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**Mary Fallin, Governor**  
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**Secretary of State**  
**Peggy Coe, Editor-in-Chief**

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

*[OAR Docket #12-462]*

### **RULEMAKING ACTION:**

Gubernatorial approval of **PERMANENT** rules

### **RULES:**

Subchapter 1. Fine Schedules  
Part 5. Food Safety Violations  
35:3-1-5 [NEW]

### **GUBERNATORIAL APPROVAL:**

March 30, 2012

*[OAR Docket #12-462; filed 4-27-12]*

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

*[OAR Docket #12-463]*

### **RULEMAKING ACTION:**

Gubernatorial approval of **PERMANENT** rules

### **RULES:**

Subchapter 3. Animal Health Reportable Diseases  
35:15-3-2 [AMENDED]  
Subchapter 11. Importation of Livestock, Poultry, and Pets  
Part 13. Equine Piroplasmiasis  
35:15-11-52 [AMENDED]  
35:15-11-53 [AMENDED]  
35:15-11-54 [AMENDED]  
35:15-11-55 [AMENDED]  
35:15-11-56 [AMENDED]  
Subchapter 15. Equine Infectious Anemia (EIA)  
Part 7. Requirements for Approved Markets  
35:15-15-72 [REVOKED]

### **GUBERNATORIAL APPROVAL:**

March 30, 2012

*[OAR Docket #12-463; filed 4-27-12]*

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

*[OAR Docket #12-464]*

### **RULEMAKING ACTION:**

Gubernatorial approval of **PERMANENT** rules

### **RULES:**

Subchapter 42. Tuberculosis Eradication in Cervidae  
Part 5. Herd Status Requirements  
35:15-42-51 [AMENDED]  
Subchapter 44. Farmed Cervidae  
35:15-44-4 [AMENDED]  
35:15-44-6 [AMENDED]  
35:15-44-18 [AMENDED]  
Subchapter 45. Brucellosis in Cervidae  
Part 13. Certified Brucellosis-Free Cervid Herds  
35:15-45-132 [AMENDED]  
Subchapter 47. Chronic Wasting Disease (CWD) in Cervids  
35:15-47-6 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

March 30, 2012

*[OAR Docket #12-464; filed 4-27-12]*

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

*[OAR Docket #12-465]*

### **RULEMAKING ACTION:**

Gubernatorial approval of **PERMANENT** rules

### **RULES:**

Subchapter 4. Concentrated Animal Feeding Operations  
35:17-4-4 [AMENDED]  
35:17-4-9 [AMENDED]  
35:17-4-11 [AMENDED]  
35:17-4-12 [AMENDED]  
35:17-4-21 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

March 30, 2012

*[OAR Docket #12-465; filed 4-27-12]*

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

*[OAR Docket #12-466]*

### **RULEMAKING ACTION:**

Gubernatorial approval of **PERMANENT** rules

### **RULES:**

Subchapter 3. Swine Feeding Operations

35:17-3-6 [AMENDED]

35:17-3-11 [AMENDED]

35:17-3-13 [AMENDED]

35:17-3-14 [AMENDED]

35:17-3-25 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

March 30, 2012

*[OAR Docket #12-466; filed 4-27-12]*

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

*[OAR Docket #12-467]*

### **RULEMAKING ACTION:**

Gubernatorial approval of **PERMANENT** rules

### **RULES:**

Subchapter 1. Agriculture Environmental Permitting and AGPDES

Part 1. General Provisions

35:44-1-2 [AMENDED]

35:44-1-3 [AMENDED]

Subchapter 3. Permit Conditions and Requirements

35:44-3-3 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

March 30, 2012

*[OAR Docket #12-467; filed 4-27-12]*

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## **TITLE 92. OKLAHOMA STATE ATHLETIC COMMISSION CHAPTER 10. RULES FOR BOXING AND OTHER ACTIVITIES**

*[OAR Docket #12-590]*

### **PERMANENT RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **PROPOSED RULES:**

Subchapter 1. General Provisions

92:10-1-2 [AMENDED]

92:10-1-5 [AMENDED]

92:10-1-8 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

April 27, 2012

*[OAR Docket #12-590; filed 5-9-12]*

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## **TITLE 160. DEPARTMENT OF CONSUMER CREDIT CHAPTER 5. FEES**

*[OAR Docket #12-574]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

160:5-1-2. [AMENDED]

### **GUBERNATORIAL APPROVAL:**

April 27, 2012

*[OAR Docket #12-574; filed 5-8-12]*

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## **TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE**

*[OAR Docket #12-578]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Subchapter 1. General Provisions

Part 1. General

165:5-1-3. Definitions [AMENDED]

165:5-1-5. Filing of documents [AMENDED]

Part 5. Response to Citizen Environmental Complaints

165:5-1-26. Receipt of pollution complaints [AMENDED]

Subchapter 3. Fees

Part 1. General Provisions

165:5-3-1. Fees [AMENDED]

Subchapter 5. Dockets

165:5-5-1. Dockets; identifying initials [AMENDED]

Subchapter 7. Commencement of a Cause

Part 3. Oil and Gas

165:5-7-6.1. Horizontal well unitization for shale reservoirs [NEW]

165:5-7-6.2. Multiunit horizontal wells in shale reservoirs [NEW]

165:5-7-9. Well location exception [AMENDED]

165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]

165:5-7-35.1. Change of operator regarding commercial pit, commercial soil farming site and/or commercial recycling facility [NEW]

Subchapter 9. Subsequent Pleadings

165:5-9-2. Subsequent pleadings [AMENDED]

165:5-9-3. Emergency applications [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-578; filed 5-8-12]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 10. OIL & GAS CONSERVATION**

*[OAR Docket #12-579]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Administration
  - Part 1. General Provisions
    - 165:10-1-2. Definitions [AMENDED]
    - 165:10-1-4. Citation effective date [AMENDED]
  - Subchapter 3. Drilling, Developing, and Producing
    - Part 1. Drilling
      - 165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports [AMENDED]
    - Part 3. Completions
      - 165:10-3-10. Well completion operations [AMENDED]
    - Part 5. Operations
      - 165:10-3-28. Horizontal drilling [AMENDED]
  - Subchapter 5. Underground Injection Control
    - 165:10-5-5. Application for approval of enhanced recovery injection and disposal operations [AMENDED]
  - Subchapter 7. Pollution Abatement
    - Part 1. General Provisions
      - 165:10-7-5. Prohibition of pollution [AMENDED]
    - Part 3. Storage and Disposal of Fluids
      - 165:10-7-16. Use of noncommercial pits [AMENDED]
      - 165:10-7-19. One-time land application of water-based fluids from earthen pits and tanks [AMENDED]
      - 165:10-7-20. Noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater [AMENDED]
      - 165:10-7-24. Waste management practices reference chart [AMENDED]
  - Subchapter 9. Commercial Disposal Facilities
    - 165:10-9-1. Use of commercial pits [AMENDED]
    - 165:10-9-2. Commercial soil farming [AMENDED]
    - 165:10-9-3. Commercial disposal well surface facilities [AMENDED]
    - 165:10-9-4. Commercial recycling facilities [AMENDED]
  - Subchapter 11. Plugging and Abandonment
    - 165:10-11-3. Duty to plug and abandon [AMENDED]
  - Subchapter 21. Applications for Tax Exemptions
    - Part 6. Production Enhancement Projects
      - 165:10-21-21. General [AMENDED]
      - 165:10-21-22. Definitions [AMENDED]
    - Part 7. ReEstablishment of Production from an Inactive Well
      - 165:10-21-36. Definitions [AMENDED]

- Part 8. Deep Wells
  - 165:10-21-45. General [AMENDED]
- Part 9. New Discovery Wells
  - 165:10-21-55. General [AMENDED]
  - 165:10-21-58. Rebates - Refund procedure [AMENDED]
- Part 13. Incremental Production from Enhanced Recovery Projects
  - 165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
  - 165:10-21-80. Expiration of exemption for incremental production [AMENDED]
- Part 14. Production of Oil, Gas or Oil and Gas from Any Well Located Within Boundaries of a Three-Dimensional Seismic Shoot
  - 165:10-21-82. General [AMENDED]
    - 165:10-21-82.2. Qualification procedure [AMENDED]
    - 165:10-21-82.3. Rebates - Refund procedure [AMENDED]
- Subchapter 29. Special Area Rules
  - 165:10-29-3. Rush Springs Sandstone Groundwater Basin [NEW]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-579; filed 5-8-12]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 30. MOTOR CARRIERS**

*[OAR Docket #12-557]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Intrastate Motor Carriers
  - Part 1. Applying for a License
    - 165:30-3-1. Obtaining a license [AMENDED]
    - 165:30-3-3. License and certificate renewals [AMENDED]
  - Part 3. License Requirements
    - 165:30-3-11. Insurance [AMENDED]
    - 165:30-3-17. Markings [AMENDED]
- Part 9. Violations
  - 165:30-3-71. Loading capacity - Safety compliance [AMENDED]
  - 165:30-3-75. Advertising [AMENDED]
- Part 11. Miscellaneous
  - 165:30-3-92. Pollution abatement [AMENDED]
- Subchapter 7. Procedural Rules
  - 165:30-7-6. Applications and requests [AMENDED]
  - 165:30-7-12. Revocation, suspension or denial of issuance of motor carrier license, permit, certificate or registration [AMENDED]
  - 165:30-7-15. Operations conducted under government contract [NEW]
- Subchapter 10. Interstate Motor Carriers

Part 7. Interstate Motor Carriers Operating in Intrastate Commerce  
165:30-10-45. Miscellaneous [AMENDED]  
Subchapter 13. Intrastate Household Goods Certificates  
Part 1. Obtaining Authority  
165:30-13-2. Obtaining a household goods certificate [AMENDED]  
Part 5. Conducting Operations  
165:30-13-20. Estimates [AMENDED]  
165:30-13-26. Bill of Lading [AMENDED]  
Subchapter 15. Intrastate Private Carriers  
Part 3. Obtaining a Private Carrier License and License Requirements  
165:30-15-4. Obtaining a license [AMENDED]  
Subchapter 16. Interstate Private Carriers  
165:30-16-1. USDOT numbers and markings ~~Markings~~ [AMENDED]  
165:30-16-11. Violations [NEW]  
Subchapter 19. Registration Pursuant to the International Registration Plan  
165:30-19-3. Registration [AMENDED]  
165:30-19-4. Title requirements and proof of ownership [AMENDED]  
165:30-19-19. Trip permits and hunters permits [AMENDED]  
Subchapter 21. International Fuel Tax Agreement  
165:30-21-4. Trip permits [AMENDED]  
165:30-21-16. Interest [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 27, 2012

*[OAR Docket #12-557; filed 5-4-12]*

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**TITLE 165. CORPORATION COMMISSION  
CHAPTER 55. TELECOMMUNICATIONS  
SERVICES**

*[OAR Docket #12-581]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 55. Telecommunications Services [AMENDED]

**GUVERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-581; filed 5-8-12]*

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**TITLE 165. CORPORATION COMMISSION  
CHAPTER 59. OKLAHOMA UNIVERSAL  
SERVICE AND LIFELINE**

*[OAR Docket #12-580]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Oklahoma Universal Service Fund

Part 9. Request for OUSF Funding

165:59-3-62. Procedures for requesting funding from the OUSF [AMENDED]

Subchapter 7. Special Universal Services

165:59-7-1. Reimbursement from the OUSF for Special Universal Service [AMENDED]

165:59-7-6. Telemedicine access for eligible healthcare entities [AMENDED]

**GUVERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-580; filed 5-8-12]*

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**TITLE 252. DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND  
PROCEDURE**

*[OAR Docket #12-475]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Environmental Permit Process

Part 7. Water Quality Division Tiers and Time Lines

252:4-7-73. Water quality applications - Tier I [AMENDED]

252:4-7-74. Water quality applications - Tier II [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-475; filed 4-30-12]*

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**TITLE 252. DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

*[OAR Docket #12-476]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

252:100-1-3. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-476; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

*[OAR Docket #12-477]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Permits for Minor Facilities

Part 3. Construction Permits

252:100-7-15 [AMENDED]

Part 4. Operating permits

252:100-7-18 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-477; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

*[OAR Docket #12-478]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 31. Control of Emission of Sulfur Compounds

Part 1. General Provisions

252:100-31-1. [AMENDED]

252:100-31-2. [AMENDED]

252:100-31-4. [NEW]

Part 2. Ambient Air Concentration Limits or Impacts for

New and Existing Equipment, Sources, or Facilities

252:100-31-7. [AMENDED]

Part 3. Existing Equipment Standards

252:100-31-13. [AMENDED]

252:100-31-15. [AMENDED]

252:100-31-16. [AMENDED]

Part 5. New Equipment Standards

252:100-31-25. [AMENDED]

252:100-31-26. [AMENDED]

252:100-31-27. [REVOKED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-478; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

*[OAR Docket #12-479]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

252:110-1-1. [AMENDED]

252:110-1-2. [AMENDED]

252:110-1-7. [REVOKED]

Subchapter 5. Incorporation by Reference

252:110-5-1. [AMENDED]

Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements [NEW]

252:110-15-1. [NEW]

252:110-15-2. [NEW]

252:110-15-3. [NEW]

252:110-15-4. [NEW]

252:110-15-5. [NEW]

252:110-15-6. [NEW]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-479; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

*[OAR Docket #12-480]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

252:515-1-2 [AMENDED]

252:515-1-3 [AMENDED]

Subchapter 3. Permit Provisions and Applications

Part 1. General Provisions

252:515-3-1 [AMENDED]

252:515-3-2 [AMENDED]

252:515-3-6 [AMENDED]

Part 3. Permit Applications and Modifications

252:515-3-39 [AMENDED]

Subchapter 19. Operational Requirements

Part 1. General Provisions

252:515-19-1 [AMENDED]

Part 3. Operational Requirements for All Disposal Facilities

252:515-19-38 [AMENDED]

252:515-19-40 [AMENDED]

Subchapter 21. ~~Waste~~Used Tire Processing, Certification, Permits and Compensation

Part 1. General Provisions

252:515-21-1 [AMENDED]

252:515-21-2 [AMENDED]

252:515-21-3 [AMENDED]

252:515-21-4 [AMENDED]

252:515-21-5 [AMENDED]

Part 3. ~~Waste~~Used Tire Facilities

252:515-21-32 [AMENDED]

252:515-21-32.1 [AMENDED]

252:515-21-33 [AMENDED]

252:515-21-34 [AMENDED]

252:515-21-35 [AMENDED]

252:515-21-36 [AMENDED]

Part 5. ~~Waste~~Used Tire Transportation

252:515-21-51 [AMENDED]

Part 7. Compensation from the ~~Waste~~Used Tire Recycling Indemnity Fund

252:515-21-71 [AMENDED]

252:515-21-72 [AMENDED]

252:515-21-74 [AMENDED]

252:515-21-75 [AMENDED]

Part 9. Erosion Control, River Bank Stabilization and Other Conservation Projects

252:515-21-91 [AMENDED]

252:515-21-92 [AMENDED]

Part 11. ~~Waste~~Used Tire Baling

252:515-21-111 [AMENDED]

252:515-21-112 [AMENDED]

## GUBERNATORIAL APPROVAL:

April 16, 2012

*[OAR Docket #12-480; filed 4-30-12]*

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## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

*[OAR Docket #12-481]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

APPENDIX H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [NEW]

APPENDIX H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [REVOKED]

APPENDIX I. Procedure for Calculating Post-Closure Cost Estimates for Financial Assurance [NEW]

APPENDIX I. Procedure for Calculating Post-Closure Cost Estimates for Financial Assurance [REVOKED]

## GUBERNATORIAL APPROVAL:

April 16, 2012

*[OAR Docket #12-481; filed 4-30-12]*

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## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 619. OPERATION AND MAINTENANCE OF NON-INDUSTRIAL TOTAL RETENTION LAGOON SYSTEMS AND LAND APPLICATION

*[OAR Docket #12-482]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 1. General Provisions

252:619-1-4. [AMENDED]

Subchapter 3. Operation and Maintenance

252:619-3-2. [AMENDED]

252:619-3-3 [REVOKED]

Subchapter 5. Closure Requirements

252:619-5-2. [REVOKED]

## GUBERNATORIAL APPROVAL:

April 16, 2012

*[OAR Docket #12-482; filed 4-30-12]*

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## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 621. NON-INDUSTRIAL DISCHARGING AND PUBLIC WATER SUPPLY LAGOONS INCLUDING LAND APPLICATION

*[OAR Docket #12-483]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 1. General Provisions

252:621-1-1 [AMENDED]

Subchapter 3. Permit Procedures

252:621-3-4 [REVOKED]

252:621-3-5 [REVOKED]

252:621-3-6 [REVOKED]

Subchapter 5. Operation and Maintenance

252:621-5-2 [REVOKED]

252:621-5-3 [REVOKED]

252:621-5-4 [REVOKED]

Subchapter 7. Monitoring, Reporting, Inspections and Records Requirements

252:621-7-1 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-483; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 626. PUBLIC WATER SUPPLY CONSTRUCTION STANDARDS**

*[OAR Docket #12-484]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 9. Treatment

252:626-9-2 [AMENDED]

252:626-9-8 [AMENDED]

252:626-9-9 [AMENDED]

252:626-9-14 [NEW]

Subchapter 13. Residuals and Decant Water Management

252:626-13-1 [AMENDED]

252:626-13-2 [AMENDED]

252:626-13-3 [AMENDED]

252:626-13-4 [AMENDED]

252:626-13-5 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-484; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 627. WATER REUSE**

*[OAR Docket #12-485]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General provisions [NEW]

252:627-1-1. Purpose and authority [NEW]

252:627-1-2. Definitions [NEW]

252:627-1-3. Permit requirements [NEW]

252:627-1-4. Compliance required [NEW]

252:627-1-5. General requirements for water reuse systems [NEW]

252:627-1-6. Permitted uses of reclaimed water [NEW]

252:627-1-7. Annual fees for water reuse systems [NEW]

Subchapter 3. Operation and Maintenance [NEW]

252:627-3-1. Distribution system [NEW]

252:627-3-2. Requirements for using Category 2 reclaimed water [NEW]

252:627-3-3. Requirements for using Categories 3 and 4 reclaimed water [NEW]

252:627-3-4. Requirements for using Category 5 reclaimed water [NEW]

Subchapter 5. Monitoring, reporting and records requirements [NEW]

252:627-5-1. Reporting, records and sampling [NEW]

Appendix A. Testing Frequency and Limits for Water Reuse Systems [NEW]

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-485; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

*[OAR Docket #12-487]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. Introduction

252:631-1-3 [AMENDED]

Subchapter 3. Operations

252:631-3-3 [AMENDED]

252:631-3-11 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-487; filed 4-30-12]*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS**

*[OAR Docket #12-488]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

252:641-1-2 [AMENDED]

252:641-1-3 [AMENDED]

Subchapter 3. Soil Tests

252:641-3-2 [AMENDED]

252:641-3-4 [AMENDED]

Subchapter 9. Pump Tanks

252:641-9-2 [AMENDED]

Subchapter 10. Aerobic Treatment Systems

252:641-10-2 [AMENDED]

252:641-10-3 [AMENDED]

Subchapter 15. Lagoons

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252:641-15-3 [AMENDED]  
Appendix C. Pipe Specifications for On-Site Sewage Treatment Systems [REVOKED]  
Appendix C. Pipe Specifications for On-Site Sewage Treatment Systems [NEW]

### GUVERNATORIAL APPROVAL:

April 16, 2012

*[OAR Docket #12-488; filed 4-30-12]*

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### TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 656. WATER POLLUTION CONTROL FACILITY CONSTRUCTION STANDARDS

*[OAR Docket #12-489]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 1. Introduction  
252:656-1-1 [AMENDED]  
252:656-1-2 [AMENDED]  
252:656-1-3 [NEW]  
Subchapter 3. Permit Procedures  
252:656-3-1 [AMENDED]  
252:656-3-2 [AMENDED]  
252:656-3-4 [AMENDED]  
252:656-3-5 [AMENDED]  
252:656-3-6 [AMENDED]  
252:656-3-8 [REVOKED]  
252:656-3-9 [AMENDED]  
252:656-3-10 [AMENDED]  
Subchapter 9. General Standards  
252:656-9-2 [AMENDED]  
Subchapter 25. Wastewater Land Application Systems  
252:656-25-1 [AMENDED]  
252:656-25-2 [AMENDED]  
Subchapter 27. ~~Wastewater Reuse~~ Reclaimed Wastewater [NEW]  
252:656-27-1 [NEW]  
252:656-27-2 [NEW]  
252:656-27-3 [NEW]  
252:656-27-4 [NEW]  
252:656-27-5 [NEW]

### GUVERNATORIAL APPROVAL:

April 16, 2012

*[OAR Docket #12-489; filed 4-30-12]*

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### TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 10. PURCHASING

*[OAR Docket #12-529]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

317:10-1-1. [AMENDED]  
317:10-1-12. [AMENDED]  
(Reference APA WF # 11-31)

### GUVERNATORIAL APPROVAL:

April 23, 2012

*[OAR Docket #12-529; filed 5-1-12]*

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

*[OAR Docket #12-509]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 1. Physicians  
317:30-5-12. [AMENDED]  
Part 49. Family Planning Centers  
317:30-5-465. [REVOKED]  
317:30-5-466. [REVOKED]  
317:30-5-467. [REVOKED]  
Part 75. Federally Qualified Health Centers  
317:30-5-664.5. [AMENDED]  
Part 112. Public Health Clinic Services  
317:30-5-1154. [AMENDED]  
(Reference APA WF # 11-03A)

### GUVERNATORIAL APPROVAL:

April 23, 2012

*[OAR Docket #12-509; filed 5-1-12]*

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

*[OAR Docket #12-511]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 3. General Provider Policies

Part 3. General Medical Program Information  
 317:30-3-40. [AMENDED]  
 317:30-3-42. [AMENDED]  
 317:30-3-57. [AMENDED]  
 Subchapter 5. Individual Providers and Specialties  
 Part 6. Inpatient Psychiatric Hospitals  
 317:30-5-96.2. [AMENDED]  
 Part 9. Long Term Care Facilities  
 317:30-5-122. [AMENDED]  
 Part 39. Skilled Nursing Services  
 317:30-5-390. [AMENDED]  
 Part 41. Family Support Services  
 317:30-5-410. [AMENDED]  
 Part 43. Agency Companion, Specialized Foster Care,  
 Daily Living Supports, Group Homes, and Community  
 Transition Services  
 317:30-5-420. [AMENDED]  
 317:30-5-423. [AMENDED]  
 Part 51. Habilitation Services  
 317:30-5-480. [AMENDED]  
 Part 53. Specialized Foster Care  
 317:30-5-495. [AMENDED]  
 Part 55. Respite Care  
 317:30-5-515. [AMENDED]  
 Part 59. Homemaker Services  
 317:30-5-535. [AMENDED]  
 Part 85. Advantage Program Waiver Services  
 317:30-5-760. [AMENDED]  
 Part 101. Targeted Case Management Services for Persons  
 with Mental Retardation an Intellectual Disability and/or  
 Related Conditions  
 317:30-5-1011. [AMENDED]  
 Part 108. Nutrition Services  
 317:30-5-1076. [AMENDED]  
 (Reference APA WF # 11-04A)  
**GUBERNATORIAL APPROVAL:**  
 April 23, 2012

[OAR Docket #12-511; filed 5-1-12]

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

[OAR Docket #12-519]

**RULEMAKING ACTION:**  
 Gubernatorial approval of permanent rules  
**RULES:**  
 Subchapter 5. Individual Providers and Specialties  
 Part 3. Hospitals  
 317:30-5-42.6. [AMENDED]  
 Part 29. Renal Dialysis Facilities  
 317:30-5-306. [AMENDED]  
 317:30-5-307. [AMENDED]

(Reference APA WF # 11-19)  
**GUBERNATORIAL APPROVAL:**  
 April 23, 2012

[OAR Docket #12-519; filed 5-1-12]

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

[OAR Docket #12-520]

**RULEMAKING ACTION:**  
 Gubernatorial approval of permanent rules  
**RULES:**  
 Subchapter 3. General Provider Policies  
 Part 1. General Scope and Administration  
 317:30-3-2. [AMENDED]  
 (Reference APA WF # 11-20)  
**GUBERNATORIAL APPROVAL:**  
 April 23, 2012

[OAR Docket #12-520; filed 5-1-12]

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

[OAR Docket #12-521]

**RULEMAKING ACTION:**  
 Gubernatorial approval of permanent rules  
**RULES:**  
 Subchapter 5. Individual Providers and Specialties  
 Part 113. Living Choice Program  
 317:30-5-1201. [AMENDED]  
 (Reference APA WF # 11-21A)  
**GUBERNATORIAL APPROVAL:**  
 April 23, 2012

[OAR Docket #12-521; filed 5-1-12]

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

[OAR Docket #12-523]

**RULEMAKING ACTION:**  
 Gubernatorial approval of permanent rules  
**RULES:**  
 Subchapter 5. Individual Providers And Specialties

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Part 32. Soonerride Non-Emergency Transportation  
317:30-5-326.1. [AMENDED]  
317:30-5-327. [AMENDED]  
317:30-5-327.1. [AMENDED]  
317:30-5-327.2. [REVOKED]  
317:30-5-328. [NEW]

(Reference APA WF # 11-25A)

## GUVERNATORIAL APPROVAL:

April 23, 2012

*[OAR Docket #12-523; filed 5-1-12]*

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

*[OAR Docket #12-525]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-19.1. [NEW]

(Reference APA WF # 11-26)

## GUVERNATORIAL APPROVAL:

April 23, 2012

*[OAR Docket #12-525; filed 5-1-12]*

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

*[OAR Docket #12-526]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 5. Individual Providers And Specialties  
Part 6. Inpatient Psychiatric Hospitals  
317:30-5-95.24. [AMENDED]  
317:30-5-95.25. [AMENDED]  
317:30-5-95.26. [AMENDED]  
317:30-5-95.27. [AMENDED]  
317:30-5-95.28. [AMENDED]  
317:30-5-95.29. [AMENDED]  
317:30-5-95.30. [AMENDED]  
317:30-5-95.31. [AMENDED]

Part 21. Outpatient Behavioral Health Services

317:30-5-240. [AMENDED]  
317:30-5-240.1. [AMENDED]  
317:30-5-240.2. [AMENDED]

