter 5. Recommendations [REVOKED]
- 310:510-5-1. Recommendations [REVOKED]

AUTHORITY:

Oklahoma State Board of Health; 63 O.S. § 1-104 and 63 O.S. § 509

DATES:

Comment Period:

November 15, 2010 through December 15, 2010

Public Hearing:

December 15, 2010

Adoption:

January 11, 2011

Submitted to Governor:

January 21, 2011

Submitted to House:

January 21, 2011

Submitted to Senate:

January 21, 2011

Gubernatorial approval:

January 31, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 5, 2011

Final adoption:

April 5, 2011

Effective:

June 11, 2011

SUPERSEDED EMERGENCY ACTIONS:

"n/a"

INCORPORATION BY REFERENCE:

"n/a"

ANALYSIS:

The purpose of the proposed rulemaking action is to revoke Chapter 310:510-1-1 et seq., Care of Eyes for Newborn Children. These rules implemented provisions in law at 63 O.S. Section 1-509 et seq., amended in 2010 by Senate Bill 1817, effective November 1, 2010. The Statute previously identified a one percent (1%) solution of nitrate of silver as medication for care of inflammation of the eyes of the newborn and authorized the State Board of Health to approve the use of antiseptics, other than nitrate of silver, for use, and to prescribe the manner of their use. The statute further mandated reporting of ophthalmia neonatorum and refusal of administration of a prophylactic ophthalmic agent.

The Statute amendments remove reporting requirements for ophthalmia neonatorum and refusal of administration of a prophylactic ophthalmic agent and now require any physician, midwife, or other attendant upon the birth of a newborn infant to ensure treatment of the eyes of the infant with a prophylactic ophthalmic agent as recommended by the Centers for Disease Control and Prevention as prophylaxis against ophthalmia neonatorum. The statute amendments authorize rulemaking in support of the amendments but no rules are deemed necessary at this time. The statute does not prohibit a parent or legal guardian of a newborn infant from refusing prophylactic treatment on religious grounds or when such person deems that it is in the best interest of the child. If the parent or legal guardian of the newborn infant refuses the prophylactic treatment, the health care provider shall document the refusal in the medical file of the newborn infant.

CONTACT PERSON:

Suzanna Dooley, Chief, Maternal and Child Health Service, phone (405) 271-4480, e-mail suzannad@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:510-1-1. Purpose [REVOKED]

The rules in this Chapter implement the Care of Eyes for Newborn Children Regulations, 63 O.S. 1981, Section 1-511.

SUBCHAPTER 3. APPROVED ANTISEPTICS [REVOKED]

310:510-3-1. Approved antiseptics [REVOKED]

The Oklahoma State Board of Health approves the use of one of the following antiseptics to be applied to the eyes of the newborn at birth: sterile ophthalmic one percent (1%) solution of silver nitrate, sterile ophthalmic ointment, solution or suspension of tetracycline or erythromycin.

SUBCHAPTER 5. RECOMMENDATIONS [REVOKED]

310:510-5-1. Recommendations [REVOKED]

- (a) Prophylactic agents should be given immediately (within one hour) after birth.
- (b) Prophylaxis should be applied as follows:
 - (1) Ophthalmic solution or suspension (silver nitrate, erythromycin or tetracycline).
 - (A) Carefully clean eyelids and surrounding skin with sterile cotton, which may be moistened with sterile water.
 - (B) Gently open the baby's eyelids and instill two (2) drops of ophthalmic solution or suspension on the conjunctival sac. Allow the drops to run across the whole conjunctival sac. Carefully manipulate lids to insure spread of the drops. Repeat in the other eye. When using single use ampules, use two (2) ampules, one for each eye. When using larger vials, use one vial per baby.
 - (C) After one minute, gently wipe excess ophthalmic solution or suspension from eyelids and surrounding skin with sterile water. Do not irrigate eyes.
 - (2) Ophthalmic Ointment (erythromycin or tetracycline).
 - (A) Carefully clean eyelids and surrounding skin with sterile cotton, which may be moistened with sterile water.
 - (B) Gently open the baby's eyelids and place a thin line of ointment, at least one half (1/2) inch (1-2 cm), along the junction of the bulbar and palpebral conjunctiva of the lower eyelid. Try to cover the whole lower conjunctival area. Carefully manipulate lids to insure spread of the ointment. Be careful not to touch the eyelid or eyeball with the tip of the tube. Repeat in other eye. Use one tube per baby.
 - (C) After one minute, gently wipe excess ointment from eyelids and surrounding skin with sterile water. Do not irrigate eyes.
- (c) The eye should not be irrigated after installation of a prophylactic agent.

[OAR Docket #11-588; filed 5-4-11]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 662. HOME CARE AGENCIES

[OAR Docket #11-589]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General provisions
- 310:662-1-2. [AMENDED]
- Subchapter 3. Administration
- 310:662-3-4. [AMENDED]
- Subchapter 5. Client Services
- 310:662-5-3. [AMENDED]
- Subchapter 6. Supportive home assistant competency testing [NEW]
- 310:662-6-1. [NEW]
- 310:662-6-2. [NEW]
- 310:662-6-3. [NEW]
- 310:662-6-4. [NEW]
- 310:662-6-5. [NEW]

AUTHORITY:

Oklahoma State Board of Health, 63 O.S. Section 1-104 and 63 O.S. Section 1960 et seq.

DATES:

Comment Period:

November 15, 2010 through December 15, 2010

Public Hearing:

December 15, 2010

Adoption:

January 11, 2011

Submitted to Governor:

January 21, 2011

Submitted to House:

January 21, 2011

Submitted to Senate:

January 21, 2011

Gubernatorial approval:

February 8, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 5, 2011

Final adoption:

April 5, 2011

Effective:

June 11, 2011

SUPERSEDED EMERGENCY ACTIONS:

"n/a"

INCORPORATION BY REFERENCE:

"n/a"

ANALYSIS:

The proposed rules are intended to implement the provisions of HB 1736 enacted during the 2009 Regular Session of the Oklahoma Legislature by creating a process for home care agencies to train "supportive home assistants" to provide "standby assistance" and subsequently obtain an independent assessment of the competency of the individuals trained in this skill set. These amendments also create a requirement for licensed home care agencies to establish an influenza control program that includes provisions to vaccinate home care workers against influenza in order to help prevent the transmission of influenza to this vulnerable population through their home health care workers.

310:662-1-2 - This new language amends the current Definitions section of the rule to include the statutory definitions of "Standby assistance" and "Supportive home assistant" so that a reader of the rule does not have to research the Home Care Act in order to find the definition of these terms.

310:662-5-3 - This new language recognizes "supportive home assistant" as a class of caregiver that may be utilized by a licensed home care agency.

Subchapter 6. is a new subchapter of this rule that establishes the process by which an individual who receives training in "standby assistance" through a licensed home care agency must receive an independent evaluation of their competency in this skill set in order to work as a "supportive home assistant." The rules specify the requirements for administration of the competency assessment; the content of the competency examination; defines successful

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completion of the competency examination; speaks to failure to complete the competency examination, and addresses expiration of the competency assessment.

310:662-3-4 - The proposed rule at this section establishes a new requirement for each licensed home care agency to implement an influenza control program consistent with Centers for Disease Control and Prevention (CDC) guidelines. This program must include provisions that the agency offer the seasonal influenza vaccination to all employees/workers onsite at no charge to the worker, or obtain a signed declination statement for each worker who refuses the vaccination and other administrative processes necessary to evaluate the effectiveness of the program. This change is necessary because research indicates that vaccination rates for healthcare workers in all settings of care rarely exceed 40%, leaving many of the most vulnerable populations at risk of contracting influenza from their healthcare workers. The proposed rule anticipates the possibility of a shortage of seasonal influenza vaccine and includes a provision to suspend these requirements if a shortage has been recognized by the Commissioner of Health.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

310:662-1-2. Definitions

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

"Act" means the Home Care Act, 63 O.S. Supp. 1996, §1-1960 et seq.

"Affiliated person" means:

- (A) any officer, director or partner of the applicant,
- (B) any person employed by the applicant as a general or key manager who directs the operations of the facility which is the subject of the application, and
- (C) any person owning or controlling more than five percent (5%) of the applicant's debt or equity. [63 O.S. Supp. 1998, Section 1-1965]

"Autonomy" means capacity to be self-determining, to make choices in accord with one's own goals and values.

"Branch office" means a business location from which a home care agency located in Oklahoma provides service within a portion of the total geographic area served by the parent agency. Branch offices from out of state parent agencies shall be licensed as home care agencies as required by this Chapter. Branch offices from in state parent agencies may be licensed as a part of the parent agency. Each home care agency branch office shall operate under the same name(s) as the parent agency.

"Certified/accredited agency" means any home care agency located in Oklahoma which is certified or accredited by:

- (A) Title XVIII or XIX of the federal Social Security Act;

(B) the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO); or

(C) the Community Health Accreditation Program of the National League for Nursing (CHAP).

"Client" means the consumer/patient/individual who receives the services of a home care agency and/or a companion or sitter service.

"Client's representative" means the client's legal guardian or person authorized by the client or client's legal guardian to assist the client in receiving home care services.

"Coercion" means compelling, pressuring or otherwise improperly influencing the free will decisions made by a consumer(s) or a potential consumer(s) of home care services by an agency representative or affiliate. Coercive means include, but are not limited to, presentation of false and/or misleading information.

"Department" means the Oklahoma State Department of Health. [63 O.S. Supp. 1996, § 1-1961(3)]

"Evaluation" means documentation of a need for services based on the client self-report.

"Governing body" means the person(s) having ultimate responsibility, including fiscal and legal authority for the home care agency.

"Harassment" means repetitive, intimidating, or otherwise distressing contact directed at a specific consumer(s) or potential consumer(s) of home care by a specific home care agency seeking to recruit clients.

"Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health aides. [63 O.S. Supp. 1996, § 1-1961(4)]

"Home care agency administrator" means a person who operates, manages, or supervises, or is in charge of a home care agency; [63 O.S. Supp. 1996]

"Home care services" means skilled or personal care services provided to clients in their place of residence for a fee. [63 O.S. Supp. 1996, § 1-1961(5)]

"Home health aide" means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee. [63 O.S. Supp. 1996, § 1-1961(6)]

"Individual Service Plan" means documentation by the individual responsible for supervision of the companion or sitter services, or a designee, of the services requested by and agreed to be provided for a client.

"Infectious wastes" means waste capable of producing an infectious disease because it contains pathogens of sufficient virulence and quantity so that exposure to the waste by a susceptible human host could result in an infectious disease.

"Licensed practical nurse" means a person currently licensed to practice practical nursing in Oklahoma.

"Nurse registry" means any person that procures, offers, promises, or attempts contracts for registered nurses, licensed

practical nurses, home health aides, or other providers of personal care who are compensated by fees as independent contractors, for the provision of home care services.

"**Parent agency**" means that part of a home care agency which develops and maintains administrative and professional control of subunits and/or branch offices.

"**Personal care**" means assistance with dressing, bathing, ambulation, exercise or other personal needs. [63 O.S. Supp. 1996, § 1-1961(7)]

"**Personal needs**" means assistance with activities of daily living such as getting out of bed, ambulation, exercise, toileting, dressing, eating, or bathing. Personal needs do not include domestic or maintenance services provided on a fee basis to maintain the home.

"**Primary home care agency**" means the agency that is responsible for the services furnished to clients and for implementation of the plan of care.

"**Qualified therapist**" means a trained respiratory therapist or technician, or a physical therapist, occupational therapist, or speech therapist who is currently licensed to practice their profession in Oklahoma.

"**Qualified therapy assistant**" means a physical therapy assistant or occupational therapy assistant who is currently licensed to assist physical therapists or occupational therapists in Oklahoma.

"**Registered nurse**" means a person currently licensed to practice registered nursing in Oklahoma.

"**Sharps**" means any discarded objects that can penetrate the skin including, but not limited to, hypodermic needles, syringes, lancet and scalpel blades. This definition includes broken glass or other sharp items that have come in contact with material defined as infectious wastes.

"**Skilled care**" means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this State, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker. [63 O.S. Supp. 1996, § 1-1961(8)]

"**Solicitation**" means coercion or harassment of any person or contact with a patient knowingly being treated by another home care agency for the purpose of attempting to persuade the patient to change home care agencies.

"**Standby assistance**" means supervision of client directed activities with verbal prompting and infrequent, incidental hands-on intervention only. [63 O.S. Supp. 2009 § 1-1961]

"**Subsidiary**" means any person, firm, corporation or other legal entity which:

- (A) controls or is controlled by the applicant,
 - (B) is controlled by an entity that also controls the applicant, or
 - (C) the applicant or an entity controlling the applicant has directly or indirectly the power to control.
- [63 O.S. Supp. 1996]

"**Subunit**" means a semi-autonomous organization that serves clients in a geographic area different from that of the parent agency. A subunit is required to independently meet requirements of this Chapter and shall be licensed separately

because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

"**Supportive home assistant**" means an individual employed by a home care agency who provides standby assistance to ambulatory clients, in conjunction with other companionship or homemaker services, in the temporary or permanent place of residence of the client for a fee. [63 O.S. Supp. 2009 § 1-1961]

SUBCHAPTER 3. ADMINISTRATION

310:662-3-4. Organization

(a) **Governing body.** The home care agency shall have an organized governing body which is legally responsible for the conduct of the agency. The ownership of the agency shall be fully disclosed to the Department. Agency staff shall be currently licensed or registered in accordance with applicable laws of the State of Oklahoma. The governing body shall be responsible for periodic administrative and professional evaluations of the agency.

(b) **Financial.** Sufficient financial resources shall be maintained sufficient to ensure the agency's ability to provide adequate home care services. The agency shall have an annual operating budget which ensures sufficient resources to meet operating costs at all times and to maintain the standards required by this Chapter.

(c) **Administrator.** The governing body shall be legally responsible for the appointment of a qualified administrator and the delegation of responsibility and authority. The administrator shall organize and direct the agency's ongoing functions, employ qualified personnel, ensure adequate staff in-service, continuing education, and evaluations. The administrator shall ensure the accuracy of public information materials and activities, and that agency practices are consistent with written agency policies. The administrator shall be properly certified as required by the Department. Proof of current certification for the administrator shall be posted in a conspicuous place at each licensed agency.