317:30-5-241. [AMENDED]  
317:30-5-241.1. [AMENDED]  
317:30-5-241.2. [AMENDED]  
317:30-5-241.3. [AMENDED]  
317:30-5-241.4. [AMENDED]  
317:30-5-241.5. [AMENDED]

Part 25. Psychologist

317:30-5-276. [AMENDED]

Part 26. Licensed Behavioral Health Providers

317:30-5-281. [AMENDED]

Part 67. Behavioral Health Case Management Services

317:30-5-596. [AMENDED]

317:30-5-596.1. [AMENDED]

Part 83. Outpatient Behavioral Health Services in  
Therapeutic Foster Care Homes

317:30-5-741. [AMENDED]

(Reference APA WF # 11-27)

## GUVERNATORIAL APPROVAL:

April 23, 2012

*[OAR Docket #12-526; filed 5-1-12]*

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

*[OAR Docket #12-528]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 103. Qualified Schools as Providers of Health Related  
Services

317:30-5-1023. [AMENDED]

317:30-5-1027. [AMENDED]

(Reference APA WF # 11-30)

## GUVERNATORIAL APPROVAL:

April 23, 2012

*[OAR Docket #12-528; filed 5-1-12]*

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

*[OAR Docket #12-530]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 9. Long Term Care Facilities

317:30-5-123. [AMENDED]  
Part 51. Habilitation Services  
317:30-5-482. [AMENDED]  
Part 101. Targeted Case Management Services for Persons  
with Mental Retardation Intellectual Disability and/or  
Related Conditions

317:30-5-1012. [AMENDED]

317:30-5-1014. [AMENDED]

(Reference APA WF # 11-32A)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-530; filed 5-1-12]*

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

*[OAR Docket #12-534]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-696. [AMENDED]

317:30-5-698. [AMENDED]

(Reference APA WF # 11-36)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-534; filed 5-1-12]*

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

*[OAR Docket #12-535]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 17. Medical Suppliers

317:30-5-211.10. [AMENDED]

(Reference APA WF # 11-38)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-535; filed 5-1-12]*

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

*[OAR Docket #12-536]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 85. ADvantage Program Waiver Services

317:30-5-763. [AMENDED]

(Reference APA WF # 11-39A)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-536; filed 5-1-12]*

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

*[OAR Docket #12-540]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-7. [AMENDED]

(Reference APA WF # 11-43)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-540; filed 5-1-12]*

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

*[OAR Docket #12-510]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Eligibility and Countable Income

Part 1. Determination of Qualifying Categorical  
Relationships

317:35-5-2. [AMENDED]

317:35-5-8. [AMENDED]

Subchapter 7. Medical Services

Part 5. Determination of Eligibility for Medical Services

317:35-7-37. [AMENDED]  
317:35-7-48. [AMENDED]  
Part 7. Certification, Redetermination and Notification  
317:35-7-60. [AMENDED]  
317:35-7-60.1. [AMENDED]  
(Reference APA WF # 11-03B)

**GUVERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-510; filed 5-1-12]*

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

*[OAR Docket #12-512]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 9. ICF/MR, HCBW/MRID, and Individuals  
Age 65 or Older In Mental Health Hospitals

Part 1. Services

317:35-9-1. [AMENDED]

317:35-9-5. [AMENDED]

Part 3. Application Procedures

317:35-9-25. [AMENDED]

Part 5. Determination of Medical Eligibility for ICF/MR,  
HCBW/MRID, and Individuals Age 65 or Older In  
Mental Health Hospitals

317:35-9-45. [AMENDED]

317:35-9-48.1 [AMENDED]

317:35-9-49 [AMENDED]

Part 11. Payment, Billing, and Other Administrative  
Procedures

317:35-9-97. [AMENDED]

Subchapter 10. Other Eligibility Factors for Families with  
Children and Pregnant Women

Part 5. Income

317:35-10-38. [AMENDED]

Subchapter 15. Personal Care Services

317:35-15-1. [AMENDED]

Subchapter 19. Nursing Facility Services

317:35-19-3. [AMENDED]

317:35-19-8. [AMENDED]

317:35-19-9. [AMENDED]

(Reference APA WF # 11-04B)

**GUVERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-512; filed 5-1-12]*

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

*[OAR Docket #12-515]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 6. SoonerCare for Pregnant Women and  
Families with Children

Part 3. Application Procedures

317:35-6-15. [AMENDED]

Subchapter 7. Medical Services

Part 3. Application Procedures

317:35-7-15. [AMENDED]

(Reference APA WF # 11-08)

**GUVERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-515; filed 5-1-12]*

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

*[OAR Docket #12-518]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.8 [AMENDED]

(Reference APA WF # 11-15)

**GUVERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-518; filed 5-1-12]*

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

*[OAR Docket #12-522]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 23. Living Choice Program

317:35-23-2. [AMENDED]

317:35-23-3. [AMENDED]

317:35-23-4. [AMENDED]  
(Reference APA WF # 11-21B)  
GUBERNATORIAL APPROVAL:  
April 23, 2012

[OAR Docket #12-522; filed 5-1-12]

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

[OAR Docket #12-524]

**RULEMAKING ACTION:**  
Gubernatorial approval of permanent rules  
**RULES:**  
Subchapter 3. Coverage and Exclusions  
317:35-3-2. [AMENDED]  
(Reference APA WF # 11-25B)  
**GUBERNATORIAL APPROVAL:**  
April 23, 2012

[OAR Docket #12-524; filed 5-1-12]

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

[OAR Docket #12-533]

**RULEMAKING ACTION:**  
Gubernatorial approval of permanent rules  
**RULES:**  
Subchapter 18. Programs of All-Inclusive Care for the  
Elderly  
317:35-18-1. [AMENDED]  
317:35-18-2. [AMENDED]  
317:35-18-3. [AMENDED]  
317:35-18-4. [AMENDED]  
317:35-18-5. [AMENDED]  
317:35-18-6. [AMENDED]  
317:35-18-7. [AMENDED]  
317:35-18-9. [AMENDED]  
317:35-18-10. [AMENDED]  
317:35-18-11. [AMENDED]  
(Reference APA WF # 11-35)  
**GUBERNATORIAL APPROVAL:**  
April 23, 2012

[OAR Docket #12-533; filed 5-1-12]

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

[OAR Docket #12-537]

**RULEMAKING ACTION:**  
Gubernatorial approval of permanent rules  
**RULES:**  
Subchapter 17. ADvantage Waiver Services  
317:35-17-1. [AMENDED]  
317:35-17-2. [AMENDED]  
317:35-17-3. [AMENDED]  
317:35-17-4. [AMENDED]  
317:35-17-5. [AMENDED]  
317:35-17-11. [AMENDED]  
317:35-17-12. [AMENDED]  
317:35-17-14. [AMENDED]  
317:35-17-15. [AMENDED]  
317:35-17-16. [AMENDED]  
317:35-17-17. [REVOKED]  
317:35-17-18. [AMENDED]  
317:35-17-19. [AMENDED]  
317:35-17-21.1. [AMENDED]  
317:35-17-24. [AMENDED]  
(Reference APA WF # 11-39B)  
**GUBERNATORIAL APPROVAL:**  
April 23, 2012

[OAR Docket #12-537; filed 5-1-12]

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

[OAR Docket #12-538]

**RULEMAKING ACTION:**  
Gubernatorial approval of permanent rules  
**RULES:**  
Subchapter 5. Eligibility and Countable Income  
Part 1. Determination of Qualifying Categorical  
Relationships  
317:35-5-4. [AMENDED]  
Part 5. Countable Income and Resources  
317:35-5-43. [AMENDED]  
Subchapter 22. Pregnancy Related Benefits Covered Under  
Title XXI  
317:35-22-1. [AMENDED]  
(Reference APA WF # 11-40)

## Gubernatorial Approvals

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**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-538; filed 5-1-12]*

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

*[OAR Docket #12-539]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 13. Member Rights and Responsibilities

317:35-13-7. [AMENDED]

(Reference APA WF # 11-42)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-539; filed 5-1-12]*

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**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 40. DEVELOPMENTAL  
DISABILITIES SERVICES**

*[OAR Docket #12-513]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

317:40-1-1. [AMENDED]

Subchapter 5. Member Services

Part 11. Other Community Residential Supports

317:40-5-152. [AMENDED]

Subchapter 7. Employment Services Through Home and

Community-based Services Waivers

317:40-7-4. [AMENDED]

(Reference APA WF # 11-04C)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-513; filed 5-1-12]*

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**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 40. DEVELOPMENTAL  
DISABILITIES SERVICES**

*[OAR Docket #12-531]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Member Services

Part 1. Agency Companion Services

317:40-5-3. [AMENDED]

317:40-5-5. [AMENDED]

317:40-5-8. [REVOKED]

317:40-5-9. [AMENDED]

317:40-5-13. [AMENDED]

Part 5. Specialized Foster Care

317:40-5-59. [AMENDED]

Part 9. Service Provisions

317:40-5-101. [AMENDED]

317:40-5-113. [AMENDED]

Subchapter 7. Employment Services Through Home and

Community-Based Services Waivers

317:40-7-12. [AMENDED]

317:40-7-15. [AMENDED]

317:40-7-21. [AMENDED]

(Reference APA WF # 11-32B)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-531; filed 5-1-12]*

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**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 45. INSURE OKLAHOMA**

*[OAR Docket #12-532]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

317:45-1-3. [AMENDED]

317:45-1-4. [AMENDED]

(Reference APA WF # 11-33)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-532; filed 5-1-12]*

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**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 50. HOME AND COMMUNITY  
BASED SERVICES WAIVERS**

*[OAR Docket #12-514]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Medically Fragile Waiver Services
- 317:50-1-2. [AMENDED]
- 317:50-1-3. [AMENDED]
- Subchapter 3. My Life, My Choice Waiver Services
- 317:50-3-2. [AMENDED]
- Subchapter 5. Sooner Seniors Waiver Services
- 317:50-5-2. [AMENDED]
- (Reference APA WF # 11-04D)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-514; filed 5-1-12]*

**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 50. HOME AND COMMUNITY  
BASED SERVICES WAIVERS**

*[OAR Docket #12-516]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. My Life, My Choice Waiver Services
- 317:50-3-4. [AMENDED]
- (Reference APA WF # 11-13)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-516; filed 5-1-12]*

**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 50. HOME AND COMMUNITY  
BASED SERVICES WAIVERS**

*[OAR Docket #12-517]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 5. Sooner Seniors Waiver Services
- 317:50-5-4. [AMENDED]
- (Reference APA WF # 11-14)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-517; filed 5-1-12]*

**TITLE 317. OKLAHOMA HEALTH CARE  
AUTHORITY  
CHAPTER 50. HOME AND COMMUNITY  
BASED SERVICES WAIVERS**

*[OAR Docket #12-527]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Medically Fragile Waiver Services
- 317:50-1-4. [AMENDED]
- (Reference APA WF # 11-29)

**GUBERNATORIAL APPROVAL:**

April 23, 2012

*[OAR Docket #12-527; filed 5-1-12]*

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

*[OAR Docket #12-495]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 3. Office of Client Advocacy
- Part 3. Investigations
- 340:2-3-2 [AMENDED]
- 340:2-3-32 through 340:2-3-33 [AMENDED]
- 340:2-3-35 through 340:2-3-37 [AMENDED]
- (Reference WF 11-12)

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-495; filed 5-1-12]*

**TITLE 340. DEPARTMENT OF HUMAN  
SERVICES  
CHAPTER 5. ADULT PROTECTIVE  
SERVICES**

*[OAR Docket #12-497]*

**RULEMAKING ACTION:**

Gubernatorial approval

# Gubernatorial Approvals

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## **RULES:**

Subchapter 3. Reports of Maltreatment of Vulnerable Adults

340:5-3-4 [AMENDED]

Subchapter 5. Investigation of Adult Protective Services Referrals

340:5-5-4 [AMENDED]

340:5-5-6 [AMENDED]

(Reference WF 11-04 and 11-16)

## **GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-497; filed 5-1-12]*

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### **TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

*[OAR Docket #12-499]*

## **RULEMAKING ACTION:**

Gubernatorial approval

## **RULES:**

Subchapter 3. Conditions of Eligibility - Need

Part 1. Resources

340:10-3-5 [AMENDED]

Part 3. Income

340:10-3-31 through 340:10-3-32 [AMENDED]

340:10-3-40 [AMENDED]

Part 5. Assistance Payments

340:10-3-56 through 340:10-3-57 [AMENDED]

Subchapter 20. Diversion Assistance [REVOKED]

340:10-20-1 [REVOKED]

(Reference WF 11-13)

## **GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-499; filed 5-1-12]*

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

*[OAR Docket #12-501]*

## **RULEMAKING ACTION:**

Gubernatorial approval

## **RULES:**

Subchapter 1. Low Income Home Energy Assistance Program

340:20-1-4 [AMENDED]

340:20-1-10 through 340:20-1-11 [AMENDED]

340:20-1-17 [AMENDED]

340:20-1-20 [AMENDED]

(Reference WF 11-09)

## **GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-501; filed 5-1-12]*

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### **TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES**

*[OAR Docket #12-459]*

## **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

## **RULES:**

Subchapter 1. Scope and Applicability

340:25-1-1.2 [AMENDED]

340:25-1-2.1 [AMENDED]

340:25-1-5.1 [AMENDED]

Subchapter 5. Operational Policies

Part 9. Disclosure of Information

340:25-5-66 through 340:25-5-67 [AMENDED]

Part 15. Case Initiation, Case Management, and Case Closure

340:25-5-110.1 [AMENDED]

340:25-5-117 [AMENDED]

340:25-5-123 through 340:25-5-124 [AMENDED]

Part 17. Past Support

340:25-5-140 through 340:25-5-140.1 [AMENDED]

Part 20. Medical Support

340:25-5-168 [AMENDED]

340:25-5-171 [AMENDED]

Part 21. Establishment

340:25-5-176 [AMENDED]

340:25-5-178 [AMENDED]

340:25-5-179.1 [AMENDED]

Part 23. Enforcement

340:25-5-200 through 340:25-5-200.1 [AMENDED]

340:25-5-201.1 [AMENDED]

Part 33. Interstate and International Cases

340:25-5-270 [AMENDED]

Part 38. Title IV-D and Non-IV-D Central Case Registry Information

340:25-5-339 through 340:25-5-340 [AMENDED]

Part 39. Accounting and Distribution

340:25-5-345.2 [AMENDED]

340:25-5-350.1 [AMENDED]

340:25-5-350.3 [AMENDED]

(Reference WF 11-08)

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-459; filed 4-26-12]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES**

*[OAR Docket #12-460]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 5. Operational Policies
- Part 25. Federal Offset Programs
- 340:25-5-215 [AMENDED]
- 340:25-5-215.1 [AMENDED]
- Part 27. State Tax Refund Offset Program
- 340:25-5-235 [AMENDED]
- (Reference WF 11-11)

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-460; filed 4-26-12]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

*[OAR Docket #12-503]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 7. Eligibility
- 340:40-7-8 [AMENDED]
- 340:40-7-11 [AMENDED]
- (Reference WF 11-14)

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-503; filed 5-1-12]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**

*[OAR Docket #12-505]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 3. Application Process
- 340:50-3-1 through 340:50-3-3 [AMENDED]
- Subchapter 5. Non-financial Eligibility Criteria
- Part 1. Household Definition
- 340:50-5-3 [AMENDED]
- Part 3. Special Households
- 340:50-5-28 [AMENDED]
- Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees
- 340:50-5-45 [AMENDED]
- Subchapter 7. Financial Eligibility Criteria
- Part 3. Income
- 340:50-7-29 through 340:50-7-30 [AMENDED]
- Subchapter 9. Eligibility and Benefit Determination Procedures
- 340:50-9-1 [AMENDED]
- 340:50-9-4 through 340:50-9-6 [AMENDED]
- (Reference WF 11-10)

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-505; filed 5-1-12]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

*[OAR Docket #12-507]*

**RULEMAKING ACTION:**

Gubernatorial approval

**RULES:**

- Subchapter 1. General Provisions
- 340:65-1-2 [AMENDED]
- Subchapter 3. Eligibility for Benefits
- 340:65-3-1 [AMENDED]
- 340:65-3-4 [AMENDED]
- 340:65-3-7 through 340:65-3-8 [AMENDED]
- Subchapter 5. Procedures Relating to Case Changes
- Part 1. General Provisions
- 340:65-5-1 [AMENDED]
- (Reference WF 11-15)

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-507; filed 5-1-12]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES**  
**CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION**

*[OAR Docket #12-457]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Administration  
Part 1. General Administration  
340:100-3-4 [AMENDED]  
340:100-3-6 [AMENDED]  
340:100-3-16 [NEW]  
Part 3. Administration  
340:100-3-27 through 340:100-3-27.2 [AMENDED]  
340:100-3-27.3 [REVOKED]  
340:100-3-27.4 through 340:100-3-27.5 [AMENDED]  
340:100-3-34 [AMENDED]  
340:100-3-40 [AMENDED]  
Subchapter 5. Client Services  
Part 3. Service Provisions  
340:100-5-20 [AMENDED]  
**(Reference WF 11-07)**

**GUBERNATORIAL APPROVAL:**

April 16, 2012

*[OAR Docket #12-457; filed 4-26-12]*

**TITLE 365. INSURANCE DEPARTMENT**  
**CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #12-583]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
365:1-1-4. Requests for Information [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-583; filed 5-9-12]*

**TITLE 365. INSURANCE DEPARTMENT**  
**CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #12-584]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 9. Description of Forms and Instructions  
365:1-9-18. Bail bond forms [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-584; filed 5-9-12]*

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

*[OAR Docket #12-585]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
Part 1. General Provisions  
365:10-1-15. Eliminating unfair discrimination on basis of children as single applicants [AMENDED]  
365:10-1-16. Providing insurance policy information [NEW]  
Subchapter 5. Minimum Standards; Contract Guidelines  
Part 15. Small Employer Health Insurance Reform Regulation  
365:10-5-150. Statement of purpose [AMENDED]  
365:10-5-155. Restrictions relating to premium rates [AMENDED]  
365:10-5-164. Uniform Health Questionnaire [NEW]  
Part 17. Actuarial Opinion and Memorandum Regulation  
365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis [AMENDED]  
Subchapter 29. External Review Regulations [NEW]  
365:10-29-1. Purpose [NEW]  
365:10-29-2. Applicability and Scope [NEW]  
365:10-29-3. Definitions [NEW]  
365:10-29-4. Notice of Right to an External Review and External Review Procedures [NEW]  
365:10-29-5. Authorization to Disclose Protected Health Information [NEW]  
365:10-29-6. External Review Requests [NEW]  
365:10-29-7. Notice of Initial Determination [NEW]  
365:10-29-8. Independent Review Organization Application [NEW]  
365:10-29-9. Independent Review Organization Recordkeeping and Reporting Requirements [NEW]  
365:10-29-10. Health Carrier Recordkeeping and Reporting Requirements [NEW]  
Appendix PP. Notice of Appeal Rights [NEW]  
Appendix QQ. External Review Request Form [NEW]  
Appendix RR. Application for Registration as an Independent Review Organization [NEW]  
Appendix SS. Independent Review Organization External Review Annual Report Form [NEW]

Appendix TT. Health Carrier External Review Annual Report Form [NEW]  
Appendix UU. Policy Holder's Authorization to Release Insurance Policy Information to Agent of Record [NEW]  
Appendix VV. Uniform Health Questionnaire [NEW]  
**GUBERNATORIAL APPROVAL:**  
May 1, 2012

[OAR Docket #12-585; filed 5-9-12]

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

[OAR Docket #12-586]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
Part 3. Standardized Health Claim Forms  
365:10-1-31. Definitions [AMENDED]  
365:10-1-32. Requirements for use of HCFA Form 1500 and HCFA Form 1491 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

[OAR Docket #12-586; filed 5-9-12]

**TITLE 365. INSURANCE DEPARTMENT  
CHAPTER 15. PROPERTY AND CASUALTY**

[OAR Docket #12-587]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation  
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]  
365: 15-7-30. Special Commercial Risks [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

[OAR Docket #12-587; filed 5-9-12]

**TITLE 365. INSURANCE DEPARTMENT  
CHAPTER 25. LICENSURE OF  
PRODUCERS, ADJUSTERS, BAIL  
BONDSMEN, COMPANIES, PREPAID  
FUNERAL BENEFITS, CEMETERY  
MERCHANDISE TRUSTS, AND VIATICAL  
SETTLEMENT PROVIDERS AND BROKERS**

[OAR Docket #12-588]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors  
365:25-3-1. Insurance producers continuing education [AMENDED]  
365:25-3-14. Insurance adjusters continuing education [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

[OAR Docket #12-588; filed 5-9-12]

**TITLE 365. INSURANCE DEPARTMENT  
CHAPTER 25. LICENSURE OF  
PRODUCERS, ADJUSTERS, BAIL  
BONDSMEN, COMPANIES, PREPAID  
FUNERAL BENEFITS, CEMETERY  
MERCHANDISE TRUSTS, AND VIATICAL  
SETTLEMENT PROVIDERS AND BROKERS**

[OAR Docket #12-589]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Bail Bondsmen  
Part 1. Continuing Education for Bail Bondsmen  
365:25-5-3. Education requirements [AMENDED]  
365:25-5-4. Application for course approval [AMENDED]  
Part 5. General Provisions Pertaining to Bail Bondsmen  
365:25-5-34. Professional bondsman deposits [AMENDED]  
365:25-5-35. Bondsman license renewal [AMENDED]  
365:25-5-43. Appointments [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

[OAR Docket #12-589; filed 5-9-12]

## Gubernatorial Approvals

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### TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

*[OAR Docket #12-469]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

385:1-1-2 [AMENDED]  
385:1-1-4 [AMENDED]  
385:1-1-5 [AMENDED]  
385:1-1-6 [AMENDED]  
385:1-1-11 [AMENDED]  
385:1-1-13 [NEW]

#### **GUBERNATORIAL APPROVAL:**

April 24, 2012

*[OAR Docket #12-469; filed 4-30-12]*

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### TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 15. SALE AND OPERATION OF OIL AND GAS LEASES

*[OAR Docket #12-470]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

385:15-1-3 [AMENDED]  
385:15-1-4 [AMENDED]  
385:15-1-6 [AMENDED]  
385:15-1-8 [AMENDED]  
385:15-1-9 [AMENDED]  
385:15-1-18 [AMENDED]  
385:15-1-20 [AMENDED]  
385:15-1-21 [AMENDED]  
385:15-1-22 [AMENDED]  
385:15-1-25 [AMENDED]  
385:15-1-32 [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 24, 2012

*[OAR Docket #12-470; filed 4-30-12]*

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### TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 20. SALE AND OPERATION OF COAL AND URANIUM HARD ROCK MINING AND OTHER MINERAL LEASES

*[OAR Docket #12-471]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

385:20-1-2 [AMENDED]  
385:20-1-3 [AMENDED]  
385:20-1-6 [REVOKED]  
385:20-1-7 [AMENDED]  
385:20-1-10 [AMENDED]  
385:20-1-11 [AMENDED]  
385:20-1-12 [AMENDED]  
385:20-1-13 [AMENDED]  
385:20-1-14 [AMENDED]  
385:20-1-15 [AMENDED]  
385:20-1-16 [AMENDED]  
385:20-1-17 [AMENDED]  
385:20-1-19 [REVOKED]  
385:20-1-20 [AMENDED]  
385:20-1-21 [AMENDED]  
385:20-1-22 [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 24, 2012

*[OAR Docket #12-471; filed 4-30-12]*

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### TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 25. SURFACE LEASING FOR AGRICULTURAL AND COMMERCIAL PURPOSES

*[OAR Docket #12-472]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

385:25-1-1 [AMENDED]  
385:25-1-2 [AMENDED]  
385:25-1-4 [AMENDED]  
385:25-1-5 [AMENDED]  
385:25-1-7 [AMENDED]  
385:25-1-12 [AMENDED]  
385:25-1-13 [AMENDED]  
385:25-1-15 [AMENDED]  
385:25-1-22 [AMENDED]  
385:25-1-23 [AMENDED]  
385:25-1-24 [AMENDED]  
385:25-1-25 [AMENDED]  
385:25-1-31 [AMENDED]

385:25-1-33 [AMENDED]  
385:25-1-39 [REVOKED]  
385:25-1-40 [REVOKED]  
385:25-1-41 [AMENDED]  
385:25-1-43 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 24, 2012

*[OAR Docket #12-472; filed 4-30-12]*

**TITLE 385. DEPARTMENT OF THE  
COMMISSIONERS OF THE LAND OFFICE  
CHAPTER 30. SALE OF SCHOOL LAND**

*[OAR Docket #12-473]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

385:30-1-3 [AMENDED]  
385:30-1-9 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 24, 2012

*[OAR Docket #12-473; filed 4-30-12]*

**TITLE 385. DEPARTMENT OF THE  
COMMISSIONERS OF THE LAND OFFICE  
CHAPTER 35. LOAN OF ABSTRACTS  
[REVOKED]**

*[OAR Docket #12-474]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

385:35-1-1 [REVOKED]  
385:35-1-2 [REVOKED]  
385:35-1-3 [REVOKED]  
385:35-1-4 [REVOKED]

**GUBERNATORIAL APPROVAL:**  
April 24, 2012

*[OAR Docket #12-474; filed 4-30-12]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 1. AGENCY AUTHORITY AND  
OBJECTIVES**

*[OAR Docket #12-551]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:1-1-4 [AMENDED]  
390:1-1-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 27, 2012

*[OAR Docket #12-551; filed 5-3-12]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 2. ADMINISTRATIVE  
PROCEDURES**

*[OAR Docket #12-552]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:2-1-2 [AMENDED]  
390:2-1-4 [AMENDED]  
390:2-1-11 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 27, 2012

*[OAR Docket #12-552; filed 5-3-12]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 15. BASIC PEACE OFFICER  
CERTIFICATION TRAINING**

*[OAR Docket #12-553]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. Basic Academy Programs  
390:15-1-13 [AMENDED]  
390:15-1-18 [AMENDED]  
Subchapter 3. Collegiate Officer Program  
390:15-3-7 [AMENDED]  
390:15-3-8 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 27, 2012

*[OAR Docket #12-553; filed 5-3-12]*

**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 30. CDS DETECTOR DOG  
CERTIFICATION**

*[OAR Docket #12-554]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:30-1-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 27, 2012

*[OAR Docket #12-554; filed 5-3-12]*

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**TITLE 390. COUNCIL ON LAW  
ENFORCEMENT EDUCATION AND  
TRAINING  
CHAPTER 31. BOMB DETECTOR DOG  
CERTIFICATION**

*[OAR Docket #12-555]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

390:31-1-3 [AMENDED]

390:31-1-5 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 27, 2012

*[OAR Docket #12-555; filed 5-3-12]*

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**TITLE 435. STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
CHAPTER 10. PHYSICIANS AND  
SURGEONS**

*[OAR Docket #12-468]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

435:10-1-4. Definitions [AMENDED]

Subchapter 7. Regulation of Physician and Surgeon  
Practice

435:10-7-4. Unprofessional conduct [AMENDED]

435:10-7-11. Use of controlled substances for the  
management of chronic pain [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-468; filed 4-27-12]*

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**TITLE 435. STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
CHAPTER 20. PHYSICAL THERAPISTS  
AND ASSISTANTS**

*[OAR Docket #12-468A]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Regulation of Practice

435:20-5-10. Referrals [NEW]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-468A; filed 4-27-12]*

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**TITLE 475. OKLAHOMA STATE BUREAU  
OF NARCOTICS AND DANGEROUS DRUGS  
CONTROL  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

*[OAR Docket #12-562]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions

475:1-1-1. Purpose [AMENDED]

Subchapter 5. Administrative Actions

475:1-5-6. Submission and receipt of evidence  
[AMENDED]

475:1-5-11. Surrender of Registration in Lieu of  
Administrative Action [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-562; filed 5-7-12]*

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**TITLE 475. OKLAHOMA STATE BUREAU  
OF NARCOTICS AND DANGEROUS DRUGS  
CONTROL  
CHAPTER 10. REQUIREMENTS FOR  
REGISTRATION**

*[OAR Docket #12-563]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 475:10-1-2. Time and method of payment of registration fees [AMENDED]
- 475:10-1-3. Exemption from registration or payment of fees [AMENDED]
- 475:10-1-5. Exemption of agents and employees [AMENDED]
- 475:10-1-9. Application for registration pursuant to Title 63 Okl.St. Ann. §2-302 [AMENDED]
- 475:10-1-10. Application ~~forms~~ notices for registration and re-registration [AMENDED]
- 475:10-1-11. Operational protocols [AMENDED]
- 475:10-1-15. Amendments to and withdrawal of applications [AMENDED]
- 475:10-1-16. Inspection [AMENDED]
- 475:10-1-20. Modification of registration [AMENDED]
- 475:10-1-21. Change of business address [AMENDED]
- 475:10-1-22. Termination of registration [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-563; filed 5-7-12]*

**TITLE 475. OKLAHOMA STATE BUREAU  
OF NARCOTICS AND DANGEROUS DRUGS  
CONTROL  
CHAPTER 15. IMMINENT DANGER  
SUSPENSION**

*[OAR Docket #12-564]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 475:15-1-2. Immediate suspension of registration [AMENDED]
- 475:15-1-3. Hearing following immediate suspension [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-564; filed 5-7-12]*

**TITLE 475. OKLAHOMA STATE BUREAU  
OF NARCOTICS AND DANGEROUS DRUGS  
CONTROL  
CHAPTER 20. SECURITY REQUIREMENTS**

*[OAR Docket #12-565]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 475:20-1-5. Other security controls for nonpractitioner registrants [AMENDED]

- 475:20-1-7. Physical security controls for drug canine handlers [AMENDED]

- 475:20-1-8. Other security controls for registrants [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-565; filed 5-7-12]*

**TITLE 475. OKLAHOMA STATE BUREAU  
OF NARCOTICS AND DANGEROUS DRUGS  
CONTROL  
CHAPTER 25. RECORDS AND REPORTS OF  
REGISTRANTS**

*[OAR Docket #12-566]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 475:25-1-7. Biennial inventory date [AMENDED]
- 475:25-1-9. Inventories of manufacturers [AMENDED]
- 475:25-1-10. Inventories of distributors [AMENDED]
- 475:25-1-12. Inventories of scientific analyst [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-566; filed 5-7-12]*

**TITLE 475. OKLAHOMA STATE BUREAU  
OF NARCOTICS AND DANGEROUS DRUGS  
CONTROL  
CHAPTER 30. LABELING REQUIREMENTS**

*[OAR Docket #12-567]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 475:30-1-4. Manner of issuance of prescriptions [AMENDED]
- 475:30-1-6. Requirements of prescriptions for controlled dangerous substances listed in Schedule II [AMENDED]
- 475:30-1-10. Requirements of prescriptions for controlled dangerous substances listed in Schedules III and IV [AMENDED]
- 475:30-1-11. Refilling of prescriptions [AMENDED]
- 475:30-1-15. Identification requirement [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-567; filed 5-7-12]*

## Gubernatorial Approvals

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### **TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 45. OKLAHOMA CONTROL REPORTING REQUIREMENTS**

*[OAR Docket #12-568]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

- 475:45-1-1. Purpose [AMENDED]
- 475:45-1-2. Required reporting of certain information [AMENDED]
- 475:45-1-3. Method of reporting [AMENDED]
- 475:45-1-4. Waiver of ~~UCF~~electronic submissions [AMENDED]
- 475:45-1-5. Time limit for reporting [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-568; filed 5-7-12]*

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### **TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 50. ANIMAL CONTROL OFFICERS**

*[OAR Docket #12-569]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

- 475:50-1-4. Special Conditions on Ordering Controlled Substances [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-569; filed 5-7-12]*

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### **TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL CHAPTER 55. PSEUDOEPHEDRINE CONTROL**

*[OAR Docket #12-570]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

- 475:55-1-2. Characteristics of exempt pseudoephedrine products [AMENDED]
- 475:55-1-5. Electronic Reporting [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

May 1, 2012

*[OAR Docket #12-570; filed 5-7-12]*

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### **TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #12-546]*

#### **RULEMAKING ACTION:**

Notice of Gubernatorial approval

#### **RULES:**

- Subchapter 7. Fees and Deposits
- 490:1-7-1. Fees and deposits [AMENDED]
- 490:1-7-2. Schedule of fees [AMENDED]
- Subchapter 9. Continuing Education
- 490:1-9-5. Auditing of continuing education hours [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-546; filed 5-2-12]*

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### **TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #12-547]*

#### **RULEMAKING ACTION:**

Notice of Gubernatorial approval

#### **RULES:**

- Subchapter 1. General Provisions
- 490:1-1-1. Purpose [AMENDED]
- 490:1-1-2. Definitions [AMENDED]
- Subchapter 3. Oklahoma State Board of Examiners for Long Term Care Administrators
- 490:1-3-1. Organization [AMENDED]
- 490:1-3-2. Officers and committees [AMENDED]
- Subchapter 5. Investigative Procedures
- 490:1-5-2. Receipt of ~~complaints~~referrals and reports [AMENDED]
- 490:1-5-2.1. ~~Receipt of~~Action on referrals ~~or~~and reports [AMENDED]
- 490:1-5-3. Complaints: investigations and investigative reports [AMENDED]
- 490:1-5-6. Notice [NEW]
- 490:1-5-7. Hearing [AMENDED]
- 490:1-5-7.1. Administrative fines [AMENDED]

- 490:1-5-8. Reporting [AMENDED]
- Subchapter 6. Administrator Registry
- 490:1-6-1. General provisions [REVOKED]
- Subchapter 9. Continuing Education
- 490:1-9-1. General provisions for continuing education programs [AMENDED]
- 490:1-9-2. Criteria for continuing education programs [AMENDED]
- 490:1-9-3. Approval of continuing education Programsprograms [AMENDED]
- 490:1-9-4. Continuing education requirements [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-547; filed 5-2-12]*

**TITLE 490. OKLAHOMA STATE BOARD  
OF EXAMINERS FOR LONG TERM CARE  
ADMINISTRATORS  
CHAPTER 10. LONG TERM CARE  
ADMINISTRATORS**

*[OAR Docket #12-548]*

**RULEMAKING ACTION:**

Notice of Gubernatorial approval

**RULES:**

- Subchapter 1. Licensing of Long Term Care Administrators
- 490:10-1-1. Purpose [AMENDED]
- 490:10-1-2. Definitions
- 490:10-1-2.1. General requirements that must be met by each applicant [AMENDED]
- 490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR) administrators (also known as nursing home administrators [AMENDED]
- 490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators [NEW]
- 490:10-1-3.2. Grandfathered License [NEW]
- 490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators [NEW]
- 490:10-1-3.4. Grandfathered License [NEW]
- 490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators [NEW]
- 490:10-1-3.6. Grandfathered License [NEW]
- 490:10-1-4. Requirements for licensure by reciprocity/licensure by interstate endorsement for long term care administrators [AMENDED]
- 490:10-1-5. Requirements for a provisional license as a nursing home administrator [AMENDED]
- 490:10-1-5.1. Requirements for a provisional license as a residential care/assisted living administrator [NEW]
- 490:10-1-5.2. Requirements for a provisional license as an adult day care administrator [NEW]

- 490:10-1-9. Inactive license [REVOKED]
- 490:10-1-10. Requirements for reinstatement from inactive status [REVOKED]
- 490:10-1-11. Requirements for restoration from suspended status [AMENDED]
- Subchapter 3. Application for Long Term Care Administrator Licensure [AMENDED]
- 490:10-3-1. Application for initial licensure, licensure by reciprocity/interstate endorsement, or provisional license [AMENDED]
- 490:10-3-2. National ("~~NAB~~") examination [AMENDED]
- 490:10-3-3. State Standards examination [AMENDED]
- 490:10-3-4. Admission to the State Standards and national examinations [AMENDED]
- 490:10-3-5. Application for licensure renewal [AMENDED]
- 490:10-3-6. ~~Licensure~~ Provisional licensure term [AMENDED]
- Subchapter 5. Discipline
- 490:10-5-3. Disciplinary action [AMENDED]
- 490:10-5-5. Summary suspension [AMENDED]
- Subchapter 7. Administrator University
- 490:10-7-3. General provisions [AMENDED]
- Subchapter 8. Administrator-In-Training (AIT) internship program for Nursing Home Administrators [AMENDED]
- 490:10-8-2. Application [AMENDED]
- 490:10-8-3. Training permit [AMENDED]
- 490:10-8-4. Preceptor selection [AMENDED]
- 490:10-8-5. Preceptor qualifications [AMENDED]
- 490:10-8-5.1. Preceptor designation/assignment to an AIT intern/trainee [AMENDED]
- 490:10-8-6. Curriculum for nursing home administrators AITs [AMENDED]
- 490:10-8-7. Module reports for nursing home administrator AITs [AMENDED]
- 490:10-8-8. Preceptor's final report [AMENDED]
- 490:10-8-9. Preceptor's checklist [AMENDED]
- 490:10-8-10. Change of status and discontinuance [AMENDED]
- 490:10-8-11. Dismissal from program [AMENDED]
- 490:10-8-13. AIT time on the job [AMENDED]
- 490:10-8-14. AIT Internship exempt status [AMENDED]
- Subchapter 13. Standards for Administrators
- 490:10-13-1. Administrator Code of Ethics [AMENDED]
- 490:10-13-2. Administrator responsibilities [AMENDED]
- 490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two (2) or-more licensed long term care nursing facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one-or-more individuals is/are employed in Assistant Administrator capacities [AMENDED]

## Gubernatorial Approvals

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### GUBERNATORIAL APPROVAL:

April 13, 2012

*[OAR Docket #12-548; filed 5-2-12]*

**TITLE 490. OKLAHOMA STATE BOARD  
OF EXAMINERS FOR LONG TERM CARE  
ADMINISTRATORS  
CHAPTER 15. LONG TERM CARE  
CERTIFIED ASSISTANT ADMINISTRATORS**

*[OAR Docket #12-549]*

### RULEMAKING ACTION:

Notice of Gubernatorial approval

### RULES:

Subchapter 1. Certification of Long Term Care Assistant Administrators

490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for an Assistant Administrator [AMENDED]

490:15-1-3.1. Evidence requirements [AMENDED]

490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as a Assistant Administrator [AMENDED]

Subchapter 3. Application for Certification and Requirements for Continued Eligibility

490:15-3-2. Approval process [AMENDED]

490:15-3-3. Requirements for Certified Assistant Administrators [NEW]

### GUBERNATORIAL APPROVAL:

April 13, 2012

*[OAR Docket #12-549; filed 5-2-12]*

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

*[OAR Docket #12-491]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 3. Administrative Components of the Department

612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]

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

Part 1. Purpose and Legal Basis

612:1-11-4. DRS and the Americans with Disabilities Act [AMENDED]

Part 3. Reasonable Accommodation

612:1-11-15. Overview of reasonable accommodation [AMENDED]

Part 9. Medical and Other Considerations

612:1-11-55. Medical documentation [AMENDED]

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

612:1-13-7. Composition of planning and policymaking bodies [AMENDED]

612:1-13-9. Complaint rules and procedures [AMENDED]

### GUBERNATORIAL APPROVAL:

April 25, 2012

*[OAR Docket #12-491; filed 5-1-12]*

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

*[OAR Docket #12-492]*

### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

### RULES:

Subchapter 1. General Provisions

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

612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]

Subchapter 7. Vocational Rehabilitation and Visual Services

Part 3. Case Processing Requirements

612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]

612:10-7-25.1. Order of selection [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]

Part 23. Self-Employment Programs and Other Services

612:10-7-230.4. Agency financial contribution to self-employment/purchasing [AMENDED]

Subchapter 13. Special Services for the Deaf and Hard of Hearing

Part 1. Service Programs

612:10-13-4. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders [REVOKED]

### GUBERNATORIAL APPROVAL:

April 25, 2012

*[OAR Docket #12-492; filed 5-1-12]*

**TITLE 612. STATE DEPARTMENT OF  
REHABILITATION SERVICES  
CHAPTER 20. SPECIAL SCHOOLS**

[OAR Docket #12-493]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 2. Contracted Instructional Personnel
- 612:20-2-5. Contracted instructional personnel [AMENDED]
- 612:20-2-13. Dismissal/Nonreemployment Hearing [AMENDED]
- 612:20-2-17. Full-time administrators; Appeal of dismissal or nonreemployment [AMENDED]
- Subchapter 9. Service Programs [NEW]
- 612:20-9-1. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders [NEW]

**GUBERNATORIAL APPROVAL:**

April 25, 2012

[OAR Docket #12-493; filed 5-1-12]

**TITLE 612. STATE DEPARTMENT OF  
REHABILITATION SERVICES  
CHAPTER 25. BUSINESS ENTERPRISE  
PROGRAM**

[OAR Docket #12-494]

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 2. General Provisions
- 612:25-2-5. Definitions [AMENDED]
- 612:25-2-6. Promulgation of Business Enterprise Program policies [REVOKED]
- 612:25-2-9. Conflict of interest [NEW]
- Subchapter 4. The State Licensing Agency
- Part 1. Organization and General Operation Standards
- 612:25-4-1. Organization of the State Licensing Agency [AMENDED]
- 612:25-4-3. Guidelines for communication [REVOKED]
- 612:25-4-4. Management services provided by the State Licensing Agency [AMENDED]
- Part 3. Business Enterprise Program Training
- 612:25-4-14. Training for new or potential licensed managers [AMENDED]
- 612:25-4-15. Training for present licensed managers [AMENDED]
- 612:25-4-16. Training for Business Enterprise Program staff [NEW]
- Part 5. State Licensing Agency Responsibility for Business Enterprise Operations

- 612:25-4-25. Management of BEP equipment and fixtures [AMENDED]
- 612:25-4-26. Maintenance and replacement of business enterprise equipment [AMENDED]
- 612:25-4-27. Initial inventory and supplies [AMENDED]
- 612:25-4-28. Method of payment for initial stock [REVOKED]
- 612:25-4-29. Failure of licensed manager to repay loan [REVOKED]
- 612:25-4-30. Second merchandise loan [REVOKED]
- Part 9. Assignment and Transfer of Licensed Managers
- 612:25-4-53. Assignment, promotion~~Promotion~~ and transfer policy [AMENDED]
- 612:25-4-54. Business enterprise vacancy announcement [AMENDED]
- 612:25-4-55. Qualifications [AMENDED]
- 612:25-4-56. Applications [AMENDED]
- 612:25-4-57. Applicant Selection Committee [AMENDED]
- 612:25-4-58. Annual Evaluation [AMENDED]
- 612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
- 612:25-4-60. Ninety day replacement [AMENDED]
- 612:25-4-61. Satellite/remote business enterprise locations [AMENDED]
- 612:25-4-62. Vending machine income [AMENDED]
- Part 11. Business Enterprise Program Auditing and Due Process
- 612:25-4-73. Due process [AMENDED]
- 612:25-4-74. Probation [REVOKED]
- Subchapter 6. Licensed Managers and Business Enterprise Operation
- Part 1. Licensed Managers
- 612:25-6-1. Licensing requirements for managing a business enterprise [AMENDED]
- 612:25-6-2. Standards for licensed managers [AMENDED]
- 612:25-6-2.1. Probation [NEW]
- 612:25-6-3. Grounds for suspension or termination of a license [AMENDED]
- 612:25-6-5. Motor vehicle operation [AMENDED]
- Part 3. Business Enterprises
- 612:25-6-15. Setting aside of funds [AMENDED]
- 612:25-6-16. Criteria to establish a business enterprise [AMENDED]
- 612:25-6-18. Establishing new licensed managers in business enterprises [AMENDED]
- 612:25-6-19. Employees of the licensed manager [AMENDED]
- 612:25-6-20. Closing a business enterprise [AMENDED]
- 612:25-6-21. Business expenses [AMENDED]
- 612:25-6-22. Monthly reports [AMENDED]
- Part 5. The Elected Committee of Licensed Managers
- 612:25-6-32. The Elected Committee of Licensed Managers [AMENDED]

## Gubernatorial Approvals

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612:25-6-33. Organization and operation of the Elected  
Committee of Licensed Managers [AMENDED]

### GUBERNATORIAL APPROVAL:

April 25, 2012

*[OAR Docket #12-494; filed 5-1-12]*

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

*[OAR Docket #12-571]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### PROPOSED RULES:

Subchapter 3. Returns and Reports

Part 7. Other Required Reporting

710:50-3-54 [AMENDED]

710:50-3-55 [NEW]

Subchapter 15. Oklahoma Taxable Income

Part 7. Credits against Tax

710:50-15-109 [AMENDED]

710:50-15-110 [AMENDED]

710:50-15-114 [NEW]

710:50-15-115 [NEW]

#### GUBERNATORIAL APPROVAL:

April 27, 2012

*[OAR Docket #12-571; filed 5-7-12]*

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

*[OAR Docket #12-573]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### PROPOSED RULES:

Subchapter 15. Oklahoma Taxable Income

Part 5. Other Adjustments to Income

710:50-15-53 [AMENDED]

Subchapter 17. Oklahoma Taxable Income for  
Corporations

Part 5. Determination of Taxable Corporate Income

710:50-17-51 [AMENDED]

#### GUBERNATORIAL APPROVAL:

April 27, 2012

*[OAR Docket #12-573; filed 5-7-12]*

### TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY

*[OAR Docket #12-572]*

#### AND ADMINISTRATIVE AUTHORITY RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### PROPOSED RULES:

Subchapter 5. ~~Waste~~Used Tire Recycling

710:95-5-1 [AMENDED]

710:95-5-2 [AMENDED]

710:95-5-3 [AMENDED]

710:95-5-8 [AMENDED]

710:95-5-9 [AMENDED]

710:95-5-10 [AMENDED]

710:95-5-11 [AMENDED]

710:95-5-12 [AMENDED]

710:95-5-19 [AMENDED]

Subchapter 17. Prepaid Wireless Fee

710:95-17-3 [AMENDED]

710:95-17-7 [AMENDED]

Subchapter 19. Business Activity Tax

710:95-19-6 [AMENDED]

710:95-19-7 [AMENDED]

Subchapter 21. Quality Events [NEW]

710:95-21-1 through 710:95-12-11 [NEW]

#### GUBERNATORIAL APPROVAL:

April 27, 2012

*[OAR Docket #12-572; filed 5-7-12]*

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### TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #12-541]*

#### RULEMAKING ACTION:

Notice of gubernatorial approval of permanent rules

#### RULES:

Subchapter 3. Transportation Commission

730:1-3-4. [AMENDED]

#### GUBERNATORIAL APPROVAL:

April 13, 2012

*[OAR Docket #12-541; filed 5-2-12]*

**TITLE 730. DEPARTMENT OF  
TRANSPORTATION  
CHAPTER 10. DEPARTMENT PROGRAMS**

*[OAR Docket #12-542]*

**RULEMAKING ACTION:**

Notice of gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Construction Program
- 730:10-1-1. [AMENDED]
- 730:10-1-2. [AMENDED]
- 730:10-1-3. [AMENDED]
- 730:10-1-4. [AMENDED]
- 730:10-1-5. [REVOKED]
- 730:10-1-6. [REVOKED]
- 730:10-1-7. [AMENDED]
- 730:10-1-8. [REVOKED]
- 730:10-1-9. [AMENDED]
- 730:10-1-11. [AMENDED]
- Subchapter 15. Project Development Procedures
- 730:10-15-1. [AMENDED]
- 730:10-15-2. [AMENDED]
- Appendix A. Ideal Scoping Process Within Current Structure [REVOKED]
- Appendix A. Eight Year Construction Work Plan Management Process [NEW]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-542; filed 5-2-12]*

**TITLE 730. DEPARTMENT OF  
TRANSPORTATION  
CHAPTER 15. HIGHWAY PLANNING**

*[OAR Docket #12-543]*

**RULEMAKING ACTION:**

Notice of gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Process [NEW]
- 730:15-1-9. Dedications and commendations [REVOKED]
- Subchapter 3. Highway and Bridge Signage [NEW]
- 730:15-3-1. Commission dedications and commendations [NEW]
- 730:15-3-2. Transfer Costs of Memorial Signs [NEW]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-543; filed 5-2-12]*

**TITLE 730. DEPARTMENT OF  
TRANSPORTATION  
CHAPTER 30. HIGHWAY DESIGN**

*[OAR Docket #12-544]*

**RULEMAKING ACTION:**

Notice of gubernatorial approval of permanent rules

**RULES:**

- Subchapter 5. Consulting Engineer Services
- 730:30-5-2. [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-544; filed 5-2-12]*

**TITLE 730. DEPARTMENT OF  
TRANSPORTATION  
CHAPTER 35. MAINTENANCE AND  
CONTROL OF STATE HIGHWAY SYSTEM**

*[OAR Docket #12-545]*

**RULEMAKING ACTION:**

Notice of gubernatorial approval of permanent rules

**RULES:**

- Subchapter 5. Highway Advertising Control
- 730:35-5-3. [AMENDED]
- 730:35-5-18. [NEW]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-545; filed 5-2-12]*

**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 1. OPERATIONS AND  
PROCEDURES**

*[OAR Docket #12-558]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 11. Publications
- 800:1-11-1. Charges for workshops, publications and other material [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-558; filed 5-4-12]*

## Gubernatorial Approvals

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### **TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 10. SPORT FISHING RULES**

*[OAR Docket #12-559]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 1. Harvest and Possession Limits

800:10-1-4. Size limits on fish [AMENDED]

800:10-1-5. Bag limits on fish [AMENDED]

Subchapter 5. Area Restrictions and Special Fees

800:10-5-3. Designated trout areas [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-559; filed 5-4-12]*

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### **TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES**

*[OAR Docket #12-560]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 3. Hunting on Corps of Engineers Land

800:25-3-2. Areas open to shotgun with pellets and bow and arrow only [AMENDED]

800:25-3-3. Areas open to archery only [AMENDED]

Subchapter 7. General Hunting Seasons

Part 1. General Provisions

800:25-7-3. General provisions [AMENDED]

Part 3. Reptiles and Amphibians

800:25-7-7. General provisions [AMENDED]

Part 12. Antelope

800:25-7-48. Dates, open areas, bag limits and hunting hours and regulations [AMENDED]

Part 13. Deer

800:25-7-55. Deer-Youth Gun Season [AMENDED]

Part 14. Elk

800:25-7-57. Dates, open areas, bag limit and hunting hours [AMENDED]

Part 16. Black Bears

800:25-7-67. Dates, open areas, bag limits, hunting hours, legal means of take, quotas, and prohibited activities

Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-83.1. Beaver River WMA - McFarland Unit [NEW]

800:25-7-90. Cherokee PHA [AMENDED]

800:25-7-91. Cherokee GMA [AMENDED]

800:25-7-94. Copan WMA [AMENDED]

800:25-7-94.1.1. Cross Timbers WMA [NEW]

800:25-7-111. Hulah WMA [AMENDED]

800:25-7-126. Mountain Park WMA [AMENDED]

800:25-7-131.1. Osage WMA - Rock Creek Unit [AMENDED]

800:25-7-131.2. Osage WMA - Western Wall Unit [AMENDED]

800:25-7-149.1. Three Rivers WMA [AMENDED]

Subchapter 9. Controlled Hunts

Part 3. Antelope

800:25-9-11. Cimarron and Texas County (west of Highway 136) landowner antelope permits [AMENDED]

Subchapter 29. Oklahoma Deer Management Assistance Program

800:25-29-3. Landowner responsibilities [AMENDED]

800:25-29-4. Department responsibilities [AMENDED]

#### **GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-560; filed 5-4-12]*

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### **TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT**

*[OAR Docket #12-561]*

#### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

#### **RULES:**

Subchapter 1. Use of Department Managed Lands

800:30-1-2. Use restrictions [AMENDED]

800:30-1-4. Camping [AMENDED]

800:30-1-5. Vehicles [AMENDED]

800:30-1-20. Restricted public use areas [AMENDED]

800:30-1-21. Baiting on Wildlife Management Areas [NEW]

#### **GUBERNATORIAL APPROVAL:**

April 13, 2012

*[OAR Docket #12-561; filed 5-4-12]*

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# Gubernatorial Disapprovals

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

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

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**TITLE 252. DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
CHAPTER 631. PUBLIC WATER SUPPLY  
OPERATION**

*[OAR Docket #12-486]*

**RULEMAKING ACTION:**

Gubernatorial disapproval of permanent rules

**RULES:**

Subchapter 3. Operations  
252:631-3-21 [AMENDED]

**GUBERNATORIAL DISAPPROVAL:**

Written disapproval received on April 25, 2012

*[OAR Docket #12-486; filed 4-30-12]*

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# Withdrawn Rules

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

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

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

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## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION

*[OAR Docket #12-556]*

### RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

### WITHDRAWN RULES:

Subchapter 43. Castor Plants or Products [NEW]

### DATES:

#### Adoption:

March 13, 2011

#### Submitted To Governor:

March 19, 2011

#### Submitted To House:

March 19, 2011

#### Submitted To Senate:

March 19, 2011

#### Withdrawn:

May 3, 2012

*[OAR Docket #12-556; filed 5-3-12]*

### WITHDRAWN RULES:

300:20-1-1. [AMENDED]

300:20-1-4. [AMENDED]

300:20-1-8. [AMENDED]

300:20-1-10. [AMENDED]

300:20-1-11. [AMENDED]

300:20-1-12. [AMENDED]

300:20-1-13. [AMENDED]

300:20-1-15. [AMENDED]

### DATES:

#### Adoption:

March 21, 2012

#### Submitted to Governor:

March 22, 2012

#### Submitted to House:

March 22, 2012

#### Submitted to Senate:

March 22, 2012

#### Withdrawn:

May 7, 2012

*[OAR Docket #12-577; filed 5-8-12]*

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## TITLE 300. GRAND RIVER DAM AUTHORITY CHAPTER 20. PURCHASING POLICY

*[OAR Docket #12-577]*

### RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking



# Emergency Adoptions

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

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

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

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

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 35. GENERAL CONDUCT

*[OAR Docket #12-582]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULE:**

325:35-1-13. Possession of contraband [AMENDED]

### **AUTHORITY:**

75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission

### **DATES:**

#### **Adoption:**

March 20, 2012

#### **Approved by Governor:**

April 19, 2012

#### **Effective:**

Immediately upon Governor's approval

#### **Expiration:**

Effective through July 14, 2013, unless superseded by another rule or disapproved by the Legislature.