(d) **Supervising physician or nurse.** Each home care agency providing skilled care shall employ a physician or a qualified supervising registered nurse. An agency providing personal care only shall employ or contract with a supervising physician or registered nurse who shall be available to the agency to advise the client care staff whenever personal care is provided. Services of a supervising physician or registered nurse in an agency only providing personal care may be provided on an on-call basis. A physician or a qualified registered nurse alternate shall be designated in writing to serve in the supervising registered nurse's absence.

(e) **Personnel policies.** The agency shall implement and follow appropriate written policies. Personnel policies shall include at least the following:

- (1) Employment procedures.
- (2) Orientation of all personnel to the policies and objectives of the agency, and participation by all personnel in appropriate employee in-service programs.

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(3) Job descriptions (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job).

(4) Periodic evaluations of employee performance.

(5) Provision for disciplinary action(s) and procedures.

(6) Health screening requirements for staff with direct client contact including but not limited to initial and annual Tuberculin skin tests. Any employee with a proven history of a positive tuberculin skin test may be excluded from this requirement if the employee has had a documented negative chest x-ray and no symptoms suggestive of tuberculosis.

(7) Each home care agency shall have an annual influenza vaccination program consistent with the recommendations of the Centers for Disease Control and Prevention Advisory Committee on Immunization Practices that shall include at least the following:

(A) The offer of influenza vaccination onsite, at no charge to all employees and/or workers in the home care agency or acceptance of documented evidence of current season vaccination from another vaccine source or hospital;

(B) Documentation of vaccination for each employee and/or worker or a signed declination statement on record from each individual who refuses the influenza vaccination for other than medical contraindications; and

(C) Education of all employees and/or workers about the following:

(i) Influenza vaccination;

(ii) Non-vaccine influenza control measures; and

(iii) The symptoms, transmission, and potential impact of influenza.

(D) Each home care agency influenza vaccination program shall conduct an annual evaluation of the program including the reasons for non-participation.

(E) The requirements to complete vaccinations or declination statements for each employee and/or worker may be suspended by the agency's medical director in the event of a shortage of vaccine as recognized by the Commissioner of Health.

(f) **Personnel records.** Personnel records shall include, but not be limited to qualifications, employment history, records of orientation and in-service provided, verification that health screening was performed as required, performance evaluations, as required by policy, record of disciplinary actions and verification of current licensure/certification, if appropriate.

(g) **Contracted services.**

(1) If a home care agency contracts to provide home care services(s), there shall be a written agreement defining the nature and scope of services provided. The agreement shall include but not be limited to the following:

(A) The services to be provided.

(B) The manner in which services shall be coordinated, evaluated and supervised by the primary home care agency.

(C) The process for development, review, and revision of the plan of care.

(D) The process for scheduling of visits or hours.

(E) The procedures for submitting clinical and/or progress notes or other entries to the clinical record which shall be maintained by the primary home care agency.

(2) Any home care agency providing home care service(s) on a contract basis shall require the contractor to provide verification of current licensure/certification of personnel as appropriate. Documentation of this verification shall be maintained in the home care agency.

(h) **Nurse registry.** A nurse registry which provides home care services shall function and be licensed as a home care agency.

SUBCHAPTER 5. CLIENT SERVICES

310:662-5-3. Services provided

(a) **Available services.** Home care services provided by the agency shall be available on a visiting basis in the place of residence used as a client's home. If the client's home is a licensed facility, services provided by the licensed facility shall not be duplicated by the agency. Additional personal care services provided shall not be considered a duplicate service.

(b) **Coordination of services.** All personnel furnishing services shall maintain liaison to ensure their efforts are coordinated effectively, documented and support the objectives in the plan of care. If services are provided in a licensed facility, the agency shall advise facility staff of services provided to ensure care is coordinated. If an agency client is transferred to another health care provider or facility, a summary of the services provided and condition of the client shall be forwarded to the receiving provider/facility if requested.

(c) **Skilled nursing.** The agency shall furnish skilled nursing services by, or under the supervision of, a registered nurse and in accordance with the physician's orders.

(1) The duties of the registered nurse shall include, but not be limited to the following:

(A) Performing the initial evaluation visit.

(B) Regularly reevaluating the client's nursing needs.

(C) Initiating the plan of care and necessary revisions.

(D) Furnishing those services requiring specialized nursing skills.

(E) Coordinating services.

(F) Informing the physician and other personnel in a timely manner of changes in the client's condition and needs.

(G) Supervision and teaching.

(2) Duties of the licensed practical nurse shall include, but not be limited to:

(A) Furnishing services in accordance with agency policy.

(B) Assisting the physician and registered nurse in performing specialized procedures.

(C) Assisting the client in learning appropriate self-care techniques.

(d) **Therapy services.** Any therapy services offered by the home care agency shall be given by a qualified therapist or by a qualified therapy assistant under the supervision of a qualified therapist in accordance with the plan of care. The qualified therapist shall assist the physician in evaluating the level of function and participate in the development of the plan of care and any necessary revisions.

(e) **Medical social services.** If the agency furnishes medical social work services, those services shall be provided by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, in accordance with the plan of care. All providers of medical social services in Oklahoma shall be licensed if required and meet all defined education and experience criteria required by the Oklahoma State Board of Licensed Social Workers.

(f) **Home health aide.** Home health aides shall be certified by the Department and placed on the Home Health Aide Registry maintained by the Department. All unlicensed, non-skilled providers of personal care to home care clients shall be certified by the Department as home health aides, regardless of the job title of the personal caregiver. Home health aides shall be in compliance with all requirements of the Act and the rules promulgated thereto. No home care agency shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless such individual is a licensed health professional or unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the Department.

(g) **Supportive home assistant.** If supportive home assistants are utilized, they shall be employed, trained, tested, and supervised as required at 63 O.S Supp. 2009 § 1-1962(B).

(gh) **Supervision of services.** All personnel providing home care services shall have periodic evaluations of performance on file in agency records. Appropriate supervision shall be available during all hours services are provided.

(1) When home health aide or personal care services are provided in conjunction with a skilled service, a registered nurse shall make a supervisory visit to the client's home at least every sixty (60) days to assess relationships, client care and determine whether goals are met. The frequency of supervisory visits shall be increased if the acuity of the client's illness requires more frequent visits.

(2) If a client is receiving only skilled therapy services and home health aide or personal care services as an extension of the therapy services, a skilled therapist may make the supervisory visit at least every sixty (60) days, in lieu of a registered nurse. The frequency of these supervisory visits shall also be increased if the acuity of the client's illness requires more frequent visits.

(3) When only home health aide or personal care services are furnished to a client, a physician or a licensed nurse shall make a supervisory visit to the client's residence at least once every six (6) months. The frequency of supervisory visits shall be increased if the acuity of the client's illness requires more frequent visits.

(4) Services furnished by a qualified physical therapy assistant or qualified occupational therapy assistant shall be provided only under the supervision of a qualified physical or occupational therapist according to agency policy and consistent with current standards of practice.