### **SUPERSEDED EMERGENCY ACTIONS:**

Not Applicable

### **INCORPORATIONS BY REFERENCE:**

Not Applicable

### **FINDING OF EMERGENCY:**

The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rule amendments to Rule 325:35-1-13 of OAC 325 *Rules of Racing*. The reasons for this finding are as follows:

1. Whereas, in the interest of the public health, safety and welfare, the Oklahoma Legislature declared the purpose of the Oklahoma Horse Racing Act was to vest the Oklahoma Horse Racing Commission with plenary power to promulgate rules and regulations for the forceful control of race meetings held in the state and that those rules should, among other things, encourage agriculture and breeding of horses in Oklahoma, maintain race meetings held in the state of the highest quality and free of any horse racing practices which are corrupt, dishonest or unprincipled, and

2. Whereas, the Federal Drug Administration has approved an animal drug application for Clenbuterol in one form only, currently marketed as Ventipulmin Syrup and Aeropulmin Syrup, which contain a small amount of Clenbuterol as a restricted use, prescription-only drug for treating horses affected with airway obstruction, and no other form of Clenbuterol has been approved by the FDA, and

3. Whereas, a recent scientific study based on medical histories and necropsy (autopsy) published in the *Journal of American Veterinary Medicine*, at Volume 239, No. 6, September 15, 2011, demonstrated that abuse through overdose and the use of compounded forms of the therapeutic medication Clenbuterol has profound negative effects on the health of horses, which include muscle tremors evident over the entire body, an unwillingness to bear weight on all limbs, much sweating and tachycardia (increased heart rate), neurologic abnormalities including loss of coordinated motor activities, which can and have lead to the death of horses, and

4. Whereas, the availability of illegal Clenbuterol formulations, often produced as a compounded drug, is now being used across the country and in Oklahoma to enhance the performance of racehorses, by way of an anabolic, muscle enhancing effect - an effect similar to those achieved with the abuse of anabolic steroids, and

5. Whereas, the illegal versions of Clenbuterol (unlike the FDA approved Ventipulmin Syrup and Aeropulmin Syrup, which is available in a single concentration), non-FDA approved Clenbuterol compounds are produced in various unknown but generally more concentrated strengths, and

6. Whereas, the abuse of Clenbuterol, particularly in the non-FDA approved compounded variety, has resulted in both injury and death to horses, and

7. Whereas, a credible, respected Oklahoma horse racing and breeding industry leader has written indicating that the abuse of Clenbuterol is now having negative effects in both Oklahoma stallions and mares coming off the track, and breeding farms are finding that many of these horses are not able to function reproductively, and

8. Whereas, a Official Commission Veterinarian is now seeing the negative effects of Clenbuterol abuse on horses at Oklahoma racetracks, and

9. Whereas, both official Horsemen's Representative Organizations perceive the need for immediate action to protect Oklahoma racing interests from Clenbuterol abuse, and

10. Whereas, in one industry leader's words, the abuse of the illegal forms of Clenbuterol "has become a cancer on Horse Racing from an attitude of a majority of owners and trainers and to the betting public," and

11. Whereas, the costs of the FDA approved forms of Clenbuterol are expensive, and the non-FDA approved compounds are now readily available locally and on the internet at much cheaper prices than the FDA approved version of the drug, it is immediately necessary to protect the health, safety and welfare of the horse athletes in Oklahoma by declaring non-FDA approved Clenbuterol as contraband, and

12. Whereas, failure to act now will have a negative effect upon the Oklahoma Horse Racing industry, including a negative effect on the perceived integrity of Oklahoma Horse Racing,

**The Commission finds that compelling public interests in the health, safety and welfare of the horse athletes participating in Oklahoma and the integrity of the Oklahoma racing program require the adoption of an emergency rule prohibiting the use of Clenbuterol in any form other than the FDA approved Ventipulmin Syrup and Aeropulmin Syrup, and declaring all other forms of Clenbuterol to be contraband in the State of Oklahoma.**

### **ANALYSIS:**

On July 12, 2011, Chairwoman Goumaz of the Oklahoma Horse Racing Commission established an Ad Hoc Committee on Medications to bring together regulators, horsemen's representatives, a state veterinarian and attorneys to discuss therapeutic medications to assist horses as well as non-approved medications with negative effects on horses. The Committee, chaired by Chairwoman Goumaz, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Becky Goumaz, Brandon Burton and Joe Lucas], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Supervising Veterinarian [Dr. Rudy Garrison], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], and one (1) representative of the Thoroughbred Racing Association of Oklahoma [Justin Cassity]. The Commission Counsel [Neal Leader, Senior Assistant Attorney General] and Commission Staff Attorney [Mary Ann Roberts] were named as advisory, non-voting members.

## Emergency Adoptions

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The Ad Hoc Committee on Medications discusses trends in the horse racing industry regarding new off-shelf uses of medications for performance enhancement of the horse and seeks publication of research studies in peer-reviewed journals about the effects of these medications on the horse. In the case of Clenbuterol, it is an effective medication for treating horses affected with airway obstruction. Unfortunately, it is also being used for other purposes such as its anabolic effect of increasing muscle mass which increased its usage after anabolic steroids were banned in 2008. As noted above, the September, 2011 issue of the Journal of American Veterinary Medicine, the researchers found that abuse through overdose and the use of compounds of the therapeutic medication Clenbuterol have profound negative effects on the health of horses, which include muscle tremors evident over the entire body, an unwillingness to bear weight on all limbs, much sweating and tachycardia (increased heart rate), and neurologic abnormalities including loss of coordinated motor activities, which can and have led to the death of horses. Further, the overdose of Clenbuterol in broodmares and stallions has the potential to affect their reproductive ability.

In order to address the issue of the non-FDA approved use of Clenbuterol and its negative effects on the equine athlete, the Ad Hoc Committee on Medications proposed a rule amendment to a rule about contraband already in effect, specifying that possession of adulterated forms of Clenbuterol at the racetrack, in a form other than the FDA approved Ventipulmin Syrup or Aeropulmin Syrup, would be prohibited. The Commission approved the recommendation, including the Declaration of Emergency, of rule amendments at its March 20, 2012 Rescheduled Regular Meeting to seek approval of the proposed rule amendments through both the emergency and permanent rulemaking processes.

**CONTACT PERSON:**

Bonnie Morris, (405) 943-6472

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

**325:35-1-13. Possession of Contraband**

No person other than a Veterinarian licensed by the Commission shall have in his/her possession within the enclosure any prohibited substance, drug or medication, any injectable substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection. Nor shall any person have in his/her possession within the enclosure the drug Clenbuterol other than in a form approved by the FDA, which approval currently allows the use of Clenbuterol under two brand names, Ventipulmin Syrup and Aeropulmin Syrup. Possession within the enclosure of any form of Clenbuterol other than the Ventipulmin Syrup and Aeropulmin Syrup, in their original container, the container in which the drug was distributed by its manufacturer, is prohibited. No person shall have in his/her possession within the enclosure any device which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time other than the ordinary whip or twitch approved by the Stewards. The Stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such condition as the Stewards may impose.

*[OAR Docket #12-582; filed 5-9-12]*

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# 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 318. HIGHWAY CONSTRUCTION MATERIALS TECHNICIAN CERTIFICATION BOARD CHAPTER 10. EXAMINATION AND CERTIFICATION

[OAR Docket #12-461]

### RULEMAKING ACTION:

PERMANENT final adoption.

### RULES:

318:10-1-6. Recertification [AMENDED]

318:10-1-11. Fees [AMENDED]

### AUTHORITY:

Highway Construction Materials Technician Certification Board; 69 O.S., § 1951 et. seq.

### DATES:

#### Comment period:

February 1, 2011 through April 1, 2011

#### Public hearing:

None held or requested.

#### Adoption:

April 1, 2011

#### Submitted to Governor:

April 5, 2011

#### Submitted to House:

April 5, 2011

#### Submitted to Senate:

April 5, 2011

#### Gubernatorial approval:

May 6, 2011

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 29, 2012.

#### Final adoption:

March 29, 2012

#### Effective:

July 1, 2012

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The rule will provide experienced Registered Highway Construction Materials Technicians (RHCMTs) with an alternate (optional) method of re-certification. The new method calls for direct observation of all pertinent sampling and/or testing procedures by evaluators, approved by the Board and the Department of Transportation, in lieu of the practical examination required for less experienced applicants. The alternate method will be available for RHCMTs who have been certified three (3) times and for a minimum of fourteen (14) years.

#### CONTACT PERSON

Steve Sawyer, Program Director, HCMTCB, 1025 SE 59<sup>th</sup> Street, Oklahoma City, OK 73129, (405) 632-8022

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

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JULY 1, 2012:**

### 318:10-1-6. Re-Certification

(a) Requirements for re-certification are the same as for original certification.

(b) Construction materials technicians may complete all re-certification requirements within one (1) year prior to the expiration of the current certification period. Recertification will become effective on the expiration date of the current certification period.

(c) Construction materials technicians who have maintained certification in Materials Sampling & Testing, Asphalt, Concrete, or Aggregates for a minimum of 14 years with no more than twelve total months interruption of continuous certification shall have the option to omit the practical examination provided the construction materials technician has received, within the past 18 months, a satisfactory evaluation from the Oklahoma Department of Transportation Independent Assurance Branch or its authorized representative(s).

### 318:10-1-11. Fees

(a) Applicants shall pay the following training fees (when applicable):

(1) No more than \$450.00 for modules with a duration of five (5) days or less.

(2) Fees for modules with a duration exceeding five days shall be based upon a rate of not more than \$90.00 per day.

(b) Applicants shall pay the following certification fees (when applicable):

(1) Three-Day Certification Examinations in Sampling and Testing of Asphalt: \$975.00 each

(2) Two-Day Certification Examinations in Sampling and Testing of Soils: \$650.00

(3) One-Day Certification Examinations in Sampling and Testing of Concrete: \$325.00

(4) One-Day Certification Examinations in Sampling and Testing of Aggregates: \$325.00

(5) One-Day Certification Examinations in Profilo-graph Operation: \$375.00

(6) One-Day Certification Examinations to Supplement American Concrete Institute Certification: \$325.00

# Permanent Final Adoptions

- (7) Three-Day Certification Examination in Field Testing of Concrete and Sampling of Soils, Aggregates, Asphalt, and Concrete: \$975.00
- (8) One-Day Certification Examination in Sampling Only of Asphalt: \$325.00
- (9) Re-Certification Examinations: Same as the Applicable Certification Fee except the Fee shall be \$100.00 when the practical examination is omitted.
- (10) Temporary Certification: Same as applicable certification fee (to be applied toward full certification fee if applicant is certified at the next available certification module.)
- (11) Apprentice Certification: \$100.00 in each area (to be applied toward full certification fee(s) if applicant is certified within one year after beginning each apprenticeship.)
- (12) Fees for applicants seeking certification through reciprocity shall be one-half (1/2) the applicable certification examination fee(s).
- (13) Fees for new or modified certifications will be based on a rate not to exceed \$325.00 per day.
- (c) Administrative Fee for returned checks: \$25.00
- (d) Duplicate certificate fee: \$15.00

[OAR Docket #12-461; filed 4-27-12]

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

[OAR Docket #12-496]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Office of Client Advocacy  
Part 3. Investigations  
340:2-3-2 [AMENDED]  
340:2-3-32 through 340:2-3-33 [AMENDED]  
340:2-3-35 through 340:2-3-37 [AMENDED]  
(Reference WF 11-12)

**AUTHORITY:**  
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 1-1-101 et seq. of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-101 et seq.); 43A O.S. § 10-102 et seq.; and 56 O.S. § 1025.1.

**DATES:**  
**Comment period:**  
January 17, 2012 through February 16, 2012

**Public hearing:**  
None requested

**Adoption:**  
February 28, 2012

**Submitted to Governor:**  
February 29, 2012

**Submitted to House:**  
February 29, 2012

**Submitted to Senate:**  
February 29, 2012

**Gubernatorial approval:**  
April 16, 2012

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

**Final adoption:**  
April 26, 2012

**Effective:**  
July 1, 2012

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**ANALYSIS:**

Amendments to Chapter 2 of Subchapter 3: (1) amend definitions contained in the recodification of the Oklahoma Children's Code enacted by the Legislature in 2009 and 2010 and add definitions contained in the Oklahoma Protective Services for Vulnerable Adults Act; (2) expand legal authority and scope for investigating abuse, neglect, and exploitation of vulnerable adults receiving care from a community services worker, employee of a community services provider, Medicaid personal care assistant; or employee of a Medicaid personal care services provider; (3) update reporting requirement no longer required to the district attorney; (4) clarify caretaker misconduct reviews apply only to vulnerable adults at Northern Oklahoma Resource Center of Enid (NORCE), Southern Oklahoma Resource Center (SORC) of Pauls Valley, and the Robert M. Greer Center in Enid (Greer); (5) remove reference to Office of Client Advocacy (OCA) investigations in Adult Protective Services (APS) substantiated cases; (6) add clarifying language regarding distribution of investigation reports when the accused caretaker is and is not subject to the Community Services Worker Registry; (7) add language the OCA finding will be sent to a vulnerable adult's caretaker, guardian, and next of kin; (8) eliminate the requirement to send certified letters to accused caretakers who cannot be reached for interview; (9) add Medicaid personal care assistant when referencing caretakers subject to the Community Services Worker Registry (CSWR); and (10) update language to current terminology and for clarification.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

### SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

#### PART 1. ADMINISTRATION

##### 340:2-3-2. Definitions

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

**"Abandonment"** means the willful intent by words, actions, or omissions not to return for a child.

**"Abuse"** means, with regard to:

(A) minors and youth, ~~the causing or permitting harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or~~ harm or threatened harm or failure

to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including but not limited to:

- (i) nonaccidental physical or mental injury;
- (ii) sexual abuse; or
- (iii) sexual exploitation; or

(B) ~~vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes causing or permitting the:~~

- (i) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or
- (ii) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

**"Administrator,"** including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

- (A) minors in Oklahoma Department of Human Services (OKDHS) custody living in a private residential facility, the chief administrative officer of the facility;
- (B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;
- (C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;
- (D) foster parents, the applicable OKDHS county director or area director, as appropriate;
- (E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS/ODMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;
- (F) day treatment programs, the person charged with responsibility for administering the program;
- (G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;
- (H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center Facility (Greer), the facility director;
- (I) providers of residential services, vocational services, or in-home paraprofessional supports to

individuals with developmental disabilities living in the community, the chief executive officer of the provider; and

(J) residents of group homes for persons with developmental disabilities, the director of the group home.

**"Adult Protective Services" or "APS"** means the Adult Protective Services Unit of OKDHS.

**"Advocate"** means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

**"Advocate general"** means the chief administrative officer of the OCA designated in Section ~~7004-3.4(B)(1)~~ 1-9-112(A)(2) of Title ~~10~~ 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(A)(2)). The ~~e-mail~~ email address for the advocate general is ~~\*oca.advocategeneral@okdhs.org~~ oca.advocategeneral@okdhs.org.

**"Authorized use of physical force"** by a caretaker of minors and youths residing outside their homes, other than minors and youth in foster care means:

- (A) the use of physical contact to control or contain a person when the caretaker reasonably considers that person to:
  - (i) pose a risk of inflicting harm to self or others; or
  - (ii) be in the process of leaving a facility without authorization; and
- (B) when the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:
  - (i) the grounds for belief that force was necessary;
  - (ii) the age, gender, and strength of the parties involved;
  - (iii) the nature of the force employed;
  - (iv) the availability of alternative means of force or control; and
  - (v) the extent of the harm inflicted.

**"Caretaker"** means, with regard to:

- (A) minors and youth, a person responsible for a child's health, safety, or welfare who is an agent or employee of:
  - (i) a public or private residential home, institution, or facility above the level of foster family care; or
  - (ii) a day treatment program as defined in Section 10 O.S. § 175.20 of Title 10 of the Oklahoma Statutes; and
- (B) ~~vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes~~ a person who has:

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(i) the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

(ii) assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

(iii) been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act.

### "Caretaker misconduct":

(A) means an act or omission that:

(i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(ii) is not found to be abuse or neglect; and

(iii) results in or creates the risk of harm to a minor, or a vulnerable adult residing at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer).

(B) includes, but is not limited to:

(i) acts or omissions that contribute to the delinquency of a minor;

(ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;

(iii) unintentionally causing mental anguish;

(iv) other acts exposing a client to harm or threatened harm to the health, safety, or welfare of the client; or

(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"**Case manager**" means the person assigned by DDS who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"**Child**" means any unmarried person under 18 years of age.

"**Child placing agency**" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"**Client**" means, with regard to OCA:

(A) OCA investigation services, those individuals listed in OAC 340:2-3-32(a)(2);

(B) OCA grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) OCA advocacy program, those individuals listed in OAC 340:2-3-71(b).

"**Community services worker**" or "**CSW**" means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are

defined in Section 56 O.S. § 1025.1 of Title 56 of the Oklahoma Statutes.

"**Community Services Worker Registry**" or "**CSW Registry**" means the Community Services Worker Registry established by OKDHS in accordance with Section 56 O.S. § 1025.3 of Title 56 of the Oklahoma Statutes.

"**Day treatment program**" means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive services, psychiatric, or psychological treatment.

"**DDSD**" means the Developmental Disabilities Services Division of OKDHS.

"**DHS**" or "**Department**" or "**OKDHS**" means the Oklahoma Department of Human Services.

"**Disposition**," with regard to OCA intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

"**DMHSAS**" or "**ODMHSAS**" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"**DRS**" means the Oklahoma Department of Rehabilitation Services.

"**E-mail**" means:

(A) with regard to the advocate general, an e-mail sent to \*oca.advocategeneral@okdhs.org or oca.advocategeneral@okdhs.org;

(B) with regard to OCA grievance matters, an e-mail sent to \*oca.advocategeneral@okdhs.org or oca.advocategeneral@okdhs.org;

(C) with regard to OCA investigation matters, an e-mail sent to \*oca.advocategeneral@okdhs.org or oca.advocategeneral@okdhs.org;

and  
(D) with regard to OCA intake matters, \*oca.advocategeneral@okdhs.org or oca.advocategeneral@okdhs.org.

"**Emergency**" means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

"**Excessive use of force**" by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

(A) the grounds for belief that force was necessary;

(B) the age, gender, and strength of the parties involved;

(C) the nature of the force employed;

(D) the availability of alternative means of force or control;

(E) the extent of the harm inflicted; and

(F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

"**Exploitation**" or "**exploit**" with regard to vulnerable adults, means exploitation or exploit as defined in Section 40-103(9) of Title 43A of the Oklahoma Statutes an unjust or improper use of the resources of a vulnerable adult for the

profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means:

- (A) a public or private agency, corporation, partnership, or other entity which:
  - (i) operates a residential child care center; or
  - (ii) contracts with or is licensed or funded by OKDHS, OJA, or ~~DMHSAS~~ ODMHSAS for the physical custody, detention, or treatment of minors;
- (B) an OKDHS operated shelter;
- (C) an OKDHS, OJA, ~~DMHSAS~~ ODMHSAS, or DRS operated residential child care center;
- (D) a community-based youth services shelter or community intervention center;
- (E) the J.D. McCarty Center;
- (F) a day treatment program;
- (G) a private psychiatric facility for minors;
- (H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or
- (I) SORC, NORCE, and Greer.

"Financial neglect" with regard to vulnerable adults, means ~~financial neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes~~ repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to:

- (A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;
- (B) refusing to pay for necessities or utilities in a timely manner; or
- (C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

"Foster care" or "foster care services" means continuous 24-hour care and supportive services provided for an individual in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means an individual maintaining a foster family home who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to another individual.

"GARC" means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

"Guardian" means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian.

The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or "GAL" means a person appointed by a court, pursuant to ~~Section 10 O.S. § 1415 of Title 10 of the Oklahoma Statutes~~, to represent the interests of an individual as specified in the court order.

~~"Harm or threatened harm to the health, safety, or welfare" includes but is not limited to: means, with regard to minors and youth, any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental, including but not limited to, sexual abuse, sexual exploitation, neglect, or dependency.~~

- ~~(A) non-accidental physical injury or mental anguish;~~
- ~~(B) sexual abuse;~~
- ~~(C) sexual exploitation;~~
- ~~(D) failure to provide protection from harm or threatened harm;~~
- ~~(E) the unauthorized use of force; or~~
- ~~(F) the use of excessive force.~~

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, Inc., et al. vs. Hissom Memorial Center, et al., Case No. 85-C-437-TCK-SAJ.

"Hotline" means the statewide, toll free hotline, 1-800-522-3511, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

"ICF/MR" or "Intermediate Care Facility for the Mentally Retarded," also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means:

- (A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or
- (B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act, ~~(Title 30 of the Oklahoma Statutes).~~

~~"Indecent exposure" means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes~~ forcing or requiring a vulnerable adult to:

- (A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

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(B) touch or feel the body or private parts of another.

**"In-home supports"** and **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS DDS, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, ~~Section O.S. § 1430.2 of the Oklahoma Statutes.~~

**"Injury"** means any hurt, harm, appreciable physical pain, or mental anguish.

**"Maltreatment"** means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation or sexual exploitation of vulnerable adults as defined in ~~Section 43A O.S. § 10-103 of Title 43A of the Oklahoma Statutes;~~ or abuse, neglect, sexual abuse or sexual exploitation of children as defined in ~~Section 710210A O.S. § 1-1-105 of Title 10 of the Oklahoma Statutes.~~

**"Medicaid personal care assistant"** or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

**"Mental anguish"** means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

**"Minor"** means any person under ~~the age of 18 years of age~~ except any person convicted of a crime specified in ~~Section 7306 1-110A O.S. § 2-5-101 of Title 10 of the Oklahoma Statutes~~ or any person certified as an adult pursuant to ~~Section 7303 4-310A O.S. § 2-2-403 of Title 10~~ and convicted of a felony.

**"Minor physical injury"** means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, or burn), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

**"Neglect"** means, with regard to:

(A) ~~minors and youth, the failure of a caretaker to provide:~~

(i) ~~adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or the failure or omission to provide any of the following:~~

(I) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;

(II) medical, dental, or behavioral health care;

(III) supervision or appropriate caretakers; or

(IV) special care made necessary by the physical or mental condition of the child;

~~(ii) special care made necessary by the physical or mental condition of the minor or youth; the failure or omission to protect a child from exposure to any of the following:~~

(I) the use, possession, sale, or manufacture of illegal drugs;

(II) illegal activities; or

(III) sexual acts or materials that are not age-appropriate; or

(iii) abandonment; or

~~(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.;~~

(i) the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;

(ii) the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

(iii) negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

**"OCA"** means the Office of Client Advocacy of OKDHS.

**"OCA intake"** means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

**"OJA"** means the Oklahoma Office of Juvenile Affairs.

**"Ombudsman"** or **"ombuds,"** means "advocate" as defined in this subsection.

**"Personal support team"** or **"team,"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

**"Preponderance of the evidence"** means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

**"Problem resolution"** means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

**"Provider"** means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

**"Referring party"** means the individual who informs OCA verbally or in writing that an incident occurred.

**"Reporting party"** means the individual who initially tells someone verbally or in writing that an incident occurred.

"Residential child care center" means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

"Self-neglect" means ~~self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes~~ the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that have no clear, known explanation.

"Sexual abuse" means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) ~~vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes;~~

(i) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object;

(ii) for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(iii) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"Sexual exploitation" means, with regard to:

(A) minors and youth:

(i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or

youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

(B) ~~vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes~~ includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law.

"Specialized foster care" means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDS, is monitored by DDS, and is funded through the Home and Community-Based Waiver Services Program administered by DDS.

"State office" means the administrative offices of OKDHS in Oklahoma City.

"State office administrator," including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);

(B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the director of the OKDHS Field Operations Division;

(C) DDS clients, the director of DDS; and

(D) other OKDHS clients, the appropriate chief of-ficer or division director.

"Subpoena" means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

"Suspicious injury" means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes, but is not limited to, an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior or normal activities of daily living;

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified

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around the same time or over a period of several weeks, but have no clear, known explanation.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

**"Unauthorized use of force"** means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

**"Unexplained injury"** means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

**"Verbal abuse"** means ~~verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes~~ the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

**"Vulnerable adult"** means ~~vulnerable adults defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes~~ an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to:

(A) provide adequately for the care or custody of himself or herself;

(B) manage his or her property and financial affairs effectively;

(C) meet essential requirements for mental or physical health or safety; or

(D) protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

**"Ward"** means a person over whom a guardianship has been given by the court.

**"Youth"** means, with regard to:

(A) OCA investigation programs, a person over ~~the age of 18 years of age~~ in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or

(B) OCA grievance programs, a person over ~~the age of 18 years of age~~ in OJA custody or voluntary care of OKDHS.