SUBCHAPTER 6. SUPPORTIVE HOME ASSISTANT COMPETENCY TESTING

310:662-6-1. Requirements for administration of the competency examination

(a) The competency examination for individuals who successfully complete agency-based supportive home assistant training taught in compliance with 63 O.S Supp. 2009 § 1-1962(B) shall be administered and evaluated only by a Department approved testing entity which shall be periodically monitored by the Department.

(b) Each approved examination entity must provide the Department with the following:

- (1) Written job analysis studies to determine the pool of test questions.
- (2) Test question validation studies.
- (3) Assurances that the written and skills testing process are not compromised.

(c) Each approved examination entity shall provide the examinee with the following:

- (1) The notice showing pass/fail results.
- (2) The notice shall specify the areas of failure to the examinee.

(d) The Department shall withdraw approval of a testing entity when it allows one or more of the following:

- (1) Disclosure of the competency examination.
- (2) Allowing another entity not approved by the Department to score the competency examination.
- (3) Tampering with the competency examination.
- (4) The competency examination was administered by a non-qualified individual.

(e) Each trainee requesting to sit for the written or oral examination and skills examination shall present to the testing entity a Training Verification Form completed by the agency that provided the supportive home assistant training.

(f) A record of the Training Verification Form and successful completion of the competency examination for each examinee shall be maintained by the testing entity for at least five (5) years. Competency is determined by a passing score on the written or oral examination and skills examination.

310:662-6-2. Content of the competency examination

(a) The competency examination shall include a written or oral portion, in English, which shall:

- (1) Allow a supportive home assistant to choose between a written and an oral examination.
- (2) Address each requirement specified in the minimum curriculum prescribed by the Department at 63 O.S Supp. 2009 § 1-1962(B).

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- (3) Be developed from a pool of test questions, only a portion of which is used in any one (1) examination.
- (4) Use a system that prevents disclosure of both the pool of test questions and the individual competency examination results.
- (5) If oral, the examination portion shall be read from a prepared text in a neutral manner.
- (b) The skills examination portion of the competency examination shall:
 - (1) Consist of randomly selected items drawn from a pool of tasks generally performed by supportive home assistants.
 - (2) Be performed in a setting similar to that in which the individual will function as a supportive home assistant.
 - (3) Be administered and evaluated by a clinical skills observer designated in writing as qualified according to criteria established by the approved examination entity.
- (c) The Department may permit the skills examination to be proctored by qualified entity personnel if the Department finds that the procedure adopted by the testing entity ensures that the competency examination:
 - (1) Is secure from tampering.
 - (2) Is standardized and scored by a testing, educational, or other organization approved by the Department.
 - (3) Is transmitted to the scoring entity immediately after completion of the skills examination. A record of successful completion of the skills examination must be maintained by the testing entity for each individual who is found to be competent or has passed the skills examination.
- (d) The Department shall revoke the approval of any entity to proctor the supportive home assistant competency examination if the Department finds evidence of impropriety, including evidence of tampering by facility staff.

310:662-6-3. Successful completion of the competency examination

- (a) An individual shall pass both the written or oral portion of the competency examination, and the skills examination in order to complete the competency examination for supportive home assistant successfully.
- (b) An individual shall score at least seventy (70) percent on the written or oral examination.
- (c) An individual shall demonstrate at least eighty (80) percent accuracy for the skills examination.

310:662-6-4. Failure to complete the competency examination

If an individual does not complete the competency examination for supportive home assistant successfully, the individual shall be notified by the testing entity of, at least, the following:

- (1) The areas which the individual did not pass.
- (2) That the individual may retake the examination a total of three times without further training.

310:662-6-5. Expiration of the competency examination

- (a) An individual who has obtained agency-based supportive home assistant training and successfully completed a competency examination for supportive home assistants administered by a Department approved testing entity as described in OAC 310:662-6 shall be deemed able to provide standby assistance to clients of a licensed home care agency.
- (b) Designation as a supportive home assistant shall not expire provided the individual receives a documented agency-based competency assessment by a Licensed Nurse at the time of employment and at least once per calendar year in each subsequent year of employment.
- (c) In order to keep the designation of supportive home assistant, individuals shall maintain documentation of their completed agency-based training issued by the agency that provided the training as well as documentation of their successful competency examination issued by a Department approved testing entity.
- (d) Individuals who are unable to provide the documentation described in 310:662-6-3(c) shall be required to meet the training and competency examination requirements for designation as a supportive home assistant before they may be employed to provide standby assistance.

[OAR Docket #11-589; filed 5-4-11]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-585]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

360:1-1-1.5. [AMENDED]

Subchapter 3. The Board

360:1-3-8. [AMENDED]

Subchapter 5. Grievance Panel Authority and Hearing Procedures

360:1-5-1. [AMENDED]

360:1-5-7. [AMENDED]

360:1-5-8. [AMENDED]

AUTHORITY:

Oklahoma State and Education Employees Group Insurance Board
74 O.S., Sections 1304, 1306 and 1344 DATES:

DATES:

Comment Period:

August 2, 2010 through November 8, 2010

Public Hearing:

November 8, 2010

Adoption:

February 25, 2011

Submitted to Governor:

February 25, 2011

Submitted to House:

February 25, 2011

Submitted to Senate:

February 25, 2011

Gubernatorial approval:

March 29, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2011

Final adoption:

April 21, 2011

Effective:

January 1, 2012

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Changes to Chapter 1 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

360:1-1-1.5. Definitions

The following words and terms as defined by the Oklahoma State and Education Employees Group Insurance Board shall have the following meaning unless the content clearly indicates otherwise:

"Adverse determination" means a determination by or on behalf of the Board or its designee utilization review organization that an admission, availability of care, continued stay or other healthcare service is a covered benefit but, after review, based upon the information provided, does not meet the Board's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

(a) "The Board" means the eight [8] members designated by statute [74 O.S. § 1303(1)].

"Grievance Panel" means the Board's independent constitutionally created administrative court. [Const. Art. 7, § 1.]

"Independent review organization" means the Board's Grievance Panel with exclusive authority and jurisdiction to conduct independent external reviews of all adverse determinations rendered by or on behalf of the Board or its designee utilization review organization.

(b) "OSEEGIB" means the Oklahoma State and Education Employees Group Insurance Board.

SUBCHAPTER 3. THE BOARD

360:1-3-8. Confidentiality of medical records

(a) All information, documents, medical reports and copies thereof contained in a member's insurance file held by OSEEGIB shall be confidential and shall not be reviewed by unauthorized parties, without written permission of the individual or provider, or by court order. The confidentiality of a

member's information is maintained when the member's information held by OSEEGIB is utilized for health management and communicated among:

- (1) employees of OSEEGIB;
- (2) OSEEGIB's contracted third party administrators and consultants;
- (3) providers to the member; and
- (4) the member, according to statutory provisions for privilege and confidentiality or written agreements to protect the confidentiality and non-disclosure of the information.

(b) OSEEGIB will honor only medical Authorizations signed by a covered employee or dependent within one [1] year of the date the Authorization was signed, unless rescinded or a shorter period of time has been specified.

(c) A member's health information is protected by this rule and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations as codified in 45 Code of Federal Regulations Parts 160 and 164.