## PART 3. INVESTIGATIONS

### 340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

#### (a) Legal authority, scope, and purpose.

##### (1) Legal authority.

(A) Section 1-9-112(A)(3)(d) and (e) of Title 10A of the Oklahoma Statutes (~~10A O.S. § 1-9-112(A)(3)(d) and (e)~~) gives the Office of Client Advocacy (OCA) the responsibility to investigate allegations of caretaker abuse, neglect, sexual abuse, sexual exploitation, and misconduct by a person responsible for a child:

(i) residing outside their own homes regardless of custody, other than children in foster care;

(ii) receiving services from a community services provider or a community services worker, as defined in ~~Section 56 O.S. § 1025.1 of Title 56 of the Oklahoma Statutes;~~

(iii) in a day treatment program as defined in ~~Section 10 O.S. § 175.20 of Title 10 of the Oklahoma Statutes;~~ and

(iv) residing in a state institution listed in ~~Section 10 O.S. § 1406 of Title 10 of the Oklahoma Statutes.~~

(B) ~~Section 43A O.S. § 10-105 of Title 43A of the Oklahoma Statutes~~ gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve:

(i) ~~Hissom class members and;~~

(ii) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer); and

(iii) vulnerable adults receiving services from a community services provider, a community services worker, a Medicaid personal care services provider, or a Medicaid personal care assistant, as those terms are defined in 56 O.S. § 1025.1.

(C) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers that provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of children by persons responsible for a child's health, safety, or welfare, and caretaker misconduct with regard to children in residential care above the level of foster care regardless of custody, including but not limited to:

(i) children in OKDHS operated or licensed shelters and group homes;

(ii) children and youth in facilities operated by, licensed by, or contracting with OJA;

(iii) children in community-based youth services shelters and community intervention centers

that contract with Office of Juvenile Affairs (OJA) pursuant to ~~Section 10A O.S. § 2-7-305 of Title 10A of the Oklahoma Statutes;~~

(iv) children in facilities operated by or contracting with Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS);

(v) children in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) children residing in or attending educational classes at facilities operated by the Oklahoma Department of Rehabilitation Services (ODRS): the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) children receiving services from a community services worker or a community services provider as that term is those terms are defined in ~~Section 56 O.S. § 1025.1 of Title 56 of the Oklahoma Statutes;~~

(B) abuse and neglect of, and caretaker misconduct with regard to, children in day treatment programs as defined in ~~Section 10 O.S. § 175.20 of Title 10 of the Oklahoma Statutes,~~ including sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker, a community services provider, or a ~~SoonerCare (Medicaid) personal care assistant services provider, or a Medicaid personal care assistant,~~ as those terms are defined in ~~Section 56 O.S. § 1025.1 of Title 56 of the Oklahoma Statutes, on request of the Adult Protective Services Unit of OKDHS.~~

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

- (A) protect clients from further maltreatment;
- (B) deter and prevent maltreatment;
- (C) provide relevant evidence in administrative and judicial proceedings;
- (D) rule out unfounded allegations; and
- (E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to, ~~Section 10A O.S. § 1-9-112(C) of Title 10A of the Oklahoma Statutes; Section 10A O.S. § 1-6-102 of Title 10A of the Oklahoma Statutes; Section 56 O.S. § 183 of Title 56 of the Oklahoma Statutes; Section 43A O.S. § 10-110 of Title 43A of the Oklahoma Statutes;~~ and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients

is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records.

(1) **OCA investigations involving children and youth.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving children and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) ~~Sections 10A O.S. §§ 2-6-102 through 106 of Title 10A of the Oklahoma Statutes~~ apply to OCA investigations involving children and youth in OJA custody and in facilities that contract with OJA.

(B) ~~Sections 10A O.S. §§ 1-2-106, 1-2-107, and 1-6-102 et seq., and 1-6-107, of Title 10A of the Oklahoma Statutes~~ apply to investigations involving children, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 340:75-1-46 apply to OCA investigations involving children in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

- (i) a district attorney or employees of the district attorney's office;
- (ii) the attorney representing an alleged victim in the matter under investigation;
- (iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;
- (iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;
- (v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;
- (vi) the provider for a vulnerable adult; and
- (vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited

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to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under ~~Section 43A O.S. § 10-110(A) of Title 43A of the Oklahoma Statutes~~ and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs administrator for investigations, or the OKDHS Office of Communications for a detailed explanation of OKDHS confidentiality rules.

### **340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation**

#### **(a) Reporting requirements and reportable incidents.**

(1) Persons having reason to believe that a child is a victim of abuse or neglect are required by Section 1-2-101 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-101) to promptly report it to the Oklahoma Department of Human Services (OKDHS).

(2) Persons having reason to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation are required by ~~Section 43A O.S. § 10-104 of Title 43A of the Oklahoma Statutes~~ to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.

(3) Employees of OKDHS, Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS), Office of Juvenile Affairs (OJA), and the J.D. McCarty Center who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, with regard to a client has occurred promptly refer it to OCA intake. This referring requirement also extends to employees of private facilities that contract with OKDHS, ODRS, ODMHSAS, and OJA to provide residential services to these clients.

(4) A person may have reason to believe that maltreatment or caretaker misconduct has occurred based on information he or she has learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is referred to OCA intake. Persons unsure of what to report or to refer call OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.

(5) Knowledge of circumstances that may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.

(6) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, employees and agents of OKDHS, ODRS, ODMHSAS, OJA, the J.D. McCarty

Center, facilities, and providers report to OCA events listed in (A) through (G) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2):

(A) a violent death, whether apparently homicidal, suicidal, or accidental;

(B) a death under suspicious, unusual, or unnatural circumstances;

(C) the death of a resident of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer);

(D) the death of a Hissom class member;

(E) a serious physical injury, as defined in OAC 340:2-3-2;

(F) any physical injury if it is:

(i) unexplained; and

(ii) suspicious; or

(G) rape, sodomy, or other sexual activity prohibited by state law.

(7) "Promptly" reporting as used in this Subchapter means the same day or the next working day.

(8) The reporting obligations under this Section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person.

#### **(b) Reporting responsibilities.**

(1) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.

(2) **Children and youth.** An OKDHS employee with knowledge of a reportable incident involving a child or youth who is an OCA client, as defined in OAC 340:2-3-32(a)(2), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident involving an OCA client is required by law to make a prompt report to OCA intake, Child Welfare in an OKDHS local county office, or the statewide, toll free hotline (the "Abuse Hotline"), 1-800-522-3511. Referrals to OCA intake are made per subsection (e) of this Section.

(3) **Vulnerable adults.** An OKDHS employee who has knowledge of a reportable incident involving a vulnerable adult who is an OCA client, as defined in OAC 340:2-3-32(a), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident is required by law to make a report as soon as possible to OCA intake, ~~the office of the district attorney in the county that the alleged incident happened,~~ or the local municipal police or sheriff's department.

(4) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma ~~Child Abuse Reporting and Prevention Act~~ Children's Code or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.

- (5) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA intake, 1-800-522-8014, during business hours, and after hours ~~calls~~ the Abuse Hotline, 1-800-522-3511.
- (c) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. ~~Section 43A O.S. § 10-104(E) of Title 43A and Section 10A O.S. § 1-2-101(C) of Title 10A of the Oklahoma Statutes~~ makes failure to report a misdemeanor, upon conviction. In addition, failure to report by an OKDHS employee may result in disciplinary action.
- (d) **False reporting.**
- (1) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a ~~minor~~ child, or a report that the person knows lacks factual foundation, may be reported by OKDHS to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.
  - (2) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.
- (e) **Method of reporting.**
- (1) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, or exploitation of an OCA client, or caretaker misconduct towards an OCA client, contacts OCA intake in Oklahoma City by telephone at 1-405-525-4850 or 1-800-522-8014, between 8:00 a.m. and 5:00 p.m. on normal business days. At all other times, the Abuse Hotline, 1-800-522-3511 accepts referrals on behalf of OCA. Referrals also are made by completing Form 15GN001E, Office of Client Advocacy Intake Referral, and transmitting it by fax 1-405-525-4885, to OCA, Attn: OCA intake, or sending the same information in an ~~e-mail~~ addressed to ~~\*oca.advocategeneral@okdhs.org~~ ~~oca.advocategeneral@okdhs.org~~.
  - (2) Allegations of exploitation of residents of SORC, NORCE, and Greer are reported to the person designated by the facility administrator to receive and investigate reports of those allegations.
  - (3) In lieu of contacting OCA intake, employees of SORC, NORCE, and Greer also have the option of contacting the quality assurance staff at those facilities. In this event, the reporting staff also notifies the OCA facility advocate staff assigned to the facility. OCA employees and facility staff who receive information about a reportable incident promptly contact OCA intake to transmit that information.
- (f) **Confidentiality of reporting party's identity.** OCA keeps confidential the identity of a person who reports an incident involving a vulnerable adult per ~~Section 43A O.S. § 10-105(C)(2) of Title 43A of the Oklahoma Statutes~~, and of a person who reports an incident involving a child or youth per ~~Section 10A O.S. § 1-6-102(H)(7) of Title 10A of the Oklahoma Statutes~~. OCA accepts anonymous referrals.

(g) **Retaliation prohibited.** ~~Section 43A O.S. § 10-104(K) of Title 43A of the Oklahoma Statutes~~ states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, ~~Section 43A O.S. § 10-101 et seq. of Title 43A of the Oklahoma Statutes~~.

(h) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting responsibilities detailed in this Section. Except for employees of a Developmental Disabilities Services Division (DDSD) provider, employees receive this training within 30 calendar days of initial employment and subsequent training annually. The training for employees of DDSD providers is per OAC 340:100-3-38 et seq.

**340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)**

(a) **Disposition options.** The Office of Client Advocacy (OCA) intake records on Form 15GN001E, Office of Client Advocacy Intake Referral, or its electronic equivalent, the specifics of each referral received and makes an appropriate disposition regarding how the referral is to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action. The disposition options and criteria include, but are not limited to, the options described in (1) through (7) of this subsection.

(1) **OCA investigation.** This disposition means OCA opens an investigation of an allegation of caretaker maltreatment.

(2) **Assign for caretaker conduct review.** This disposition means the facility or provider named in the referral is given responsibility to conduct an internal caretaker conduct review per OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. OCA intake documents the notification on Form 15GN001E or its electronic equivalent. This disposition does not apply to allegations involving ~~Developmental Disabilities Services Division (DDSD) clients~~ vulnerable adults other than residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer).

(3) **Refer to advocate.** This disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE or Greer, and involves a concern that, based on the information provided, does not rise to the level of maltreatment. Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by ~~e-mail~~ or telephone for appropriate follow-up inquiry. If the advocate knows or learns of facts that indicate a more appropriate disposition, the advocate immediately notifies OCA intake.

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(4) **Refer to another administrative entity for handling.** This disposition means OCA intake forwards the information to another state agency or Oklahoma Department of Human Services (OKDHS) division or office for handling. This disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the purview of OCA, but rather involves complaints about employee performance or allegations within the scope of another administrative entity. When this disposition is made, OCA intake makes the referral within one working day of receipt of the reported incident. These referrals are not assigned to OCA investigators for handling or intervention.

(5) **Refer to law enforcement.** This disposition is used when the referral involves possible criminal activity and it is not within OCA investigative authority as described in OAC 340:2-3-32(a). This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency also is investigating the matter.

(6) **Refer for grievance.** When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form 15GN001E, or its electronic equivalent. The referral is directed to the appropriate entity for handling as a grievance when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. If the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. A referral may be appropriate for handling as a grievance when the complaint(s) concerns:

- (A) conditions that do not endanger clients or residents;
- (B) staff improprieties that do not constitute maltreatment; and
- (C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another disposition. ~~This disposition is also made when an OCA investigation is not warranted in an Adult Protective Services substantiated case.~~

(8) **Refer to administration.** This disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency but is relevant to the operations of a facility or provider. When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral.

(9) **Refer to DDS Quality Assurance (QA).** This disposition is made when an allegation involves an alleged contract violation that does not involve caretaker maltreatment.

(10) **Refer for special advocacy.** This disposition is made when the referral constitutes a request for advocacy services under OAC 340:2-3-75.

(b) **Notifying law enforcement.** If a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker or a person responsible for a child's health, safety, or welfare, OCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents that information on Form 15GN001E or its electronic equivalent. OCA intake also notifies the appropriate law enforcement authority and notes the specifics on Form 15GN001E or its electronic equivalent.

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. Investigations involving Hissom class members are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately.

### 340:2-3-36. Investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator or designee to arrange for document production, site visits, and interviews.

(1) The facility or provider administrator who employed an accused caretaker at the time of the alleged incident informs that employee of:

- (A) the name and telephone number of the OCA investigator;
- (B) the investigative process described in this Section;
- (C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection ~~(d)~~(e) of this Section, using Form 15IV005E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused Caretakers, Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, or a substantially similar provider or agency form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and
- (D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving caretakers subject to the Community Services Worker (CSW) Registry maintained by DDS, the rights and responsibilities of accused community services workers and Medicaid personal care assistants are found in OAC 340:100-3-39. The facility or provider administrator or designee promptly completes Form 06PE059E, Rights and Responsibilities of Community Services Worker or Medicaid personal care assistant in an Investigation of Abuse, Neglect, or Exploitation, per OAC 340:100-3-39(e)(2)(C). The facility or provider

administrator or designee mails Form 06PE059E to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Notice of Investigation.** The assigned OCA investigator provides notice to the caretaker of the alleged victim, the legal guardian, and next of kin of a vulnerable adult as provided by Section 10-105.1 of Title 43A of the Oklahoma Statutes ~~(43A O.S. § 10-105.1)~~. The assigned OCA investigator provides notice to a person responsible for the health, safety, or welfare of a child who is the subject of an investigation as provided by ~~Section 10A O.S. § 1-2-106 of Title 10A of the Oklahoma Statutes.~~

(c) **Access.** The applicable facility or provider administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(d) **Interference prohibition.**

(1) ~~Section 10A O.S. § 1-2-101(B)(4) of Title 10A of the Oklahoma Statutes~~ prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding.

(2) ~~Section 21 O.S. § 455 of Title 21 of the Oklahoma Statutes~~ makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under ~~Title 43A O.S.~~ An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for reporting an allegation; or
- (C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) ~~Section 43A O.S. § 10-104(K) of Title 43A of the Oklahoma Statutes~~ states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, ~~Section 43A O.S. §§ 10-101 et seq. of Title 43A of the Oklahoma Statutes.~~

(e) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection,

except those of a caretaker who is a community services worker or a ~~SoonerCare~~ (Medicaid) personal care ~~attendant~~ assistant, whose rights and responsibilities are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

- (A) be advised by the facility or provider administrator of the nature of the allegation(s) made against him or her in the referral;
- (B) be advised by OCA of the investigative process involving caretaker maltreatment;
- (C) be interviewed by the investigator and allowed to give his or her position regarding the referral;
- (D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;
- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
- (H) be notified in writing by his or her employer of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:

- (A) prepare written statements and reports relevant to the investigation upon request;
- (B) be available for interviews and accommodate the investigator in scheduling of interviews;
- (C) refrain from any action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (D) provide pertinent information and respond fully and truthfully to questions asked.

(f) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility

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where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(g) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The facility or provider administrator where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The facility or provider administrator where the alleged incident took place is responsible for protection of clients.

(h) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

- (A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (B) medical records;
- (C) photos; and
- (D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(3) If the OCA investigator is denied access to the place where the child is located, access to records or treatment plans, or other documentation relevant to the alleged abuse or neglect of a child, the investigator contacts the district attorney. The district attorney may make application to the district court for an order allowing access.

(i) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator and the person interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person interviewed attends an interview only as a silent observer with prior permission of the advocate general or designee.

(j) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Recording interviews.** OCA investigators record every interview. To maintain confidentiality of the information provided in an interview, no recording by the person interviewed or by anyone else in attendance is permitted. ~~Interview recordings~~ Recordings of interviews remain with the OCA investigative file. OCA files and recordings are not public documents.

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s). In general, the investigator discloses only the nature of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the administrator of the facility or provider of the new allegation and the new potential accused caretaker.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information that the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency that employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided per OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the facility, provider administrator, or designee that employs the caretaker. If a reasonable

time has passed without being able to schedule an interview, the investigator contacts the facility or provider administrator to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends ~~both a certified letter and~~ a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the ~~certified~~ letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(k) **Exit notice.** Within 30 calendar days of assignment of a referral to be investigated, the assigned OCA investigator contacts by ~~e-mail~~ email the applicable facility or provider administrator or designee when the information gathering portion of the investigative process is completed. The investigator informs the facility or provider administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

(l) **The written investigative report.** After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

- (1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries sustained by the alleged victim(s);
- (3) information regarding any involved law enforcement entities;
- (4) a recommendation for the district attorney whether to consider further investigation;
- (5) the applicable definition(s) of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the finding(s) per subsection (m) of this Section;
- (7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;
- (8) the name, address, and telephone numbers of any interpreter used during the investigation;
- (9) an explanation of the basis for the finding(s);
- (10) a summary of relevant information obtained during each interview conducted during the investigation;
- (11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures that have implications

for the safety, health, or welfare of clients but do not rise to the level of abuse or neglect;

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report that are provided upon request; and

(14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section.

(m) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a greater weight of the evidence standard. The finding options are:

(1) **"confirmed"** means that the greater weight of the available evidence establishes the alleged maltreatment occurred;

(2) **"not confirmed"** means the greater weight of the available evidence indicates the alleged maltreatment did not occur; or

(3) **"ruled out"** means no evidence was discovered that indicates the alleged maltreatment occurred.

(4) **"defer"** means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

(n) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. If the evidence is sufficient to confirm maltreatment but the person responsible for the maltreatment cannot be identified by the greater weight of the evidence, the confirmed finding is made on an unknown caretaker. The administration may be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.

(o) **Dissemination of the OCA investigative reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the assignment of a referral to be investigated, the OCA written investigative report is completed.

(1) Except as provided in subsection (p) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding. OCA notifies the caretaker, legal guardian and next of kin of a vulnerable adult of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy also is sent to the applicable district attorney.

(3) A copy is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of ODRS, the director of ODMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.

(4) When a facility or provider administrator is named as an accused caretaker in the allegation, OCA forwards

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the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter that summarizes the allegation and states the OCA finding. If an accused caretaker is an OKDHS employee, the applicable OKDHS division director or designee is responsible for providing the employee with a letter that summarizes the allegation and states the OCA finding.

(7) If client maltreatment by a licensed nurse is confirmed, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending OSDH a copy of any report when at least one of the accused caretakers is a certified nurse aide (CNA).

(9) OCA distributes its investigation reports by United States mail, fax, or ~~e-mail~~ email, whichever is appropriate.

(10) If maltreatment by a guardian is confirmed, a copy of the OCA investigation report is submitted to the applicable guardianship court.

**(p) Dissemination of reports involving Hissom class members and caretakers subject to the Community Services Worker (CSW) Registry or the Child Care Restricted Registry.**

(1) All OCA investigations involving a confirmed finding against a community services worker, or a ~~SoonerCare~~ (Medicaid) personal care assistant employed by a ~~SoonerCare~~ (Medicaid) personal care services provider are processed per OAC 340:100-3-39 and 317:35-15.

(2) All OCA investigations involving a confirmed finding against a caretaker of a child while in the care of a child care facility are processed per OAC 340:110-1-10.1.

(3) After the OCA investigation report has been approved, an ~~e-mail~~ email notice of the areas of concern in the report is sent to the facility or provider administrator, the ~~APS programs manager~~, Aging Services Division (ASD) director or designee, the Oklahoma Child Care Services (OCCS) director or designee, and the DDS director or designee, whichever are applicable.

(4) When the OCA finding does not confirm an allegation, OCA sends a copy of the report to the facility or provider administrator, the DDS director or designee, the ~~Aging Services Division (ASD) director or designee~~, or the OCCS director or designee, ~~or the APS programs manager~~, whichever is applicable. A copy of the report is sent to the district attorney in the county where the suspected maltreatment ~~or abuse or neglect~~ occurred

pursuant to ~~Section 43A O.S. § 10-104(I) of Title 43A of the Oklahoma Statutes~~ if the victim is a vulnerable adult, or ~~Section 10A O.S. § 1-2-105(E) of Title 10A of the Oklahoma Statutes~~ if the victim is a child.

~~(5) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the facility or provider administrator, the DDS director, the ASD director, the OCCS director or designee, or the APS programs manager, whichever is applicable, and to the applicable district attorney.~~

(6) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a SoonerCare (Medicaid) personal care assistant, OCA submits a copy of the report to the DDS director or designee or the APS ASD programs manager director or designee, whichever is applicable, and the applicable district attorney and processes the report per OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable facility or agency administrator and the assigned OKDHS long-term care nurse if applicable. OCA also notifies the caretaker, legal guardian and next of kin of a vulnerable adult of the result of the investigation when the investigative finding has become final.

~~(7) When the OCA finding confirms an allegation against a caretaker when the abuse or neglect occurred to a child when in the care of a child care facility, OCA submits a copy of the report to the OCCS Licensing Records Office per OAC 340:110-1-10.1(e). OCA also submits a copy of the report to the OCCS director or designee, the facility or agency administrator, and the applicable district attorney.~~

~~(8) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final.~~

~~(9) If maltreatment by a guardian is confirmed, a copy of the OCA investigation report is submitted to the applicable guardianship court.~~

**(q) Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of ~~Sections 10A O.S. §§ 1-6-102 through 1-6-107 of Title 10A, and Section 43A O.S. § 10-110 of Title 43A of the Oklahoma Statutes~~, whichever is applicable.

**(r) Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDS receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded,

within 60 working days, the applicable division director notifies the advocate general in writing of:

- (A) any personnel action taken or to be taken with regard to each accused caretaker named in the report;
- (B) any corrective action taken or to be taken regarding areas of concern noted in the report; and
- (C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(s) **Findings involving a Hisson class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the DDS director or designee notifies the advocate general in writing:

- (A) if any personnel action has or will be taken with regard to each accused caretaker named in the report; and
- (B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session.

(t) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and applicable recordings per the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general.

**340:2-3-37. Caretaker conduct review (CCR)**

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) that OCA refers to a facility for an internal caretaker conduct review (CCR) per OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving ~~maltreatment caretaker misconduct~~ of a Hisson class member or ~~person receiving Developmental Disabilities Services Division (DDS) waiver services~~ a vulnerable adult, other than a resident of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer).

(b) **Assignment to a facility to conduct a CCR.**

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation

OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR if:

- (A) there is no injury or evidence that the client might have been exposed to a significant risk of harm;
- (B) there is a minor physical injury and it is not a suspicious injury;
- (C) there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; or
- (D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1) of this Section, at Oklahoma Department of Human Services (OKDHS) operated facilities, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR if the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures described in OAC 340:2-3-36, with the exception of recording the interviews in OAC 340:2-3-36(j)(1), including:

- (1) reviewing pertinent documentation, records, and evidence collected;
- (2) viewing any injuries and photos of injuries, and obtaining photos of injuries;
- (3) obtaining written statements and conducting interviews with:
  - (A) each alleged victim;
  - (B) each eyewitness;
  - (C) other persons with knowledge relevant to the allegation; and
  - (D) each accused caretaker;
- (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
- (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and
- (6) determining the appropriate finding(s) per OAC 340:2-3-36(m).

(d) **Returning the investigation responsibility to OCA.** If at any time during the CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form 15GN001E, Office of Client Advocacy Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation per OAC 340:2-3-35(c).

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(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting the CCR prepares a written report. Facilities are encouraged, but not required, to use the OCA format for CCR reports, Form 15IV007E, Caretaker Conduct Review Report. The written report contains:

- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
- (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
- (3) the finding(s), whether caretaker misconduct did or did not occur, per OAC 340:2-3-36(n);
- (4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;
- (5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;
- (6) an explanation of the basis for the finding(s);
- (7) a summary of pertinent information obtained in interviews conducted during the review;
- (8) a list of relevant documents and records reviewed;
- (9) a list of attachments to the report;
- (10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures that have implications for the safety, health, or welfare of clients but that do not rise to the level of abuse or neglect; and
- (11) either on a cover memo or at the end of the report, the date and signature of the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to the advocate general. The advocate general or designee reviews the CCR report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Final CCR report.** If a final CCR report is not submitted to the advocate general within 45 calendar days from the date that OCA notifies the facility or provider administrator that the allegation is referred for CCR, OCA notifies the appropriate state agency, division, or regulatory entity that contracts with the facility or agency for the delivery of services.

(i) **Review by DDS director.** Within five working days of completion of a CCR report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the CCR. If the client or the guardian or parent does not concur

with the finding(s), the facility administrator or designee notifies the advocate general in writing by ~~e-mail~~email or letter. The advocate general refers the matter to the OCA grievance coordinator to process for review by the DDS director as a contested grievance per OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of the review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) per OAC 340:2-3-62 and 340:2-3-64.

(j) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to ~~the~~ paragraph (i) of this Section has expired and review has not been requested, or the review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

- (A) any personnel action taken or to be taken;
- (B) any corrective action taken or to be taken; and
- (C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

[OAR Docket #12-496; filed 5-1-12]

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### TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #12-498]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 3. Reports of Maltreatment of Vulnerable Adults

340:5-3-4 [AMENDED]

Subchapter 5. Investigation of Adult Protective Services Referrals

340:5-5-4 [AMENDED]

340:5-5-6 [AMENDED]

(Reference WF 11-04 and 11-16)

#### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Sections 10-105 and 10-108 of Title 43A of the Oklahoma Statutes.

#### DATES:

#### Comment period:

January 17, 2012 through February 16, 2012

#### Public hearing:

None requested

**Adoption:**

February 28, 2012

**Submitted to Governor:**

February 29, 2012

**Submitted to House:**

February 29, 2012

**Submitted to Senate:**

February 29, 2012

**Gubernatorial approval:**

April 16, 2012

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

**Final adoption:**

April 26, 2012

**Effective:**

July 1, 2012

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 5. Investigation of Adult Protective Service Referrals

340:5-5-6 [AMENDED]

(Reference WF 11-04)

**Gubernatorial approval:**

October 28, 2011

**Register publication:**

29 Ok Reg 104

**Docket number:**

11-1051

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The revisions to Subchapter 3 of Chapter 5 amend the rules to add: (1) additional types of reports of maltreatment Adult Protective Services (APS) staff refer to the Oklahoma Department of Human Services (OKDHS) Office of Client Advocacy (OCA) including reports involving persons subject to the Community Services Worker Registry (CSWR); and (2) clarifying information.

The revisions to Subchapter 5 of Chapter 5 amend the rules to: (1) remove rules regarding APS staff investigating reports of maltreatment by persons subject to the CSWR; (2) clarify information regarding religious beliefs of the vulnerable adult; (3) remove the provision that emergency placement is not made to facilities for the acutely mentally ill when the individual is under the guardianship of Adult Protective Services (APS); (4) add provision that emergency placement not be made as an alternative to involuntary commitment; (5) add provision that services to vulnerable adults must be provided in a setting that is segregated from residents who have been determined to be a danger to others; and (6) add that transportation by law enforcement can be court ordered; and (7) add clarifying language.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

**SUBCHAPTER 3. REPORTS OF MALTREATMENT OF VULNERABLE ADULTS**

**340:5-3-4. Reports under the jurisdiction of agencies other than local Adult Protective Services (APS)**

Some reports of alleged maltreatment of vulnerable adults are not investigated by local Adult Protective Services (APS) staff.

(1) **Reports of alleged victims who are residents of Northern Oklahoma Resource Center of Enid (NORCE), Greer Center, or Southern Oklahoma Resource Center (SORC) of Pauls Valley, or former residents of Hissom Memorial Center.** Reports which APS staff refer reports that allege a current resident of NORCE, Greer Center, or SORC has suffered maltreatment by an employee of the facility, as well as reports which allege or maltreatment of a former resident of Hissom Memorial Center by a current caretaker, are referred to the Oklahoma Department of Human Services (OKDHS) Office of Client Advocacy (OCA).

(2) **Reports of maltreatment by persons providing services to alleged victims receiving services from a community services worker, a community services provider, a SoonerCare (Medicaid) personal care services provider, a Medicaid personal care assistant (MPCA).** APS staff refer reports to the OKDHS OCA when the alleged victim receives services from a community services worker, a community services provider, a SoonerCare (Medicaid) personal care services provider, or a MPCA, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

(3) **Alleged victims of maltreatment in hospital settings.** Reports APS staff refer reports of alleged maltreatment of vulnerable adults who are receiving services in medical hospitals, rehabilitation facilities, or private psychiatric hospitals by staff of the facility are referred to the Oklahoma State Department of Health (OSDH), Protective Health Services, Medical Facilities Service.

(4) **Alleged victims of maltreatment by staff of the Oklahoma Department of Mental Health and Substance Abuse Services (DMHSAS/ODMHSAS) and its contracted providers.** Reports APS staff refer reports of alleged maltreatment of a vulnerable adult by staff of a public or private community mental health agency are referred to the Advocacy Division of DMHSAS/ODMHSAS. If DMHSAS/ODMHSAS declines to conduct an investigation, the report may be referred back to the local APS office.

(5) **Reports alleging maltreatment of residents by staff of nursing facilities.** Reports APS staff send reports of alleged maltreatment of nursing facility residents are sent to the Family Support Services Division, APS Unit, Long Term Care Investigations Section. These reports are also sent to the Oklahoma State Department of Health (OSDH), Protective Health Services.

(6) **Reports involving local, state, or federal correctional facilities.** Reports APS staff refer reports of abuse, neglect, or exploitation of residents by staff of state or federal public hospitals, jails, prisons, or similar facilities

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~~are referred~~ to the facility's regulatory department for investigation and to the local district attorney.

**(67) Reports involving deceased alleged victims.** Reports of maltreatment of persons who are already deceased at the time the report is made are not accepted by APS. Reporters are referred to the state or local Office of the Medical Examiner, local law enforcement, or, if the death occurred in a nursing facility, to the Medicaid Fraud Control Unit in the Office of the Attorney General.

## SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REFERRALS

### 340:5-5-4. Special considerations during investigations

(a) **Referrals regarding members of Indian tribes.** Referrals are accepted for an alleged victim (AV) who is a tribal member according to the Protective Services for Vulnerable Adults Act as set forth in Sections 10-101 through 10-110 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-101 through 10-111). The Adult Protective Services (APS) specialist provides or arranges voluntary or involuntary services as indicated for a vulnerable adult regardless of whether the adult resides on tribal land.

(b) **Referrals involving two or more counties.** If a referral involves two or more counties, as when the AV lives in one county and the alleged perpetrator (AP) in another or when the AV moves either temporarily or permanently to another county before the investigation has been completed, local APS staff from both human services centers (HSCs) are involved in the investigation.

(c) **Referrals involving Soonercare (Medicaid) fraud.** When an APS investigation indicates fraud by a provider receiving Medicaid funds, APS staff immediately notifies the Medicaid Fraud Control Unit (MFCU) in the Office of the Oklahoma Attorney General. APS cooperates with any investigation by MFCU. If MFCU declines to investigate, APS staff completes the investigation and sends a summary report to MFCU upon completion of the investigation.

(d) **Referrals involving persons and provider agency employees.** ~~APS investigations of maltreatment of vulnerable adults may include all persons in a relationship of caretaker, regardless of organizational affiliation, except those noted in Subchapter 3 of this Chapter.~~ Care providers who may be subject to APS investigation include, but are not limited to, home health providers, ~~community services workers for persons with developmental disabilities, personal care assistants, adult foster homes, adult day care centers, independent living centers, residential care facilities, and assisted living centers.~~

(1) These agency investigations include all the elements of an APS investigation, with special emphasis placed on:

- (A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;
- (B) obtaining copies of applicable charts and records;

- (C) reviewing medication lists and schedules;
- (D) taking photographs;
- (E) examining habilitation or other care plans;
- (F) examining financial records and other money management documentation;
- (G) reviewing time schedules and time sheets; and
- (H) requesting any other information needed to complete the investigation.

(2) If assistance is needed in assessing medical issues in these cases, involvement of the OKDHS long-term care nurse may be requested.

~~(3) APS staff submits findings of substantiated referrals of maltreatment by persons who are personal care assistants, Medicaid personal care attendants (MPCA), and community services workers subject to the requirements of the Community Services Worker (CSW) Registry maintained by Developmental Disabilities Services Division (DDSD) pursuant to 56 O.S. § 1025.3 of the Oklahoma Statutes within three working days to the OKDHS Office of Client Advocacy for consideration of placement of the worker's name on the statewide CSW Registry. Persons whose names are on the CSW Registry must not be employed by providers for direct care services to persons with developmental disabilities or as personal care attendants (PCA) paid through the Medicaid ADvantage Waiver.~~

~~(4) For provider agency employees who are not subject to the CSW Registry requirements, such as program coordinators, job coaches, bus drivers, or administrative personnel, APS staff notifies the agency director or board of any substantiated elements of the investigation. Any corrective action plan on the part of the provider agency becomes a part of the APS case record. If the provider agency fails to cooperate in addressing the substantiated elements of the investigation, APS staff notifies the licensing agency, any appropriate governing board, and the district attorney's (DA's) office of the failure to cooperate.~~

(e) **Referrals involving other licensed or certified persons.** APS staff sends findings to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and any other appropriate state licensure or certification board, agency, or registry.

(f) **Referrals alleging exploitation.** ~~Referrals involving exploitation are complex. To assist in handling some of these~~ When referrals, the OKDHS Office of Inspector General (OIG) may accept for investigation referrals of exploitation involving large amounts of funds or the need to access complex records regarding financial transactions, the APS specialist is authorized to request assistance from the OKDHS Office of Inspector General (OIG). If OIG declines to investigate, the APS specialist completes the investigation. Protective services that may be provided in cases of exploitation include:

- (1) changing the representative payee;
- (2) freezing all assets of the vulnerable adult;
- (3) petitioning the court for an order allowing access to records;

- (4) redirecting or stopping the flow of the vulnerable adult's assets into the alleged perpetrator's accounts; and
- (5) stopping perpetrator access to the alleged victim's account(s).

(g) **Persons referred to OKDHS by the courts.** Courts are not authorized to remand criminal defendants to OKDHS based on a finding of lack of competency. Courts are authorized to refer the alleged incompetent defendant to OKDHS for consideration of voluntary assistance or conditionally release the incompetent defendant according to 22 O.S. § 1175.6(b)(B). In order to qualify for such findings/disposition, the court must make findings described in (1) or (2) of this subsection.

(1) Referral for voluntary services or conditional release occurs when the court finds that the person is incompetent for reasons other than the AV is a person requiring treatment under 43A O.S. and is found not to be dangerous.

(2) When a court, the DA, or the attorney for a criminal defendant notifies the APS specialist that a referral for voluntary APS/OKDHS services or conditional release has been made, the APS specialist obtains a copy of the order from the person making the referral. If, after evaluation, it appears to the APS specialist the AV may also be developmentally disabled, the APS specialist immediately contacts the Developmental Disability Services Division (DDSD) Area Intake office and requests their involvement in the process of determining what in consultation with the Office of General Counsel if voluntary services are available and adequate or whether to propose a plan of services for conditional release. This is a joint effort between the APS specialist and the DDSD case manager.

(h) **AV receiving services from DDSD.** When an AV is receiving or may be eligible for services from DDSD, the APS specialist contacts the appropriate DDSD Area Intake office to coordinate activities to enhance the AV's safety. ~~22 O.S. § 1175.3(D)(1)(b) authorizes a court to call for DDSD to conduct a competency evaluation to determine whether mental retardation or other developmental disability may be involved.~~

(i) **Referrals involving residents of residential care facilities, assisted living facilities, and continuum of care facilities.** ~~The APS specialist sends a copy of the final investigative report is sent to OSDH.~~

**340:5-5-6. Provision of protective services to vulnerable adults receiving APS services**

(a) **Voluntary protective services.** Protective services may be provided on a voluntary basis when a vulnerable adult consents to provision of services, requests services, and is willing to allow the Adult Protective Services (APS) specialist to provide or arrange for services as authorized by Section 10-106 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-106).

(b) **Payment for protective services.** The cost of providing voluntary or involuntary protective services is borne by the vulnerable adult if the APS specialist determines that the person is financially able to make payment or by any private or public programs for which the vulnerable adult is eligible. If a

caretaker controls the person's funds and refuses to pay for necessary services, this may be construed as caretaker interference and is handled as described in (3) of this subsection.

(1) **Payment for voluntary services.** If voluntary services are required to meet an emergency need and no other payment source is available, the APS specialist follows procedures described in (3) of this subsection. In cases where the services are not to meet an emergency need, the APS specialist arranges for voluntary services if:

- (A) services can be provided free of charge;
- (B) the vulnerable adult has funds and agrees to pay for the services; or
- (C) there is a public or private assistance program available to pay for the services.

(2) **Payment for involuntary services.** Payment for involuntary protective services is made from the vulnerable adult's funds only upon order of the court. If payment is required for involuntary services, procedures described in (3) of this subsection are followed if:

- (A) no funds are available from the vulnerable adult's assets; and
- (B) no private or public payment source is available.

(3) **Payment for emergency protective services.** The Oklahoma Department of Human Services (OKDHS) maintains a limited APS Emergency Fund that may be accessed only when specific criteria are met. This fund is used as a short-term measure for crisis situations until other arrangements are made.

(c) **Court-related services.** All petitions or motions filed with the court regarding a vulnerable adult require the signature of the district attorney (DA), assistant district attorney (ADA), or OKDHS Office of General Counsel attorney.

(d) **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services, but the caretaker refuses to allow the provision of services, OKDHS may petition the court for an injunction prohibiting the caretaker from interfering with the provision of protective services in accordance with subsection (e).

(e) **Petitioning the court - order enjoining caretaker.** When the vulnerable adult's caretaker refuses to allow the provision of protective services to which the vulnerable adult has consented or otherwise interferes in the provision of services, OKDHS may petition the court for an Order to Enjoin Caretaker.

(f) **Refusal to consent to protective services.** If a vulnerable adult does not consent to the provision of needed services, or withdraws consent after it is given, the APS specialist documents the vulnerable adult's refusal in the case narrative or on Form 08AP002E, Adult Protective Services Report of Investigation. Services are terminated unless OKDHS determines that the person lacks capacity to consent. In that case, the APS specialist considers action as outlined in OAC 340:5-1-4.

(g) **Religious beliefs.** A vulnerable adult has the right to depend on spiritual means for healing through prayer, in accordance with the practices of a recognized religious method in accordance with the tenets and practices of said church/place of worship as mandated by 43A O.S. § 10-103(B).

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(h) **Involuntary protective services.** Involuntary protective services are authorized by 43A O.S. § 10-107. If a vulnerable adult is suffering from abuse, neglect, or exploitation that presents a substantial risk of death or immediate and serious physical harm to self, or significant and unexplained depletion of the adult's estate, but lacks the capacity to consent to receive protective services and no consent can be obtained from anyone acting as caretaker, the services may be ordered by the court on an involuntary basis. In accordance with 43A O.S. § 10-107(B)(1), the court authorizes provision of specific services that the court finds least restrictive of the rights and liberty while consistent with the welfare and safety of the person involved.

(i) **Petitioning the court - emergency order for involuntary protective services.** OKDHS may petition the court for an order to provide emergency protective services. The petition is made in the county of the vulnerable adult's residence or in a county where any of the protective services are provided.

(1) If the court issues an emergency order to provide protective services, the order includes the appointment of a temporary guardian for the person in need of services. The temporary guardian may be either OKDHS or an interested person. The order gives the temporary guardian authority only to consent to the specified protective services on behalf of the person.

(2) The vulnerable adult, temporary guardian, or any other interested person may at any time petition the court to have the emergency order set aside or modified.

(j) **Do not resuscitate (DNR).** In accordance with 43A O.S. § 10-108(A), only the court may make decisions regarding the granting or denying of consent for a DNR order, the withdrawal of hydration or nutrition, or other life-sustaining treatment.

(k) **Notice to recipient.** The court sets a date to hear the case. The hearing is scheduled within five days of the date the judge signs the notice to the recipient of protective services. The vulnerable adult must receive notice 48 hours in advance of the hearing. Notice may be waived by the court in emergency cases, as described in (2) of this subsection.

(1) A court order is issued showing OKDHS has petitioned the court for an order to provide protective services, and giving the date, time, and place of the hearing. The order specifies who serves the notice to the vulnerable adult.

(2) When petitioning the court for an order for emergency protective services, OKDHS may file a motion to waive notice if there is a risk that immediate and reasonably foreseeable death or serious physical harm to the person will result from a delay. This action is authorized by 43A O.S. § 10-108(D). In response, the court may enter a 72-hour verbal order if not during regular court hours or issue a limited order during regular hours and order written notice be served on the vulnerable adult and attorney, if known, of a hearing to be held within that 72-hour period.

(3) If the hearing is declined, the court may either terminate the emergency temporary guardianship or enter a temporary 30-day order to provide involuntary protective services.

(l) **Emergency services responsibilities for out-of-home placements.** As a result of a substantiated investigation, the APS specialist develops a service plan to address the identified needs and safety issues.

(1) All out-of-home placements, including any change of placement, of vulnerable adult's under APS guardianship, are reported to and subject to approval of the court. Only protective services that are necessary to remove the conditions immediately threatening the life and well-being of the person are ordered.

(A) Protective services that may be authorized by an emergency court order include a change of residence only if the court gives specific approval for such action and names the facility in its order.

(B) Emergency placements may be made to nursing homes, personal medical institutions, other home placements, or other appropriate facilities that provide services appropriate for the vulnerable adult's age and condition. ~~Emergency placement is not made to facilities for the acutely mentally ill.~~

(C) Emergency placement shall not be made or construed as an alternative to emergency detention and protective custody as authorized under 43A O.S. § 5-206, et seq., or made or construed as an alternative to involuntary commitment under 43A O.S. § 5-410, et seq., when the person otherwise meets the criteria for involuntary commitment.

(D) Services provided to vulnerable adults are provided in a setting that is segregated from residents of a facility who have been determined to be a danger to others.

(42) When the service plan recommends out-of-home placement for safety, health, and care needs, the APS specialist discusses this plan with the vulnerable adult. The vulnerable adult is provided with all the information necessary to make an informed decision. This may include visits to a variety of placement options arranged or facilitated by the APS specialist. The vulnerable adult's family, if appropriate and approved by the vulnerable adult, is included in the planning stages. The vulnerable adult or family is provided with all the information available to the APS specialist regarding the quality of care provided by the identified and selected placement.

(23) Information on current quality issues of specific nursing facilities are obtained from a variety of sources to determine the appropriateness of a facility for a vulnerable adult receiving APS services. Placements are determined by the local APS specialist and APS specialist IV, with approval from the county director and area APS program field representative (PFR). If a facility has any Oklahoma State Department of Health (OSDH) deficiencies at or above the actual harm level, or has had more than three substantiated Long Term Care Investigations (LTCI) reports in the past year, the placement must be approved by the Family Support Services Division (FSSD) APS Unit.

(m) **Restricted visitation.** Supervised or restricted visitation with the vulnerable adult may be put in place only by court order as mandated in 43A O.S. § 10-111 when:

- (1) consistent with the welfare and safety of a vulnerable adult; or
- (2) the vulnerable adult needs protection as the OKDHS investigation determined that maltreatment occurred.

(n) **Time limits for providing involuntary emergency protective services.** Protective services under an emergency court order other than a 72-hour order may be provided for 30 days. If the APS specialist determines protective services are required past this 30-day period, a petition is filed for continuation of involuntary protective services in accordance with (o) of this Section.

(o) **Continuation of services.** Continuation of services is authorized by 43A O.S. § 10-108(L).

- (1) If, upon expiration of the original 30-day order, the vulnerable adult continues to require protective services, OKDHS immediately files a motion for the court to order either or both:

- (A) appointment of a guardian; and
- (B) ~~commitment~~placement of the vulnerable adult ~~in~~ a nursing home, personal medical institution, home placement, or other appropriate facility ~~other than a facility for the acutely mentally ill.~~

(i) Emergency placement shall not be made or construed as an alternative to emergency detention and protective custody as authorized under 43A O.S. § 5-206, et seq., or made or construed as an alternative to involuntary commitment under 43A O.S. § 5-410, et seq., when the person otherwise meets the criteria for involuntary commitment.

(ii) Services provided to vulnerable adults are provided in a setting that is segregated from residents of a facility who have been determined to be a danger to others.

- (2) Before the court enters a 180 calendar day order for continued protective services, the court directs that an evaluation of the vulnerable adult is conducted and submitted to the court within 30 days at a review hearing. The evaluation shall include at least:

- (A) the address where the person resides and the name of any persons or agencies presently providing care, treatment, or services;
- (B) a summary of the professional treatment and services provided the person by OKDHS or other agency, if any, in connection with the problem creating the need for protective services; and
- (C) a medical, psychological or psychiatric, and social evaluation and review, including recommendations for or against maintenance of partial legal rights and recommendations for placement consistent with the least restrictive environment required.

- (3) The original order continues in effect until the evaluation is submitted and the hearing is held on the motion.

- (4) Notice of this hearing is served as described in subsection (k).

- (5) The APS specialist is responsible for assembling the required information and submitting it to the court of jurisdiction.

(6) When an investigation indicates that the vulnerable adult is likely to need assistance with his or her affairs for an extended period of time, consideration is given to identifying a relative, friend, or other person interested in the well-being of the vulnerable adult to serve as permanent guardian. Any person interested in the welfare of a person believed incapacitated or partially incapacitated may file a guardianship petition with the court. Procedures for filing the petition are given in 30 O.S. § 3-101, the Oklahoma Guardianship and Conservatorship Act. Interested persons are referred to the office of the district court for further information and assistance.

- (7) If the alleged victim's mental state is in question, the APS specialist may request the court to order a psychological or psychiatric evaluation.

(p) **Continuation of services for an additional period.** If after the hearing the vulnerable adult is found in need of continued protective services, the court issues an order to continue the temporary guardianship to provide specified protective services for an additional period not to exceed 180 calendar days, as authorized by 43A O.S. § 10-108. If after the 180 calendar days the vulnerable adult is still found in need of protective services, the court may renew the order every 180 days as needed.

(q) **Sale of real property.** In the event that temporary guardianship extends for more than one year or the vulnerable adult owns real property that must be sold in order to qualify for SoonerCare (Medicaid), OKDHS may as temporary guardian sell the real property of the vulnerable adult pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act and as directed by the OKDHS Office of General Counsel. The fact that the vulnerable adult would be in jeopardy for receipt of SoonerCare (Medicaid) if the property was not sold shall be stated in the court order directing the sale of the real property.

(r) **Sale of personal property.** The court may issue an order authorizing OKDHS to sell personal property of a vulnerable adult when additional resources are required to pay for necessary care for the vulnerable adult.

(s) **Responsibilities of the temporary guardian of the person or estate.** The APS specialist as temporary guardian is responsible for ensuring, to the extent possible, protection of the vulnerable adult residence, resources, and belongings. This includes:

- (1) securing the residence, checking and gathering the mail, and feeding or arranging for care for the vulnerable adult's domestic animals or livestock;

- (2) inventorying the vulnerable adult's home and personal property, using a camera where available.

(A) For enhanced accountability a minimum of two people must be present during the inventory, one of whom is a law enforcement representative or non-OKDHS employee.

(B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory and/or the photographic record noting the date and their professional affiliation;

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- (3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and
- (4) securing other valuables located during the inventory. The APS specialist:
  - (A) arranges to have the locks changed or padlocks the residence to secure it from intrusion, if necessary; and
  - (B) advises all parties that no one is allowed to enter the residence unless accompanied by a representative of OKDHS, for as long as the temporary guardianship is in effect.
- (t) **Additional responsibilities of temporary guardian of the estate.** The APS specialist responsible for the temporary guardianship of the estate:
  - (1) opens a guardianship account in a local financial institution and regularly collects and deposits monies due to the vulnerable adult;
  - (2) submits an accounting to the court as ordered by the court, no less than annually;
  - (3) works with the court, the vulnerable adult's attorney, the DA, and the OKDHS Office of General Counsel to obtain a professional accountant to manage the estate; and
  - (4) absent the availability of professional financial management, is responsible for regular financial activities as dictated by the vulnerable adult's circumstances, ~~which~~ that include, but are not limited to, the timely:
    - (A) payment and documentation of the vulnerable adult's expenses, and other bills as they occur.
    - (B) deposit of funds received;
    - (C) redirection of incoming funds to the new account; and
    - (D) protection of existing accounts.
- (u) **Responsibility of APS specialist - involuntary protective services.** In cases where temporary guardianship of the person has been granted to OKDHS, the APS specialist provides, arranges, or facilitates the protective services ordered by the court. This may include, but is not limited to:
  - (1) hiring of in-home caregivers to provide in-home care and protection for the vulnerable adult;
  - (2) placement in a medical facility for treatment of health related problems;
  - (3) placement in a safe and anonymous location;
  - (4) placement in a facility for either short or long term care needs. Long term care facilities include:
    - (A) residential care facilities;
    - (B) group homes;
    - (C) nursing homes;
    - (D) intermediate care facilities for persons with mental retardation;
    - (E) assisted living centers;
    - (F) skilled nursing facilities; or
    - (G) any other type of facility licensed to provide 24-hour care and/or services for vulnerable adults;
  - (5) making application or completing reviews for any state or federal programs on behalf of the vulnerable adult for which he or she is or may be eligible to receive; or
  - (6) making arrangements for facilities to be paid from the vulnerable adult's funds or resources.

- (v) **Responsibility of APS specialist - emergency out-of-home placement - ex-parte hearing.** When an emergency situation requires immediate placement, the APS specialist places the vulnerable adult in a licensed facility that, to the best of the APS specialist's knowledge, provides the required services needed to ameliorate the current emergency situation. Reasons for this choice are documented in the case record and provided to the court at the 72-hour hearing.
- (w) **Enforcement of involuntary court orders.** To enforce an involuntary order of protective services, 43A O.S. § 10-108 provides that the court may order:
  - (1) forcible entry of the premises of the vulnerable adult to be protected;
  - (2) transportation by law enforcement of the vulnerable adult to another location; or
  - (3) the eviction of a person from any property owned, leased, or rented by the vulnerable adult and restricting that person from further access to any property of the vulnerable adult.
- (x) **Dismissal of involuntary court orders.** When the vulnerable adult is subject to an involuntary court order and OKDHS serves in the role of temporary guardian, after the temporary order has expired, the APS specialist is responsible for responding to a court's request to dismiss the guardianship by preparing a motion for the ~~attorney representing OKDHS~~ OKDHS attorney's consideration for an order of dismissal when it is no longer needed.

[OAR Docket #12-498; filed 5-1-12]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #12-500]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Conditions of Eligibility - Need

Part 1. Resources

340:10-3-5 [AMENDED]

Part 3. Income

340:10-3-31 through 340:10-3-32 [AMENDED]

340:10-3-40 [AMENDED]

Part 5. Assistance Payments

340:10-3-56 through 340:10-3-57 [AMENDED]

Subchapter 20. Diversion Assistance [REVOKED]

340:10-20-1 [REVOKED]

(Reference WF 11-13)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 233.20 of Title 45 of the Code of Federal Regulations (CFR); Sections 5044(f) and 4952 of Title 42 of the United States Code (U.S.C.); and Program Instruction received from the Administration for Children and Families regarding Section 728 of Public Law 111-312.

### DATES:

#### Comment period:

January 17, 2012 through February 16, 2012

#### Public hearing:

None requested

**Adoption:**

February 28, 2012

**Submitted to Governor:**

February 29, 2012

**Submitted to House:**

February 29, 2012

**Submitted to Senate:**

February 29, 2012

**Gubernatorial approval:**

April 16, 2012

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

**Final adoption:**

April 26, 2012

**Effective:**

July 1, 2012

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The proposed revisions to Subchapters 3 and 20 of Chapter 10 amend the rules to: (1) clarify consideration of income tax refunds, payments to volunteers, and past due child support as resources and income; (2) define a self-employed person; (3) add clarifying language regarding self-employment income calculations; (4) clarify who may be included in the Temporary Assistance For Needy Families (TANF) benefit; (5) remove incorrect language; (6) update policy citations; and (7) revoke rules for a program that is no longer funded.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

**SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED**

**PART 1. RESOURCES**

**340:10-3-5. Personal property**

(a) This subsection describes personal property and how it is considered in determining eligibility for Temporary Assistance for Needy Families (TANF).