SUBCHAPTER 5. GRIEVANCE PANEL AUTHORITY AND HEARING PROCEDURES

360:1-5-1. Access to Grievance Panel; request for hearing

(a) **Grievance Panel Authority.** The Board has established a grievance procedure by which an independently appointed three [3] member Grievance/review Panel shall act as an appeals body and the exclusive remedy:

- (1) For complaints by insured employees regarding the allowance and payment of claims, eligibility, benefits, provision of services, or other matters;
- (2) To conduct independent external reviews of all adverse determinations rendered by or on behalf of the Board or its designee utilization review organization.

(b) **Court Administrator Appointees.** The Court Administrator shall designate Grievance Panel members as shall be necessary. The members of the Grievance Panel shall consist of two [2] retired active Judges licensed to practice law in this state and one [1] state licensed health care professional or health care administrator who has at least three [3] years practical experience, has had or has admitting privileges to a State of Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career.

(c) **Governor Appointees.** The state health care professional shall be appointed by the Governor. At the Governor's discretion, one or more qualified individuals may also be appointed as an alternate to serve on the Grievance Panel in the event the Governor's primary appointee becomes unable to serve.

(d) **Right to a Hearing.** Except for grievances settled to the satisfaction of both parties prior to a hearing, any aggrieved covered member who requests in writing a hearing before the Grievance Panel shall receive a hearing before the panel.

(e) **Exclusive remedy.** The grievance procedure provided by this subchapter shall be the exclusive remedy available to

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insured employees having complaints against the Board. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court.

(af) ~~Aggrieved covered member.~~ **Timely request for a Hearing.** Any covered member aggrieved regarding the allowance and payment or denial of claims, eligibility, benefits and provision of services, adverse determinations, or other matters may request a hearing before the Grievance Panel [hereinafter referred to as Panel] to determine the validity of the grievance. All requests for hearings must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was first notified of an allowance, payment, or denial of a claim, benefit, coverage, or other matter, the matter shall be deemed finally resolved.

(bg) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting a grievance panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.

(eh) **Submission of Request for Hearing.** The Request for Hearing shall be in writing on a form provided by OSEEGIB for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:

- (1) Name of employee, Social Security Number and address;
- (2) Name of dependent for whom claim was submitted, if not the covered employee;
- (3) Name of employee's employing entity, location, and identifying number;
- (4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;
- (5) Date claim submitted for payment, claim number;
- (6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and
- (7) A short statement as to the nature of the illness or injury giving rise to the claim.

(ei) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to OSEEGIB to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 110, Oklahoma City, Oklahoma 73112.

360:1-5-7. Final order; appeals

(a) **Final Order.** The Panel shall enter a Final Order within no more than forty-five [45] days after the date of the hearing in all cases in which evidence and testimony has been offered and admitted in all cases heard. The Final Order shall separately state all Findings of Fact, Conclusions of Law and an Order approving or denying the claim.

(b) **District Court appeals.** The Panel's Final Order shall be considered a final decision of OSEEGIB for purposes of appeal. Any party to the hearing has the right to appeal to District Court from Final Orders entered by the Panel. This appeal shall be governed by the Administrative Procedures Act, 75 O.S. §301, et seq., and by other pertinent statutes such as 74 O.S. §1301, et seq.

360:1-5-8. Scheduling of hearings

All requests for hearings regarding the allowance and payment or denial of claims, eligibility, benefits, provision of services, adverse determinations, or other matters shall be presented to, and heard by the Grievance Panel in open court within sixty [60] days of receipt of the properly submitted written request, unless the matter is: settled to the satisfaction of both parties; continued by agreement of the parties; or the Panel orders a continuance for good cause shown.

[OAR Docket #11-585; filed 4-29-11]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #11-586]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

360:10-1-2. [AMENDED]

Subchapter 3. Administration of Plans

360:10-3-24. [AMENDED]

360:10-3-24.1. [AMENDED]

360:10-3-25. [AMENDED]

AUTHORITY:

Oklahoma State and Education Employees Group Insurance Board

74 O.S., Sections 1304, 1306 and 1344

DATES:

Comment Period:

August 2, 2010 through November 8, 2010

Public Hearing:

November 8, 2010

Adoption:

February 25, 2011

Submitted to Governor:

February 25, 2011

Submitted to House:

February 25, 2011

Submitted to Senate:

February 25, 2011

Gubernatorial approval:

March 29, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on

April 21, 2011

Final adoption:

April 21, 2011

Effective:

January 1, 2012

SUPERSEDED EMERGENCY ACTIONS:

none

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Changes to Chapter 10 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

360:10-1-2. Definitions

The following words and terms as defined by OSEEGIB, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

"Administrative error" occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in unpaid premiums, full payment to OSEEGIB shall be required before coverage elected by the member can be made effective. If overpayment occurs, OSEEGIB shall refund overpaid funds to the appropriate party.

"Administrator" means the Administrator of the Oklahoma State and Education Employees Group Insurance Program or his designee.

"Allowable fee" means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by OSEEGIB and the member for covered services.

"Attorney representing OSEEGIB" means any attorney designated by the Administrator to appear on behalf of OSEEGIB.

"The Board" means the eight [8] members designated by statute [74 O.S. §1303(1)].

"Business Associate" shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by OSEEGIB. Such benefits shall be provided

on a copayment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by OSEEGIB. [74 O.S. §1303 (14)]

"Cosmetic procedure" means a procedure that primarily serves to improve appearance.

"Current employee" means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

"Custodial care" means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child or child legally placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support, unmarried child up to the child's twenty fifth [25th] birthday, regardless of residence, provided that the primary member is primarily responsible for the child's support. This includes a stepchild or child who lives with the member in a regular parent-child relationship, or a child living with the member in a normal parent-child relationship where the member has adopted the child, or has been appointed guardian by a court. It also includes a stepchild who does not live with the member, when the primary member's spouse is covered by the Plan and has been ordered by a court to provide health insurance for his/her children, regardless of residence. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age ~~twenty five [25]~~twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(13)]. See additional eligibility criteria for disabled

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dependents over the age of ~~twenty-five [25]~~ ~~twenty-six [26]~~ at 360:10-3-24.1.

"Durable medical equipment" means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

"Emergency" means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.

"Enrollment period" means the time period in which an individual may make an election of coverage or changes to coverage in effect.

"Facility" means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF).

"Fee schedule" means a listing of one or more allowable fees.

"Former participating employees and dependents" means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

"Health information" means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

"Home health care" means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

"Hospice care" means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

"Initial enrollment period" means the first thirty [30] days following the employee's entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

"Insurance Coordinator" means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

"Maintenance care" means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

"Medically necessary" means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by OSEEGIB. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

"Members" means all persons covered by one or more of the group insurance plans offered by OSEEGIB including eligible current and qualified former employees of participating entities and their eligible covered dependents.

"Mental health and substance abuse" means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

"Network provider" means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network provider" operates and/or is accredited by a nationally recognized accrediting organization such as The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF) approved by state or federal guidelines, and has entered into a contract with OSEEGIB to accept scheduled reimbursement for covered health care services and supplies provided to members.

"Non-Network out-of-pocket" means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by the non-Network provider after the HealthChoice allowable fees have been paid.