(1) **Household goods and equipment.** Items essential to day-to-day living, such as clothing, furniture, and other similarly essential items of limited value, are excluded as resources.

(2) **Livestock and equipment used in a business enterprise.** A person's equity in livestock, equipment, or inventory of merchandise in a business enterprise is considered as a resource only if the person is not actively engaged in the business enterprise. Equity is not counted if the person actively participates in the business or is only temporarily inactive, for example, the person is incapacitated and can reasonably expect and has plans to resume the business enterprise. Equity is established on the basis of oral or written information which the person has at hand

and counsel with persons who have specialized knowledge about the particular resources.

(3) **Livestock and home produce used for home consumption.** Any livestock or produce grown and used by the assistance unit for home consumption is exempt.

(4) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a resource. The person's statement that he or she has no money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the person does not have records to verify the amount on deposit, verification is obtained from bank records. Section 167.1 of Title 56 of the Oklahoma Statutes provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the person or the Oklahoma Department of Human Services (OKDHS).

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the person to establish what, if any, portion of the account represents savings. Any income deposited during the current month is not considered.

(B) Accounts owned jointly are considered available to the person unless it can be established what part of the account actually belongs to each of the owners, the money is separated, and the joint account is dissolved.

(5) **Insurance policies and prepaid funeral benefits.**

(A) **Life insurance policies.** The cash surrender value (CSV) less any loans or unpaid interest of life insurance policies owned by members included in the TANF cash assistance is counted as a resource. Dividends which accrue and remain with the insurance company increase the amount of the resource. Dividends paid to a person are considered as income. Assignment of the face value of a life insurance policy to fund a prepaid burial contract is not counted as a resource. In this instance, the amount of the face value of the life insurance is evaluated according to (C) or, if applicable, (D) of this paragraph.

(B) **Burial spaces.** The value of a burial space for each family member whose needs are in the cash assistance or whose income and resources are considered when computing the cash assistance is excluded from resources.

(C) **Burial funds.** Revocable burial funds not in excess of \$1500 for each person included in the assistance unit are excluded as a resource if the funds are specifically set aside for the burial arrangements of the person. Any amount in excess of \$1500 for each person included in the assistance unit is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered prepaid burial policies.

(i) Burial funds means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the person's burial expenses.

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

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

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

(v) If the person did not purchase the prepaid burial, even if the person's money was used for the purchase, the person is not the owner and the prepaid burial funds cannot be considered a resource to the person.

(D) **Irrevocable burial contract.** Oklahoma law provides that a purchaser of a prepaid funeral contract may elect to make the contract irrevocable. Irrevocability becomes effective 30 calendar days after the contract is signed.

(i) If the irrevocable election was made prior to July 1, 1986, and the person received assistance on July 1, 1986, the full amount of the irrevocable contract is excluded as a countable resource. This exclusion applies only if the person does not add to the amount of the contract. Interest accrued on the contract is not considered as added. Any break in assistance requires that the contract be evaluated at the time of reapplication.

(ii) If the effective date for the irrevocable election or application for assistance is July 1, 1986, or later, the amount in any combination of an irrevocable contract, revocable prepaid burial contract or trust, and the cash value of unassigned life insurance policies cannot exceed \$10,000. When the principal amount exceeds \$10,000, the person is ineligible for assistance. Accrued interest is not counted as a part of the \$10,000 limit, regardless of when it is accrued.

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

(E) **Medical insurance.** When a person has medical insurance whether directly purchased or available in conjunction with employment, the available benefits are applied toward the medical expense for which the benefits are paid. If an assignment of the insurance is not made to the vendor and payment is made directly to the person, the payment must be applied to the cost of medical services. Any amount remaining after payment for medical services is considered a resource.

(6) **Stocks, bonds, mortgages, and notes.** The person's equity in stocks and bonds, including United States

Savings Bonds, Series A through EE, is considered a resource.

(A) The current market value less encumbrances is the equity.

(B) Except for a bond which has been held beyond the maturity date, the current value is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached.

(C) If the bond has been held beyond maturity date, it has continued to draw interest.

(D) The amount which can be realized from notes, mortgages, and similar instruments, if offered for immediate sale, constitutes a resource.

(7) **Non-negotiable resources.** Installment payments received on a note, mortgage, and similar instruments, for which a buyer cannot be found, are considered as monthly income.

(8) **Vehicles, pickups, and trucks.** For each automobile, pickup, truck, motorcycle, or other vehicle, the market value of each year's make and model is established on the basis of the average trade-in value. In the event the person and worker cannot agree on the value of the vehicle, the person secures written appraisals by two persons familiar with current values. If there is substantial unexplained divergence between these appraisals or between the blue book value and one or more of these appraisals, the worker and the person jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and acceptable to both the person and worker.

(A) **Exempt vehicles.** One automobile, pickup, truck, motorcycle, or other vehicle used for the primary source of transportation for each assistance unit not to exceed an equity of \$5,000 is exempted. The amount of the equity in excess of \$5,000 is considered against the resource limit.

(B) **Other vehicles.** The equity in other automobiles, pickups, and trucks as well as other personal property including boats, travel trailers, motorcycles, motor homes, campers, and similar items is considered a resource. The current market value less encumbrances on the vehicle is the equity. Only encumbrances that can be verified are considered in computing equity.

(9) **Lump sum payments.** A lump sum settlement which compensates for the loss of a resource, such as an automobile, may be disregarded in the amount used to replace the loss.

(A) The person is given a reasonable amount of time to replace the loss not to exceed 30 calendar days. Extension beyond 30 calendar days may be justified in special instances when completion of the transaction is beyond the person's control.

(B) Any amount remaining after the replacement of the loss is considered as income.

(C) Income tax refunds, except for the portion that represents an earned income tax credit (EITC), must be treated as a resource and considered available to

the person upon receipt. Per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 [Public Law 111-312], EITC payments received after December 31, 2009 as a result of filing a federal or state tax return are exempt as a resource for 12 months following receipt.

(D) Retirement benefits received as a lump sum payment at termination of employment are considered a resource. These benefits are not treated as income because the retirement contribution was regarded as income in the month earned and withheld by the employer.

(10) **Individual Development Accounts (IDAs).** IDAs are dedicated savings accounts that are used for a qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the IDA administrative entity.

(A) IDAs are managed by community organizations and accounts are held at local financial institutions.

(B) Cash deposits and interest accrued from the deposits made by a person in an IDA up to \$2,000 are not considered as income or resources in determining TANF eligibility.

(C) The account deposits must be made from earned income, EITCs, or tax refunds.

(11) **Saving For Education, Entrepreneurship, and Downpayment (SEED) Initiative accounts.** SEED accounts are dedicated savings accounts for persons age 13 through 18 that are used for a qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the administrative entity. SEED accounts are managed by community organizations and accounts are held at local financial institutions. Cash deposits and interest accrued from the deposits made by a person in a SEED account up to \$2,000 are not considered as income or resources in determining TANF eligibility.

(b) This subsection describes resources disregarded in determining need. Disregarded resources are:

- (1) food benefit allotments under the Food and Nutrition Act of 2008;
- (2) any payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) education grants, including work study, scholarships, and similar grants, if receipt is contingent upon the student regularly attending school. The student's classification, graduate or undergraduate, is not a factor;
- (4) loans, regardless of use, if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. The borrower's acknowledgment of obligation to repay, with or without interest, is considered to indicate that the loan is bona fide. If the loan agreement is not written, Form 08AD103E, Loan Verification, is completed by the

borrower attesting the loan is bona fide and signed by the lender verifying the date and amount of loan;

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

(6) special allowances for school expenses made available upon petition, in writing, from funds held in trust for the student;

(7) trusts of a child(ren) included in a TANF benefit if it is determined by the worker the funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;

(8) any accounts, stocks, bonds, or other resources held under the control of a third party if the funds are designated for educational purposes for a child(ren) eligible for TANF, even if the child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V are disregarded. Both Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000;

(10) unearned income received, such as needs based payments, cash assistance, compensation in lieu of wages, or allowances from programs funded by the Workforce Investment Act (WIA), including Job Corps income. This includes WIA earned income received as wages;

(11) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and any other programs pursuant to the National and Community Service Trust Act of 1993 (NCSTA);

(12) payments to volunteers under the NCSTA, ~~unless the gross amount of AmeriCorps\*VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater~~ such as Americorps VISTA;

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- (13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
- (14) any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;
- (15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;
- (16) ~~advance payments of EITC or~~ refunds of federal and state EITC, as a result of filing a federal income tax return, in the month received and the following month received after December 31, 2009 as a result of filing a federal or state tax return are exempt as a resource for 12 months following receipt per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 [Public Law 111-312];
- (17) ~~refunds of the state EITC as a result of filing a state income tax return, in the month received and the following month;~~
- (18) payments from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (19) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (20) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.), and comparable disaster assistance provided by state, local governments, and disaster assistance organizations;
- (21) interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or restricted lands are considered as income;
- (22) a migratory farm worker's out-of-state home-stead if the farm worker's intent is to return to the home-stead after the temporary absence;
- (23) a non-recurring lump sum Supplemental Security Income (SSI) retroactive payment, made to a TANF recipient, in the month paid and the next following month. The amount remaining in the second month after the month of receipt is a countable resource;
- (24) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
- (25) payments made to persons because of their status as victims of Nazi persecution;
- (26) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;
- (27) reimbursements made to a foster care parent(s);

- (28) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans; ~~and~~
- (29) funds in education accounts established under Section 529 and 530 of the Internal Revenue Code or exempted by Section 4000 of Title 56 of the Oklahoma State Statutes; ~~and~~
- (30) child support collected from a child support tax intercept for the month received. The amount remaining in the second month after the month of receipt is a countable resource.

### PART 3. INCOME

#### 340:10-3-31. Earned income

(a) The term earned income refers to monies earned by an individual through the receipt of wages, salary, commission, or profit from activities in which the individual is engaged as self-employed or as an employee. A person is considered self-employed when:

- (1) he or she declares himself or herself to be self-employed;
- (2) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even if required by law to do so; or
- (3) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(b) Payments made for accumulated annual leave, vacation leave, sick leave, or as severance pay are considered as earned income whether paid during employment or at termination of employment. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed.

(c) Earned income received as a one-time nonrecurring payment is considered as a lump sum payment per OAC 340:10-3-28.

(d) Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, for example, barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee and employer relationship has been established.

- (1) The cash value of the in-kind benefits must be verified by the employer.
- (2) Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise.
- (3) Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income.

(e) Gross earned income is used to determine eligibility for assistance. Gross earned income is defined as the "true wage" prior to payroll deductions and withholdings. Income that is based on the number of hours worked as opposed to income

based on regular monthly wages must be computed as irregular income.

- (ef) Countable earned income excludes income from:
  - (1) capital investments with respect to which the individual is not actively engaged. Dividends and interest on rental properties in the hands of a rental agent with the check forwarded to the recipient is excluded from "earned income;" and
  - (2) benefits not in the nature of wages, salary, or profit accruing as compensation or reward for services, or as compensation for lack of employment.
- (fg) The worker verifies income by the best available information such as pay stubs presented by the individual or an interview with the employer. The worker verifies medical insurance which may be available to the employed Temporary Assistance for Needy Families (TANF) recipient and any dependents at the same time that income is verified.
  - (1) Pay stubs may only be used for verification if they have the individual's name or social security number indicating that the pay stubs are in fact the individual's wages. The stubs must include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required.
  - (2) With new employment, it is necessary to verify the beginning date.
  - (3) When a member of the assistance unit accepts employment and has not received any wages, verification of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer.
  - (4) Verified income which is expected to be received during a future month is considered available to the assistance unit and is counted in determining eligibility for that month.

**340:10-3-32. Determination of earned income**

Earned income results from self-employment or other employment sources.

- (1) ~~**Earned self-employment income from self-employment.** If the self-employment income results from the person's activities primarily as a result of the person's own labor from the operation of~~ received by a member of the assistance unit whose income is derived from a self-employment business enterprise owned solely or in part by the person or when the person works for an employer, but is considered self-employed per OAC 340:10-3-31(a), the countable earned income is determined by deducting 50% of the gross income as business expenses or by using the net business profit for the most recent tax year as reported on the person's income tax returns considered per the procedures listed in (2) of this Section. Self-employment income that represents a household's annual support is prorated over a 12-month period, even if the income is received in a shorter period of time.
  - (A) **Room or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as business expenses. Earned income from room and board paid by a person

in the home is determined by considering 50% of the gross income received as a business expense.

- (B) **Rental property.** Income from rental property is considered income from self-employment if none of the activities associated with renting the property is conducted by an outside person or agency.
- (C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:
  - (i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or
  - (ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.
- (2) **Self-employment income procedures.** Self-employment income that represents the person's annual support is prorated over a 12-month period, even if the income is received in a shorter period of time. The countable earned income is determined by deducting 50% of the gross income as business expenses or by using the net business profit for the most recent tax year as reported on the person's income tax return.
  - (A) **New income source.** When self-employment income has been received for less than a year, the income must be averaged over the period of time received and the monthly income projected for the coming year.
  - (B) **Averaged over period of time received.** When there is insufficient data to make a reasonable income projection from this income source, the worker does not consider income from this source until the six month review. At review, the worker averages the income over the number of months received until a full year's data information is available.
  - (C) **Substantial increase or decrease in income.** When the person who would normally have the self-employment income annualized experiences a substantial increase or decrease in income, the worker does not calculate self-employment income on the basis of prior earnings such as income tax returns. Instead, the worker calculates the self-employment income using only the income that can reasonably be anticipated to project future earnings.
- (23) **Earned income from sources other than self-employment.**
  - (A) **Earned income from wages, salary, or commission.** If the income is from wages, salary, or commission, the earned income is the gross income or true wage prior to payroll deductions and withholdings. This includes earned income from contract employment. Money from the sale of whole blood or blood plasma is considered as earned income.
  - (B) **Earned income from work and training programs.**

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- (i) **Workforce Investment Act (WIA).** WIA earned income is exempt.
- (ii) **On-the-job training (OJT).** Earned income from regular employment for OJT is considered as any other earned income.

### 340:10-3-40. Income disregards

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) is:

- (1) the food benefit allotment under the Food and Nutrition Act of 2008;
- (2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veterans education benefits, and the like if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. When the educational assistance is serving the same purpose as TANF cash assistance such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;
- (4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.
  - (A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.
  - (B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay, with or without interest, is required to indicate that the loan is bona fide.
  - (C) If the loan agreement is not written, Form 08AD103E, Loan Verification, must be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan.
  - (D) When copies of written agreements or Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;
- (5) Indian payments, which include judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount.
  - (A) Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded.

- (B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.
- (C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;
- (6) special allowance(s) for school expenses made available upon petition in writing from trust funds of the student;
- (7) income from trusts of a child(ren) included in a TANF benefit if it is determined by the worker that funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;
- (8) income from accounts, stocks, and bonds held under the control of a third party if the funds are designated for educational purposes for a child(ren) in a TANF benefit even if the child(ren)'s name is on the account and the third party holder is required to access the funds;
- (9) benefits from state and community programs on aging from Title III and Title V. Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000. Each state and various organizations receive some Title V funds. These organizations include:
  - (A) Experience Works;
  - (B) National Council on Aging;
  - (C) National Council of Senior Citizens;
  - (D) American Association of Retired Persons (AARP);
  - (E) United States (US) Forest Service;
  - (F) National Association for Spanish Speaking Elderly;
  - (G) National Urban League;
  - (H) National Council on Black Aging; and
  - (I) National Council on Indian Aging.
- (10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce Investment Act (WIA) including Job Corps income and WIA earned income received as wages;
- (11) payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);
- (12) payments to volunteers under the National and Community Service Trust Act of 1993 (NCSTA), ~~unless the gross amount of AmeriCorps\*VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater~~ such as AmeriCorps VISTA;

- (13) the value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
- (14) any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native, which are exempt from taxation under the Settlement Act;
- (15) any income of an adult or child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. His or her individual income is considered by the Social Security Administration in determining eligibility for SSI. This includes any payment made by the Developmental Disabilities Services Division through the Family Support Assistance Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;
- (16) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the US Housing Act of 1937, as amended;
- (17) earnings of a child(ren) in a TANF benefit who is a full-time student;
- (18) government rental or housing subsidies by governmental agencies, for example, Housing and Urban Development (HUD) which are received in-kind or in cash for rent, mortgage payments, or utilities;
- (19) reimbursements from an employer, the Department of Labor, or the Bureau of Indian Affairs, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies, which could include uniforms, to the extent the funds are used for expenses directly related to such travel, training, meals or supplies;
- (20) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;
- (21) advance payments of Earned Income Tax Credit (EITC) or refunds of federal or state EITC as a result of filing a federal income tax return received after December 31, 2009 as a result of filing a federal or state tax return are exempt as income for 12 months following receipt per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 [Public Law 111-312];
- ~~(22) refunds of state EITC as a result of filing a state income tax return;~~
- (23) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (24) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (25) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.) and comparable disaster assistance

- provided by states, local governments, and disaster assistance organizations;
- ~~(26) interests of individual Indians in trust or restricted lands;~~
- (27) income up to \$2,000 per calendar year received by individual Indians, which is derived from leases or other uses of individually owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as unearned income;
- ~~(28) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;~~
- (29) payments made to persons because of their status as victims of Nazi persecution;
- ~~(30) interest accrued from the deposits made by an person into an Individual Development Account (IDA) up to \$2,000;~~
- (31) stipends paid to students participating in the Indian Vocational Education Program (IVEP) through the Carl D. Perkins Vocational and Applied Technology Education Act;
- ~~(32) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;~~
- ~~(33) reimbursements made to a foster care parent(s) or a potential foster care parent(s);~~
- (34) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans; ~~and~~
- ~~(35) earned income received as wages, unearned income, cash assistance, compensation in lieu of wages, or an allowance from a program funded by WIA; and~~
- (35) child support judgments or arrearage payments received for a child no longer age eligible for the TANF cash benefit.

PART 5. ASSISTANCE PAYMENTS

340:10-3-56. Structure of the assistance unit

- (a) The structure of the assistance unit is defined in this Section.
  - (1) Persons whose needs **must** be included in the assistance unit, unless otherwise excluded in accordance with paragraph (3) of this subsection, are:
    - (A) at least one Temporary Assistance for Needy Families (TANF) eligible child;
    - (B) the natural or adoptive parent(s); and
    - (C) all blood-related minor siblings living in the home with the TANF eligible child(ren), including half brothers and half sisters unless eligibility for the half brothers and half sisters does not exist. This does not apply to siblings of a minor parent when the minor parent is the adult in the assistance unit.
  - (2) Persons whose needs **may** be included are:

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(A) the caretaker relative-payee other than the natural or adoptive parent(s) with whom the child(ren) resides, if this person meets the definition of needy and is of the specified degree of relationship. A caretaker other than stepparent may be included in the assistance unit only when the natural or adoptive parent(s) is absent from the home. A stepparent may be included in the assistance unit when the natural or adoptive parent(s) is incapacitated or absent;

(B) the caretaker relative or the natural or adoptive parent when the only dependent child(ren) residing in the home:

(i) receives Supplemental Security Income (SSI); or

(ii) has been removed from the home by a child protection action and the plan for the child(ren) is impending reunification;

(C) the caretaker relative when the only child(ren) in the home receives federal or state foster care maintenance payments;

(D) the adoptive parent(s) when the only dependent child(ren) receives a Title IV-E or state adoption subsidy;

(E) a family that includes any head of household or a spouse of the head of household who has received TANF benefits for a total of 60 cumulative months nationwide, whether or not consecutive, and a hardship extension is approved. All other conditions of TANF eligibility must be met. The hardship extensions are:

(i) under-employment. The participant is regularly working 30 hours or more per week and earning at least minimum wage or its equivalent, but the net income of the assistance unit is insufficient to close the TANF cash assistance;

(ii) chronically under-employed. The participant is under-employed over an extended period of time as a result of documented barriers;

(iii) pending SSI or Social Security Administration (SSA) disability application. This extension is granted only if the Oklahoma Department of Human Services (OKDHS) determines the disability application has merit and the participant pursues all appeals through a decision by the SSA Appeals Council. If an unfavorable decision is received from the SSA Appeals Council during the time period the participant is approved for a hardship extension, Family Support Services Division (FSSD), TANF Section, is notified and the TANF benefit is closed the next effective date;

(iv) care of a disabled child(ren) or spouse. The participant is responsible for the care of a disabled child(ren) or spouse. This extension is granted only when verification has been provided to show the participant is needed in the home to care for this disabled person and there is no alternative care available;

(v) a clinical diagnosis of mental illness. The participant must be diagnosed with and receiving

treatment for a mental disorder listed at Part 404, Subpart P, Appendix 1 of Title 20 of the Code of Federal Regulations. This illness must interfere with the participant maintaining or obtaining gainful employment. If appropriate, the participant must participate in other work activities in conjunction with receiving treatment;

(vi) a substance abuse treatment plan. The participant has a treatment plan level of care which requires intensive aftercare treatment of nine hours or more per week in conjunction with other appropriate work activities, or outpatient treatment of nine hours or more per week in conjunction with other appropriate work activities, or is in full-time inpatient treatment; or

(vii) a continuing training or educational activity. The participant, during the 60th month, is regularly attending an approved training or educational activity which will be completed in less than 12 months; or

(F) a child of a minor in foster care if the minor's child is not included in a foster care payment.

(3) Persons whose needs **may not** be included are:

(A) a person who has received a State Supplemental Payment (SSP) for the same month;

(B) a person who has received or is included in an SSI payment for the same month;

(C) the spouse of the payee if the payee is not the natural or adoptive parent;

(D) a child(ren) ~~who is receiving~~ included in a foster care payment;

(E) an adopted child(ren) receiving an adoption subsidy;

(F) an alien who is not legally admitted to the United States (US) for permanent residence or does not meet alienage requirements;

(G) a caretaker other than a stepparent when the natural or adoptive parent is in the home;

(H) a person whose period of ineligibility due to receipt of a lump sum payment has not expired;

(I) a stepparent when the natural or adoptive parent is in the home and not incapacitated;

(J) a person in a household that is eligible to receive benefits under a tribal TANF program;

(K) a fugitive felon;

(L) a probation and/or parole violator;

(M) a person convicted of having fraudulently misrepresented residence in order to obtain assistance in more than one state. The person is ineligible for a ten year period that begins on the date of conviction;

(N) child(ren) in a family that includes any head of household or a spouse of the head of household who has received TANF benefits for a total of 60 cumulative months, whether or not consecutive, and a hardship extension is not approved; or

(O) a minor unmarried payee who has a dependent child(ren) in the minor's care and does not reside with a parent(s), legal guardian, or other adult relative age

18 or older. For the minor payee to be eligible for TANF benefits, the minor must live with the minor's natural or adoptive parent(s) or a stepparent, legal guardian, or other adult relative age 18 or older, or live in a foster home, maternity home, or other supportive living arrangement supervised by an adult. A supportive living arrangement is where a private family setting is maintained and an adult assumes the responsibility for the care and control of the minor and the minor's dependent child(ren) or provides supportive services such as counseling and guidance. The minor payee can reside elsewhere and be eligible for TANF if good cause is established because the:

- (i) minor has no living parent or legal guardian whose whereabouts are known;
  - (ii) parent(s), legal guardian, or other adult relative does not allow the minor to live in the home;
  - (iii) physical or emotional health or safety of the minor or the minor's dependent child(ren) is jeopardized if the minor or the minor's dependent child(ren) lives in the home with the parent(s), legal guardian, or other adult relative age 18 or older;
  - (iv) minor parent has lived apart from the minor's parent(s), legal guardian, or other adult relative age 18 or older, for at least one year before the birth of any dependent child(ren), or before the minor applied for benefits; or
  - (v) minor parent is legally emancipated pursuant to Chapter 4, Title 10 of the Oklahoma Statutes. A minor is legally emancipated when the district court must have granted the minor the authority to act on the minor's own behalf.
- (b) In general, when a person whose needs are included in a TANF assistance unit is temporarily absent from the home for the purpose of receiving training or education for employment, or certain medical services, he or she is considered part of the family and the budgetary requirements are not changed unless needs change by reason of circumstances unrelated to the temporary absence. Persons temporarily absent from the home but included in the assistance unit are:
- (1) a person receiving training or education for employment during the period of time the training or educational activities are taking place;
  - (2) a child(ren) attending boarding school during the school term;
  - (3) a child(ren) absent from the home on visitation to the absent parent up to a maximum of three months. This consideration applies only to visitation and does not apply if the absent parent has physical and legal custody of the child(ren) during these three months;
  - (4) a child(ren) absent in order to attend school, other than boarding school. Factors considered in making this determination include the maintenance of normal ties between home and the child(ren) during the period of absence; whether the child(ren) continues under the control and guidance of the payee during the absence; and assumption of responsibility by the relative-payee for meeting the child(ren)'s expenses during the school term.

A child(ren) who attends the School for the Blind or the School for the Deaf is considered temporarily absent from the home in determining TANF eligibility;

- (5) a person absent from the home because of entrance into a private facility for counseling, rehabilitation, behavioral problems, or special training. If an assessment indicates care is projected for a period exceeding four months, the absence is not considered temporary. At any time an absence is determined as not temporary or no longer temporary, the needs of the person cannot be included in the assistance unit;
  - (6) a person absent from the home for medical services, other than institutionalization for treatment of mental illness, mental retardation, or tuberculosis, for up to six months. Six-month extensions may be allowed when verification indicates the person may return to the home within the next six months;
  - (7) a person absent from the home to receive substance abuse treatment for up to four months. A four-month extension may be allowed when verification indicates the person will return to the home within the next four months; or
  - (8) a person absent from the home to receive nursing care approved by the Oklahoma Health Care Authority, Level of Care Evaluation Unit. If it appears that the person is disabled, an application for State Supplemental Payment is taken and a referral made to the SSA district office for an SSI application.
- (c) A change in benefit is not made during a temporary absence from Oklahoma for three months or less, unless a change is necessary by reason of some change in circumstances not relating to such absence from Oklahoma.