"Open enrollment period" means a limited period of time as approved by either the Board or the Legislature in which a specified group of individuals are permitted to enroll.

"Option period" means the time set aside at least annually by OSEEGIB in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by OSEEGIB.

"**Orthodontia limitation**" means an individual who enrolls in the Dental Plan without prior group dental coverage being in effect the day before Dental Plan coverage begins will not be eligible for any orthodontia benefits for services occurring within the first twelve [12] months after the effective date of coverage. Services continuing or occurring after the twelve [12] month waiting period will be paid by prorating or according to plan benefits.

"**OSEEGIB**" means the Oklahoma State and Education Employees Group Insurance Board.

"**Other hospital services and supplies**" means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

"**Participating entity**" means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma State and Education Employees Group Insurance Act.

"**The Plan or Plans**" means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by OSEEGIB. Such benefits shall be provided on a coinsurance basis and the insured pays a proportion of the cost of such benefits.

"**Primary insured**" means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

"**Prosthetic appliance**" means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

"**Provider**" means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

"**Schedule of benefits**" means the OSEEGIB plan description of one or more covered services.

"**Skilled care**" means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

SUBCHAPTER 3. ADMINISTRATION OF PLANS

360:10-3-24. Dependents

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at

that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other verifiable group health, dental or vision coverage. The member can elect not to cover dependents who do not reside with the member, are married, are not financially dependent on the member for support, have other group coverage or are eligible for Indian or military health benefits. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life.

(1) When the parent is covered by health insurance, in order for an employee to retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) for his or her own newborn child, a completed insurance change form and any appropriate premium for the month of birth must be furnished to the Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims incurred for inpatient hospital treatment beyond the first forty-eight [48] or ninety-six [96] hours may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan.

(2) If optional coverage is not selected until after the employee's effective date, but within the member's initial thirty [30] day enrollment period, the optional coverage will be effective the first [1st] day of the month following the date the optional coverage was selected.

(3) In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.

(4) Eligible dependents who lose other group health, dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through OSEEGIB within thirty [30] days after the loss of other group insurance coverage without penalty for ~~preexisting conditions or orthodontia limitations~~ if those dependents have been continuously covered by other group dental insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the orthodontia limitations, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage, and any break in coverage will result in the application of the orthodontia limitations.

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(5) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or during the annual enrollment period as established by OSEEGIB. Documentation proving the qualifying event may be required. The effective date of coverage will be the first [1st] day of the month following notification to OSEEGIB of the qualified event except for newborn or adopted dependent children.

(6) Provided all other eligibility requirements are satisfied, newly born or adopted eligible dependent children, eligible children for which guardianship has been newly granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first [1st] day they are placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to OSEEGIB within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.

(7) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first [1st] day of the second month following placement, if written notice is provided within thirty [30] days after the date of placement, or at the next option period as established by OSEEGIB.

~~(8) If the spouse of a member is insured by this Plan as a dependent and such spouse has been ordered by a court to provide health insurance for his children, such children may be insured when they meet all requirements of and provide positive evidence in accordance with Board policy within thirty [30] days after the official filing date of the court order.~~

(98) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other unmarried minor children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide a Declaration of Dependency - an Application for Coverage for Other Dependent Children form prescribed by the Plan; and (3) coverage, ~~when~~ if approved, shall begin on the first [1st] day of the month following approval, and will never apply retroactively; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. OSEEGIB shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.

360:10-3-24.1. Eligibility criteria for disabled dependent children over the age of ~~twenty-five [25]~~ twenty-six [26]

Eligibility criteria for covering a disabled dependent child over the age of ~~twenty-five [25]~~ twenty-six [26] pursuant to 74 O. S. §1303(13) are as follows, provided all other eligibility requirements are also satisfied:

(1) It is intended that the following dependent children over the age of ~~twenty-five [25]~~ twenty-six [26] are eligible for coverage under this provision:

(A) A child who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of ~~twenty-five [25]~~ twenty-six [26] years; and

(B) The child is the primary member's natural child, an adopted child, a child for whom the primary member has been granted guardianship, or a child of the primary member's spouse when the spouse has been ordered by a Court to provide health insurance for the child; and

(i) Eligibility through court appointed guardianship will be accepted only for individuals considered to be the primary member's immediate family members (such as a child or grandchild). Guardianship for others not listed herein will not be considered as documentation supporting eligibility for coverage as a disabled dependent. The assessment/application for coverage must be submitted within thirty [30] days of obtaining legal guardianship. Power of attorney, including durable power of attorney, does not qualify as guardianship; and

(ii) Coverage ceases at the end of the month in which the primary member's appointment as guardian is terminated.

(2) Other criteria required for disabled dependent status are:

(A) For an individual who is a new hire or a re-hire, assessment/application for disabled dependent status must be completed and submitted to OSEEGIB within thirty [30] days of primary member's initial enrollment;

(B) Primary members must submit a copy of their federal and/or state income tax returns for the prior year reflecting their support of the dependent.

(C) Dependents are eligible only for the coverage in which the primary insured is enrolled. Only dependent life insurance can be carried by both parents if each is a primary member under the plan; and

(D) Primary members must apply for disabled dependent status for an eligible child at least thirty [30] days prior to the dependent's ~~twenty-fifth [25th]~~ twenty-sixth [26th] birthday.

(3) Disabled dependent status must be continued for a minimum of one [1] year. If the dependent having the disabled status is dropped from coverage, the primary member may not reapply for disabled dependent status

for the dependent for a period of twelve [12] months. The twelve [12] month requirement does not apply when the dependent has lost other group coverage.

360:10-3-25. Termination of dependent coverage

(a) **Waiting period of twelve [12] months.** If coverage is discontinued for dependents, the employee cannot reapply for the discontinued coverage for any dependents again for at least twelve [12] months. Reinstated coverage shall be subject to penalty for orthodontia limitations.

(b) **Loss of other group health, dental, vision or life insurance coverage.** The twelve [12] month requirement does not apply when the dependent has lost other group health, dental, vision and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-24(4).

(c) **Dependent reaches age ~~twenty-five~~ [25] ~~twenty-six~~ [26].** Coverage will be terminated for dependents reaching age ~~twenty-five~~ [25] ~~twenty-six~~ [26] on the first [1st] day of the month following their ~~twenty-fifth~~ [25th] ~~twenty-sixth~~ [26th] birthday, except disabled dependents who are incapable of self-support and who have been deemed eligible for coverage by OSEEGIB.

[OAR Docket #11-586; filed 4-29-11]

**TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION
CHAPTER 10. LICENSE**

[OAR Docket #11-649]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. License Identification and Changes

465:10-3-3 [AMENDED]

465:10-3-4 [AMENDED]

AUTHORITY:

Oklahoma Motor Vehicle Commission, Title 47, Sections 563(F), 564, 564.1, & 565.

DATES:

Comment Period:

December 16, 2010 to January 17, 2011

Public hearing:

No public hearing was scheduled. No request for public hearing was received.