### **340:10-3-57. Special considerations**

- (a) **Concurrent receipt of State Supplemental Payment (SSP) for the aged, blind, or disabled.** A person who is not a recipient of Supplemental Security Income (SSI) has an option to be included in a Temporary Assistance for Needy Families (TANF) assistance unit or may be a recipient of SSP if all eligibility requirements are met. The person may also be included in the TANF assistance unit pending determination of eligibility for SSP or SSI if all eligibility requirements are met.
- (b) **Concurrent receipt of TANF and SSI.** A person is not included in a TANF benefit for the same month he or she is included in an SSI payment. If it appears a person included in a TANF application or an active TANF benefit meets the eligibility conditions for TANF and SSI, the person has a choice to have eligibility determined for TANF or SSI benefits. The worker informs the payee of his or her responsibility to report to the Oklahoma Department of Human Services (OKDHS) if any member of the assistance unit makes application for SSI or becomes eligible for SSI. If any assistance unit member applies for TANF or is receiving TANF when the member makes an application for SSI, the payee must inform the Social Security Administration (SSA).
  - (1) When the only dependent child(ren) is receiving SSI, the natural or adoptive parent(s) or needy caretaker

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relative may receive TANF if all other factors of eligibility are met. The assistance unit consists of the adult(s) only.

(2) When a TANF applicant is also an applicant for SSI, eligibility for TANF must be determined and, if eligible, is included in the benefit until notified of SSI eligibility.

(3) When a TANF recipient is an applicant for SSI, SSA advises OKDHS of SSI eligibility, and requests the month of TANF termination and the amount of TANF benefits paid for each month of SSI eligibility. SSA considers a recipient removed from a TANF benefit effective with, and based on, the TANF termination date provided orally by the worker. If the actual date of termination is later than the date given orally to SSA, TANF payments to SSI recipients are TANF overpayments and must be recouped.

(4) When a TANF recipient is determined ineligible for SSI the person may continue to be included in the TANF assistance unit if all other conditions of eligibility are met.

(5) When a TANF recipient is determined ineligible for SSI for reasons other than a disability determination, the person may be included in an SSP, if all other conditions of eligibility are met.

(c) **Concurrent receipt of state and tribal TANF.** A person included in a tribal TANF payment is not included in another TANF benefit in the same month. If the person meets the criteria of a tribal TANF service area and population, the entire assistance unit must be served by tribal TANF. If the household moves out of the tribe's service area, the worker coordinates certification of state TANF benefits.

(d) **Concurrent receipt of more than one form of public assistance.** A person included in a TANF benefit is not included in another TANF or SSP benefit for the same period. When a TANF applicant is eligible for TANF but has received a weekly or bi-monthly TANF benefit from another state for the same month the applicant is eligible in Oklahoma, the benefit from the other state is counted as unearned income. A person who is the payee for a TANF benefit, but not included in that benefit, is not prevented from being a recipient of SSP if the SSP eligibility requirements are met. When transferring a TANF recipient to SSP, the removal and approval date must agree.

(e) **Stepparent, spouse of needy caretaker, person acting in the role of a spouse, or parent(s) of a minor parent.** The natural or adoptive parent's income cannot be diverted to meet the needs of the stepparent or other dependents in the home, but is considered available to the TANF assistance unit. No income is considered if the stepparent, spouse of a needy caretaker, person acting in the role of a spouse, parent(s) of a minor parent, or his or her dependent is an SSI recipient. ~~Refer (3) of this subsection for the definition of a person acting in the role of a spouse.~~

(1) **Stepparent or spouse of needy caretaker income.** If a stepparent of the child(ren) or the spouse of a needy caretaker for whom TANF is requested lives in the home with the child(ren), the worker computes the verified gross earned and unearned income of the stepparent or spouse of a needy caretaker, after all applicable TANF income disregards and work related expenses, to determine the amount considered available to the assistance unit. The

worker computes the stepparent's or spouse of a needy caretaker's income by:

(A) subtracting the work related expense, one-half of the remaining gross earned income, and dependent care expense from the stepparent's or spouse of a needy caretaker's earned income for full-time or part-time employment; [OAC 340:10-3-33]

(B) adding the net earned income to the stepparent's or spouse of a needy caretaker's gross unearned income;

(C) subtracting the need standard for the appropriate number of persons, including the stepparent or spouse of a needy caretaker and dependents who are not included in the assistance unit but are living in the home and can be claimed on the stepparent's or spouse of a needy caretaker's personal income taxes;

(D) subtracting the actual amounts the stepparent or spouse of a needy caretaker paid to persons not living in the household but claimed as tax dependents. It is the stepparent's or spouse of a needy caretaker's responsibility to identify and verify tax dependents;

(E) subtracting the actual payments of alimony and child support to persons outside the household; and

(F) adding the stepparent's or spouse of a needy caretaker's remaining net income to all other gross income of persons included in the TANF assistance unit. If the income does not exceed the monthly maximum gross income, the remaining income of the stepparent or spouse of a needy caretaker is considered as a contribution to the assistance unit.

(2) **Stepparent or spouse of a needy caretaker resources.** The worker does not consider resources owned exclusively by the stepparent or spouse of a needy caretaker to determine the assistance unit's resource eligibility but does consider the assistance unit's share of resources owned jointly with the stepparent or spouse of a needy caretaker.

(3) **Person acting in the role of a spouse.** The worker must count the income of a person acting in the role of a spouse who lives in the home with the natural or adoptive parent when he or she does not receive a TANF benefit on another case. The worker computes the income of this person the same as stepparent income. The person acting in the role of spouse is not eligible to receive the exemption of one-half of the remainder or a dependent care expense deduction in determining this person's countable earned income. If the parent or the person acting in the role of a spouse fails to provide information necessary to determine income eligibility, the application is denied or the cash assistance terminated. Provided, however, the income of non-relative adults of the opposite sex not receiving TANF may be excluded if the adults have separate living quarters and demonstrate no characteristics of a person acting in the role of spouse.

(4) **Parent(s) of a minor parent.** When a minor parent is living in the home with his or her natural or adoptive parent(s) and the needs of the parent(s) are not included in the assistance unit, the parent's income is considered available

to the assistance unit and computed the same as stepparent income. The income of a minor parent's stepparent is not considered. The parent of the minor parent may be designated as the substitute payee for the assistance unit.

(f) **Allocating or diverting income.** When family members are not included in the assistance unit, special consideration is required in determining the income available to the assistance unit.

(1) Income received by a person included in the assistance unit is not allocated or diverted to persons who are not in the assistance unit. All countable unearned and earned income of the person is considered available to the assistance unit.

(2) The net income of an alien parent excluded from the benefit because the citizenship or alienage requirement is not met is considered the same as stepparent income. The needs and income of disqualified alien siblings are not considered when determining eligibility of an otherwise eligible child(ren).

(3) The net income of a fugitive felon excluded from the benefit is considered the same as stepparent income.

(g) **Benefit reduction as a result of program violation.** The TANF benefit is reduced by 25% of the payment standard when a determination of program violation has been made. The 25% penalty is removed the next effective date when compliance is documented or the time frame for the penalty has ended. When multiple types of program violations have occurred, a 25% penalty of the payment standard is imposed for each type of violation. If the benefit reduction causes existing income to be in excess of the benefit amount, the case is closed using the reason for the benefit reduction. The amount of the payment standard reduction applies as Food Stamp Penalty Income in the Supplemental Nutrition Assistance Program (SNAP) per OAC 340:50-7-29(c)(1)(A). ~~{OAC 340:50-7-29(b)(1)}~~ Reasons for benefit reduction are:

- (1) refusal to cooperate in an effort to obtain child support per OAC 340:10-10-5(c);
- (2) failure to apply for or provide a Social Security number per OAC 340:10-12-1;
- (3) failure of a child(ren) kindergarten to 18 years of age to attend school per OAC 340:10-13-1;
- (4) failure to provide verification of child(ren) immunizations per OAC 340:10-14-1; and
- (5) intentional program violations determined as fraud by court action or an administrative disqualification hearing or administrative hearing waiver per OAC 65-9-2(d) and OAC 340:65-9-4340:65-9-4(c)(1)(A-C).

(h) **Parent living in the home receiving SSP.** When there is a parent living in the home but not included in the TANF benefit because of receipt of SSP and not SSI, consideration is not given to that parent's individual income for the TANF benefit. When a parent in the SSP benefit becomes ineligible to continue to receive the SSP, the parent is included in the TANF benefit and all the income and resources of the parent are considered in determining eligibility for TANF. If consideration of the parent's income and resources causes the TANF benefit to be closed, and the closure of the SSP benefit was a direct result of an overall Social Security increase, the SSP benefit is placed

in Special Medical Status. If the parent is living in the home but not included in the TANF benefit because of receipt of SSP and SSI, no consideration is given to the parent's income and the parent is not included in the TANF assistance unit as long as the parent remains eligible for SSI.

(i) **TANF eligibility when the child(ren) is placed in out-of-home care.** When the child(ren) is removed by a child protection action and it is reasonably anticipated the child(ren) will return to the home within four months, the natural or adoptive parent or needy caretaker relative continues eligible for TANF, if other conditions of eligibility are met.

(1) A team consisting of the worker, the Child Welfare (CW) worker, the natural or adoptive parent or needy caretaker relative, and any other appropriate partner(s) must meet to develop a mutually agreed upon plan of action. This plan addresses employability and strategies to correct the conditions which caused the child(ren) to be removed from the home.

(2) At the end of the four month period if the child(ren) has not been returned to the home, the adult(s)' needs are removed and the TANF benefits are discontinued.

(j) **Strikers.** The assistance unit is not eligible for TANF for any month the natural or adoptive parent, whether or not included in the benefit, is participating in a strike on the last day of that month. A person other than the natural or adoptive parent is not included in the benefit for any month if that person is participating in a strike on the last day of the month.

## SUBCHAPTER 20. DIVERSION ASSISTANCE [REVOKED]

### 340:10-20-1. Diversion Assistance (DA) [REVOKED]

~~(a) **Scope.** Diversion Assistance (DA) for families with a minor child(ren) provides for financial assistance in lieu of Temporary Assistance for Needy Families (TANF) when there is an immediate need to retain or obtain employment.~~

~~(1) DA is not used to pay fines, including traffic fines, or any cost related to a criminal offense, such as legal fees or court costs.~~

~~(2) DA is not to be used for reimbursement of expenses already paid by client or others.~~

~~(3) DA is limited to once in the lifetime of the applicant(s); therefore, it is vital that financial planning be initiated to determine if the provision of DA will allow the family to be self-sufficient for the next 12 months.~~

~~(4) Families approved for this benefit are not included in the count of persons reported for federal participation rates and these payments do not count against the person's 60-month lifetime limit of receipt of TANF. For this reason, an adult must be included in the DA benefit.~~

~~(b) **Need.** The criteria for the eligibility for DA are described in (1) through (4).~~

~~(1) The person is employed or has a bona fide offer of employment.~~

~~(2) There is a financial need which, if not met, can cause the loss of employment or the offer of employment for the person.~~

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(3) ~~The family monthly gross income cannot exceed the gross income maximum as shown on the Oklahoma Department of Human Services (OKDHS) Appendix C 1, Maximum Income, Resource, and Payments Standards, Schedule XVI, for the appropriate family size.~~

(4) ~~Family resources cannot exceed limits as shown on OKDHS Appendix C 1, Schedule XVI.~~

(c) ~~**Requirements.** The applicant completes Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits, to apply for DA. When the applicant signs Form 08MP003E, he or she agrees to not apply for TANF for one year from the date of application for DA. In two parent families both parents must sign the application form. A stepparent may be included in the benefit if the couple is legally married.~~

(1) ~~Refer to OAC 340:65-3-4 for Social Security number (SSN) requirement. The application is not delayed waiting for a SSN.~~

(2) ~~Refer to OAC 340:10-15 and OAC 340:65-3-1(e) for requirements for citizenship and alienage.~~

(3) ~~The application is processed within seven working days.~~

(d) ~~**Benefits.** Benefits can equal up to three months of the payment standard as shown on OKDHS Appendix C 1, Schedule XVI for the appropriate family size. Benefits can be approved in more than one authorization as long as the request for additional funds is made before the end of the 90 calendar day period which begins with the initial date of application, and does not exceed three times the monthly payment standard for the family size. Payment is issued through an authorization to purchase.~~

[OAR Docket #12-500; filed 5-1-12]

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

[OAR Docket #12-502]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Low Income Home Energy Assistance Program

340:20-1-4 [AMENDED]

340:20-1-10 through 340:20-1-11 [AMENDED]

340:20-1-17 [AMENDED]

340:20-1-20 [AMENDED]

(Reference WF 11-09)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Sections 2601 through 2605 of the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 Public Law (P.L.) 97-35, as amended); Section 927 of the Housing and Community Development Act of 1992 (P.L. 102-550), as amended by P.L. 103-185; and Sections 96.30 and 96.42 of Title 45 of the Code of Federal Regulations.

### DATES:

#### Comment period:

January 17, 2012 through February 16, 2012

#### Public hearing:

None requested

#### Adoption:

February 28, 2012

#### Submitted to Governor:

February 29, 2012

#### Submitted to House:

February 29, 2012

#### Submitted to Senate:

February 29, 2012

#### Gubernatorial approval:

April 16, 2012

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

#### Final adoption:

April 26, 2012

#### Effective:

July 1, 2012

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The proposed revisions to Subchapter 1 of Chapter 20 amend the rules to: (1) clarify, correct, update, and rearrange rules regarding the Oklahoma Department of Human Services (OKDHS) relationship with tribal Low Income Home Energy Assistance Program (LIHEAP), the definition of household, when subsidized households are not considered vulnerable, how income is treated for ineligible aliens, and rules regarding the Energy Crisis Assistance Program (ECAP) component of LIHEAP; (2) better align LIHEAP cooling assistance rules with winter heating rules regarding preauthorization criteria and types of cooling equipment that may be purchased; and (3) remove outdated language.

#### CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

### SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

**340:20-1-4. Coordination with Native American energy program tribal Low Income Home Energy Assistance Program (LIHEAP) to prevent duplication of assistance**

Applications are accepted and processed from members of Native American tribes which have been approved to administer their own program. Some, but not all, Oklahoma Indian tribes receive federal funds to operate their own Low Income Home Energy Assistance Program (LIHEAP). Tribes may choose to use their funds for one assistance payment per household or through multiple application periods throughout the federal fiscal year that runs from October through September each year.

(1) The Oklahoma Department of Human Services (OKDHS) ~~coordinates with each and~~ participating ~~tribes~~ share information regarding tribal member's receipt of LIHEAP to prevent duplication of assistance.

(1) ~~Any Native American household that has applied for Low Income Home Energy Assistance Program (LIHEAP) payments through the tribal agency is not eligible for LIHEAP certification through OKDHS regardless of whether they have expended their tribal LIHEAP maximum authorized amount.~~

(2) Tribal members are not eligible to receive energy assistance from their tribe and OKDHS for the same federal fiscal year.

(23) ~~When a Native American household tribal member applies first for LIHEAP through OKDHS for LIHEAP or is a member of a tribe that does not have its own LIHEAP, they are given the same consideration the worker treat's the person's eligibility in the same manner as any other household if the person is a member of a tribe that:~~

(A) ~~does not operate its own LIHEAP; or~~

(B) ~~operates its own LIHEAP, but the person has not applied to the tribe for energy assistance.~~

(4) ~~When a tribal member applies for LIHEAP at a human services center (HSC) and the worker determines that a member of the person's household received energy assistance from a tribal LIHEAP program for the same federal fiscal year, the worker denies the LIHEAP application.~~

(5) ~~If~~ When a tribal member is approved for OKDHS LIHEAP and later wants to apply ~~applies~~ for a tribal LIHEAP for the same federal fiscal year, the OKDHS certification ~~is~~ can be canceled, if requested, as long as payment has not already been made. ~~If a payment has already been made, the tribal LIHEAP denies its application.~~

**340:20-1-10. Program factors**

(a) **Home energy.** Home energy means a household's source of energy used to heat or cool a residential dwelling.

(b) **Primary energy source.**

(1) The primary energy source during winter months is fuel used to heat the home.

(2) The primary energy source during summer months is fuel used to cool the home.

(3) During the Energy Crisis Assistance Program (ECAP) application period, the household may choose heating or cooling as the primary energy source.

(c) **Household.** Household means any person or group of persons who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent.

(1) The worker considers the income and resources of all household members per OAC 340:20-1-11 even if one or more household members is not eligible to be included in the benefit per OAC 340:20-1-8 or (g)(5) of this Section.

(2) Refer to OAC 340:20-1-4 when one or more household members is a member of a tribe operating

its own Low Income Home Energy Assistance Program (LIHEAP).

(3) There is one authorization for heating or cooling assistance per household.

(d) **Vulnerability.** A household is vulnerable if it is responsible, either totally or partially, for the cost of home energy. A vulnerable household includes households whose primary energy source has been temporarily discontinued.

(e) **Non-vulnerability.** Non-vulnerable households are those that do not bear any of the expense of home energy. Examples of non-vulnerable living arrangements include:

(1) congregate or domiciliary facilities, such as a nursing facility, college or university dormitory, or fraternity or sorority housing;

(2) households whose primary energy source is totally paid by someone other than a household member; and

(3) subsidized households whose heating costs are included in their rent. Subsidized households assessed an energy surcharge during the operation of LIHEAP may be eligible for assistance if they provide proof of the surcharge.

(df) **Subsidized household.** Subsidized household means a household that receives assistance through a utility allowance to cover all or part of their energy cost, and/or receives assistance in paying their rent or house payment on a regular basis. A subsidized household is not vulnerable when an agency or person pays the entire utility bill every month even if the utility bill is in the name of a household member or the payment is a loan.

(1) Assistance may be from a government agency such as a local housing authority, or a private person, usually a relative, who helps a person or family pay their utility bills, rent or house payment, or allows them to live rent free.

(2) If apartment rental rates in college or university-owned apartment complexes are deliberately set lower than other apartments in the community in order to help the student, the household is considered a subsidized household.

(3) Eligible subsidized households with out-of-pocket utility expenses receive the same assistance benefit as unsubsidized households.

(e) **Vulnerability.** A household is vulnerable if it is responsible, either totally or partially, for the cost of home energy. A vulnerable household includes households whose primary energy source has been temporarily discontinued.

(f) **Non-vulnerability.** Non-vulnerable households are those that do not bear any of the expense of home energy.

(1) ~~Examples of non-vulnerable living arrangements include:~~

(A) ~~congregate or domiciliary facilities, such as nursing facilities and college or university dormitory, fraternity, or sorority housing;~~

(B) ~~households whose primary energy source is totally paid by someone other than a household member; and~~

(C) ~~subsidized households whose heating costs are included in their rent.~~

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~~(2) Some subsidized households may be assessed an energy surcharge during the operation of the Low Income Home Energy Assistance Program (LIHEAP). These households may be eligible for assistance if they can document assessment of the surcharge.~~

(g) **Eligible households.** All eligible households must meet criteria in (1) through (4) or the worker must deny the application.

(1) Households must be vulnerable by being totally or partially responsible for the cost of home energy.

(2) Households must not exceed the income and resource standards as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(3) Households must include at least one citizen or legal alien per OAC 340:20-1-8 and may include an illegal alien.

(4) The person making the application must provide proof of identity per OAC 340:20-1-13(4).

(5) Each household member must provide his or her Social Security number (SSN) per OAC 340:20-1-13(3) and 340:65-3-1(f). When the household does not provide a SSN for a household member, the worker counts that person's income but does not include him or her in household size.

(h) **Benefit amount.** Funding for LIHEAP is contingent on the receipt of federal funds and authorized amounts vary from year-to-year. Benefit amounts are estimated and reserved for winter heating, summer cooling, and ECAP on a yearly basis after the amount of available funding is known. OKDHS Appendix C-7-A, Estimated LIHEAP Benefit Level For All Households, provides estimated benefit amounts for each program. Adjustments, as needed, may be made to this estimated benefit amount throughout the fiscal year because of changes in available funding or anticipated need. The household benefit amount is based upon the household's size, income, and primary energy source. ~~The benefit amount does not change during the program year due to changes in household composition, income, or primary energy source.~~

### 340:20-1-11. Income and liquid resources

(a) **Income.** All gross earned and unearned income, except for those income sources shown in (b) of this Section, received by the household is considered in determining financial eligibility. Eligible households must meet the income standard less the earned income deduction as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(1) Income received on an annual basis is prorated over 12 months to determine the average monthly income.

(2) If the income is not received on a regular monthly basis, refer to OAC 340:10-3-31.

(3) Total income is rounded to the nearest dollar.

(4) When a person's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is considered.

(5) Countable income is computed as outlined in (A) through (D) of this paragraph.

(A) For each employed household member, subtract the earned income deduction as shown on OKDHS Appendix C-7. If the employed household member is self-employed, business expenses are allowed as described at (a)(6) of this Section.

(B) Add the unearned income of all household members.

(C) Subtract all applicable deductions as shown in (c) of this Section.

(D) The remaining amount is the amount considered available to the household members eligible for the Low Income Home Energy Assistance Program (LIHEAP).

(6) When a household member is self-employed, the net income as shown on the tax return is used as the income for this person.

(A) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) of this subparagraph to determine the net monthly self-employment income.

(i) The gross self-employment income, including capital gains, is computed using the client's self-employment business records.

(ii) If the client declares they incurred business expenses, the worker then subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker divides the net self-employment income by the number of months to be averaged per OAC 340:50-7-30.

(B) The monthly net self-employment income is added to all other earned income received by the household.

(7) When an ~~undocumented~~ ineligible alien is part of an eligible household, the countable portion of his or her income is computed as outlined in (A) through (E) of this paragraph. An ineligible alien is a person who does not meet the eligibility criteria described in OAC 340:20-1-8.

(A) For each employed household member, subtract the earned income deduction as shown on OKDHS Appendix C-7.

(B) Add the unearned income of the ~~undocumented~~ ineligible alien.

(C) Subtract the need standard on OKDHS Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards Schedule IX, for the appropriate number of persons. Persons counted for the need standard are the ~~undocumented~~ ineligible alien and his or her ~~undocumented~~ ineligible alien dependents who:

(i) are claimable for federal personal income taxes;

(ii) live in the same household; and

(iii) are not included in determining the LIHEAP benefit level because they are ~~undocumented~~ ineligible aliens.

(D) Subtract all applicable deductions as shown in (c) of this Section.

(E) The remaining amount is the amount considered available to the household members eligible for LIHEAP.

(b) ~~Income disregard~~ exclusions. In determining income, ~~disregard~~ exclude:

(1) the food benefit amount under the Food and Nutrition Act of 2008;

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

(3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. The student's classification, whether graduate or undergraduate, is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan is from a person or financial institution in the loan business.

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

(5) Indian payments including judgment funds or funds held in trust and distributed per capita by the Secretary of the Interior Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior.

(A) ~~Disregard~~ Exclude any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds.

(B) ~~Disregard~~ Exclude per capita payments, for example, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, as long as they meet the distribution requirements as stated in this paragraph.

(C) Consider as income interest or income derived from the principal or produced by purchases made with the funds after distribution;

(6) special allowance for school expenses made available upon petition in writing from trust funds of the student;

(7) benefits from State and Community Programs on Aging [Title III]. Income from the Older American

Community Service Employment Act [Title V], including American Association of Retired Persons (AARP) and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income;

(8) unearned income received by a child receiving Temporary Assistance for Needy Families (TANF), such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance, from a program funded by the Workforce Investment Act (WIA) including Job Corps income, and WIA earned income received as wages, not to exceed six months in any calendar year;

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

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

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

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

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

(14) earnings of a minor dependent child who is a full-time student;

(15) rental or housing subsidies by governmental agencies, for example, United States Department of Housing and Urban Development (HUD), received in-kind or in cash for rent, mortgage payments, or utilities;

(16) reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training. Uniform allowances are ~~disregarded~~ excluded if the uniform is uniquely identified with company name or logo;

(17) advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;

(18) refunds of state EITC as a result of filing a state income tax return;

(19) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.) are not considered as income or as a resource in determining eligibility for or the amount of the benefit;

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- (20) payments received for Emergency Assistance to Needy Families with Children;
  - (21) payments made by others on the household's behalf;
  - (22) in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages;
  - (23) payments made under the Radiation Exposure Compensation Act (P.L. 101-426) enacted October 15, 1990;
  - (24) federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;
  - (25) interests of individual Native Americans in trust or restricted lands;
  - (26) income up to \$2,000 per year received by individual Native Americans, which is derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as income;
  - (27) payments made to persons because of their status as victims of Nazi persecution;
  - (28) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (USC) provided to certain persons who are children of Vietnam War veterans; and
  - (29) Family Support Assistance Payment Program payments paid to persons by the OKDHS Developmental Disabilities Services Division (DDSD).
- (c) **Income deductions.** Certain deductible expenses from income may be applied when applicable, such as:
- (1) out-of-pocket non-reimbursed medical expenses paid by persons age 60 and older or persons considered disabled per OAC 340:50-5-4 and 340:50-7-31(b)(3);
  - (2) legally binding child support paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member; and
  - (3) the earned income deduction as shown on OKDHS Appendix C-7 for each employed household member. In addition, if a household member is self-employed, see (a)(6) of this Section for self-employment deductions.
- (d) **Resources.** Liquid resources, such as cash on hand, checking or savings accounts, certificates of deposits, and stocks or bonds, cannot exceed the allowable resource level as shown on OKDHS Appendix C-7. The applicant's statement is accepted as verification unless the information received is inconsistent or questionable.

### **340:20-1-17. Energy crisis assistance Crisis Assistance Program (ECAP)**

(a) **Energy crisis assistance.** ~~Energy crisis situations are handled year round on a case by case basis for households with a 72-hour cut off notice and a verified life threatening medical situation. Clients in a crisis situation must make application by contacting the local human services center (HSC). Family Support Services Division (FSSD) Low Income Home Energy Assistance (LIHEAP) Section staff approves applications for~~

~~life threatening situations outside the normal application period for Energy Crisis Assistance Program (ECAP) and when the heating or cooling program cannot be used to pay the bill.~~

~~(1) If a household is approved for assistance to resolve the crisis situation, the application is processed within 48 hours from the time the HSC receives the application.~~

~~(2) When the crisis situation is verified by a designated authority as life threatening and the household qualifies for assistance, the application must be processed so that assistance is provided to resolve the crisis situation within 18 hours following receipt of the application. Authority for designating a crisis situation as life threatening is limited to a:~~

- ~~(A) physician;~~
- ~~(B) public health official;~~
- ~~(C) licensed practitioner of the healing arts; or~~
- ~~(D) HSC county director.~~

~~(ba) **