Adoption:

February 8, 2011

Submitted to Governor:

February 14, 2011

Submitted to House:

February 14, 2011

Submitted to Senate:

February 14, 2011

Gubernatorial approval:

March 11, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 8, 2011

Final adoption:

April 8, 2011

Effective:

June 11, 2011

ANALYSIS:

The proposed amendment to 465:10-3-3 will update the rule to match a change in statutory language from 2009. The proposed amendment to 465:10-3-4 is to provide clarity as to what changes are required to be reported by our licensees.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 3. LICENSE IDENTIFICATION AND CHANGES

465:10-3-3. Salespersons' license

(a) **License.** Contemporaneous with a new Salesperson being employed, an application for Salesperson License shall be submitted to the Commission on forms prescribed by the Commission along with the appropriate fee. A license for a Motor Vehicle Salesperson will not be issued, renewed, or endorsed until the employing Dealer is licensed and has certified that the applicant for said license is in his or her employ. It is not intended that the Dealer pay for licenses for its Salespersons. However, for convenience, the Dealer may do so on a reimbursable basis or any other plan satisfactory to its organization. All Salespersons' licenses will be sent to the Dealer for distribution to his or her respective applicants, and the Dealer will determine that all its personnel required to obtain license have done so. Salesperson Licenses are required for anyone involved in the selling of new or used vehicles, including sales managers and F&I personnel.

(b) **Identification card.** A Salesperson's license shall consist of an identification card. The card shall be carried upon his or her person when acting as a Salesperson.

(c) **Termination of employment.** Upon termination of employment of a licensed Salesperson, the dealership must notify the Motor Vehicle Commission in writing within ten days.

(d) **One license and employer at a time.** No Salesperson may hold more than one license at any one time or be employed by, or sell for, any Dealer other than the Dealer designated on the Salesperson's license, except as follows:

- (1) A Salesperson may hold more than one license only in instances where the salesperson is employed by multiple dealerships which have the same majority ownership;
- (2) The Salespersons' new or renewal license application shall reflect all dealerships which have the same majority ownership for which the Salesperson seeks a Salespersons' license;
- (3) The identification card or cards which are issued in accordance with OAC Title 465:10-3-3(b), shall contain the names of all commonly owned dealerships for which the Salesperson is licensed; and,

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(4) The Salesperson shall only sell for the dealerships designated on the Salespersons' identification card.

(e) **Change of employment.** A licensed Salesperson shall, on change of employment, surrender the Salesperson's License Certificate to the new employer, who shall submit the License along with the appropriate Transfer form and fee to the Commission for endorsement issuance of a replacement License reflecting the change of employers.

465:10-3-4. Changes to be reported

Any proposed change ~~of~~ by a dealer, manufacturer, or distributor, including but not limited to: name, dealership address, ownership or franchises sold by the Dealer, sold, shall be submitted to the Commission, in writing, along with the appropriate documentation. Sufficient advance notice shall be given for the Commission to act in accordance with the applicable statutes and rules.

[OAR Docket #11-649; filed 5-6-11]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION CHAPTER 15. ADVERTISING

[OAR Docket #11-650]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

465:15-1-2. [AMENDED]

Subchapter 3. Specific Advertising Regulations

465:15-3-2 [AMENDED]

465:15-3-7 [AMENDED]

465:15-3-8 [AMENDED]

465:15-3-9 [REVOKED]

465:15-3-14 [AMENDED]

AUTHORITY:

Oklahoma Motor Vehicle Commission, Title 47, Sections 563(F) and 565

DATES:

Comment Period:

December 16, 2010 to January 17, 2011

Public hearing:

No public hearing was scheduled. No request for public hearing was received.

Adoption:

February 8, 2011

Submitted to Governor:

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Gubernatorial approval:

March 11, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 8, 2011

Final adoption:

April 8, 2011

Effective:

June 11, 2011

ANALYSIS:

The proposed rules would modify the current advertising definitions and regulations. These amendments will update and provide clarity to the rules in

response to the constantly changing styles of advertising by new motor vehicle dealers.

CONTACT PERSON:

Marilyn Maxwell, Deputy Director, Oklahoma Motor Vehicle Commission, 4334 N.W. Expressway, Suite 183, Oklahoma City, OK 73116, (405) 607-8227, ext 101

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 11, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

465:15-1-2. Definitions

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

"Advertisement" means an oral, written, graphic or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation contained in a newspaper, magazine, publication, notice, sign, poster, display, circular, pamphlet, letter, or on the Internet, radio, television, or any other type of media.

"Bait advertisement" means an alluring but insincere offer to sell a product of which the primary purpose is to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

"Clear and Conspicuous" means that the statement, representation, or disclosure is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. ~~This standard shall be met by the following:~~

~~(A) In a print advertisement:~~

~~(i) The type size of 5 2 caps or larger shall be used in all disclosures.~~

~~(ii) Disclosures shall be located adjacent to the price or in an area clearly marked with reference symbols. All reference symbol marks, such as asterisks, must be type size 5 2 caps or larger.~~

~~(B) In an audio advertisement:~~

~~(i) The disclosure shall be clear and understandable in pace and volume; and,~~

~~(ii) The disclosure shall be placed at the end of the advertisement.~~

~~(C) In a television advertisement:~~

~~(i) The disclosure shall be in visual form so that the average viewer can easily read and understand it.~~

~~(ii) The disclosure size shall be at least twenty (20) scan lines and each disclosure shall appear continuously on the screen at least ten (10) seconds.~~

"Dealership addendum" means a form which is to be displayed on a window of a new motor vehicle when the dealer installs special features, equipment, parts or accessories, or charges for services required to prepare a vehicle for delivery to a buyer. The addendum is to disclose:

- (A) That it is supplemental and it should not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act;
- (B) Any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price thereof;
- (C) Any additional charge to the selling price such as additional dealership markup; and,
- (D) The total dealer selling price

"Dealer-added fee" means an amount charged by the dealer to the customer in connection with the sale or lease of a new motor vehicle including, but not limited to, processing fee, documentary fee, service and handling fee, administrative fee, closing fee, or ADP (additional dealer profit) fee. "Dealer-added fee" does not mean legally required charges such as a lien entry filing fee. It is prohibited to state or imply that a dealer-added fee is required by law or by any government agency.

"Demonstrator" means those vehicles that are of the current or previous model year which have not been sold, titled or registered to any type of purchaser and are used by dealership personnel for demonstration purposes. Service vehicles, courtesy cars, daily rentals, loaners, factory program cars, driver education and factory executive cars shall not be described as "demonstrator" vehicles. Demonstrators may be advertised for sale, as such, only by a franchised dealer of the same line-make of vehicle.

"Disclosure" means required information that is clear, conspicuous, and accurate. In print and internet advertisements, disclosures shall be located either adjacent to the price or in an area clearly marked with reference symbols. In audio advertisements, disclosures shall be clear and understandable in pace and volume and shall be located at the end of the advertisement. In a television or video advertisement, the disclosure must appear continuously on the screen for a minimum of ten seconds.

"Factory executive/official vehicle" means a new motor vehicle with an original Manufacturer's Statement of Origin, that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

"Licensee" means any entity or person required to obtain a license from the Oklahoma Motor Vehicle Commission.

"Manufacturer's label" means the label required by the Automobile Information Disclosure Act, 15 U.S.C. Sections 1231-1233, (normally referred to as Monroney Label), to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to a dealer.

"Program car" means a car that is purchased at a manufacturer's closed auction or sold by or directly from the

manufacturer or distributor which is a current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

"Rebate" or "Cash back" means a sum of money refunded to a purchaser or for the benefit of the purchaser. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for his or her benefit.

SUBCHAPTER 3. SPECIFIC ADVERTISING REGULATIONS

465:15-3-2. Availability of vehicles

(a) **Specific advertising.** A licensee may advertise a ~~price~~ price, payment, or savings claim for a specific vehicle or line-make of vehicles for sale if:

(1) the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is disclosed in the advertisement; and,

(2) the advertisement ~~sets forth the~~ discloses the number of vehicles available ~~or for the advertised price or savings.~~ This requirement shall be met by the following:

(A) if the advertisement advertised price or savings claim pertains to only one specific vehicle, then the advertisement must disclose that vehicle's stock number must be disclosed; or,

(B) if the advertised price or savings claim pertains to multiple vehicles, the disclosure must contain either the number of vehicles available or verbiage such as "many available" or "several to choose from".

(b) **General advertising.** This Section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor, and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

465:15-3-7. Dealer price advertising

(a) **Selling price.** The most conspicuous price or payment of a new motor vehicle, when advertised by a dealer, must be the full and total selling price for which the dealer will sell the vehicle to any retail buyer. The only charges that may be excluded from the advertised price or payment are: taxes, title and license fees.

~~(1) state and local taxes,~~

~~(2) license, and~~

~~(3) title.~~

(b) **Qualification.** A qualification may not be used when advertising the price of a vehicle such as "with trade", "with acceptable trade", "with dealer-arranged financing", or "with down payment".

(c) **Rebate or incentive claim.** If an advertised price includes any rebates, cash back, or other incentives, the ad must clearly disclose that the price includes the rebate or incentive.

Permanent Final Adoptions

(d) **Rebates only available to select consumers.** The most conspicuous price or payment of a new motor vehicle, when advertised by a dealer, must be the true price that is available for every consumer. Rebates that are only available to select consumers shall either be presented as additional savings to the select group, or presented as separate prices or payments which clearly identify to whom the price or payment applies.

465:15-3-8. Identification

(a) When the price, payment or savings claim of a vehicle is advertised, the following must be ~~disclosed:~~ conspicuously disclosed adjacent to the price, payment, or savings claim:

- (1) model year;
- (2) make;
- (3) ~~trade, model name, brand~~ or style name; and
- (4) ~~if other than a new vehicle, the~~ advertised new vehicle had been in prior service as a demonstrator, service loaner, factory program vehicle, or any other similar use, if known by the dealer, it must be identified as ~~a used, demonstrator, factory executive/official vehicle, or a factory program vehicle. such.~~

(b) An illustration of a motor vehicle used in an advertisement must be ~~that of either the actual motor vehicle advertised, advertised or a vehicle of the same make, model, year, and style. If an illustration of the advertised vehicle is not available then the dealer must clearly and conspicuously disclose the difference between the illustration and the vehicle being advertised.~~

465:15-3-9. Demonstrators, executives and officials vehicles [REVOKED]

~~If a demonstrator or factory executive/official vehicle is advertised, the advertisement must so disclose.~~

465:15-3-14. Prohibited statements

The following statements are presumptively false and misleading, and the burden of proving otherwise shall be on the Advertiser/Licensee:

- (1) Statements such as "everybody financed", "no credit rejected", "guaranteed approval", "you are pre-approved", and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.
- (2) Statements representing that no other dealer grants greater allowances for ~~trade-ins, however stated, unless such is the case. trade-ins.~~
- (3) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of ~~vehicles, unless such is the case. vehicles.~~
- (4) Statements such as "factory direct prices", "wholesale prices", "factory sale", and other similar statements that create the impression that the vehicle is being offered for sale by the manufacturer or distributor of the vehicle, are prohibited. Dealers may use terms such as "factory authorized sale" only in conjunction with factory-sponsored

promotions and/or advertising campaigns. Statements such as "we have been selected", "we have been chosen", and other similar statements, which imply that the dealership has exclusive arrangements not available to other dealers, are prohibited.

(5) A savings claim or discount offer is prohibited except to advertise specific new or demonstrator vehicles. Statements such as "up to", "as much as", "from", shall not be used in connection with savings or discount claims, unless the vehicle for which the claim is made is clearly identified including stock number. Savings claims can only be offered from the bottom line MSRP sticker price. Discounts shown on the Monroney Sticker Label shall not be included in the advertised discount or savings claim. The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

(6) The use of the terms "Free", "Complimentary", or similar terminology is prohibited if a consumer must make a purchase to obtain the "free" offer.

(7) The terms "dealer's cost", "invoice", "invoice price" or other reference to the cost of the vehicle to the dealer shall not be used.

(8) No trade-in amount or range of amounts shall be ~~advertised stated or implied in an advertisement, including comparisons or references to industry valuation guides.~~

(9) A used vehicle shall not be advertised in any manner that creates the impression it is new.

(10) Statements such as "we pay tag, tax and license", or statements with similar meaning shall not be used.

(11) The use of the terms "liquidation", "going out of business", or statements with similar meaning, are prohibited unless a dealer is actually going out of business and ceasing its operations at the licensed location. If a dealer is going out of business, these terms can only be advertised during the period between the execution of a buy-sell with the proposed buyer and written factory approval.

(12) An offer of a buy down rate is prohibited without the appropriate disclaimer: "This is a buy down rate. The amount of the buy down may affect the price of the vehicle".

(13) Terminology such as "we will pay off your ~~trade no matter how much you owe" trade~~" or statements with similar meaning shall not be used, unless accompanied by a disclaimer ~~indicating which clearly and conspicuously states that the amount of the pay off amount~~ is added into the contract and is dependent upon approved credit.

(14) Statements such as "we will make your payments for a number of months", "you make no payments for a number of months", or similar statements are prohibited unless the finance contract is written as such and the customer is not obligated for payments to the finance company for that specified period of time.

[OAR Docket #11-650; filed 5-6-11]

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

1:2011-8a.

SECOND AMENDED EXECUTIVE ORDER 2011-08

I, Mary Fallin, 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. All of the 77 counties in Oklahoma are currently under a severe wildfire threat beginning March 11, 2011, and continuing. The entire State is being affected.
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 wildfires in the entire State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety
4. 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.
5. 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.
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 hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 6 day of May, 2011.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #11-655; filed 5-6-11]

1:2011-17.

EXECUTIVE ORDER 2011-17

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby designate Lieutenant Governor Todd Lamb as Oklahoma's Small Business Advocate. The purpose of this position is to assist the small businesses of Oklahoma, which are the backbone of our economy.

Many Oklahoma businesses have less than one hundred employees. Therefore, it is appropriate to recognize the need of an advocate for small businesses. It is important for both the rural and urban areas to assist the small business entrepreneur so that he or she is able to operate, grow, and succeed in today's competitive marketplace.

This executive order shall be forwarded to all members of the Governor's Cabinet who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

Executive Orders

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 3rd day of May, 2011.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #11-587; filed 5-4-11]
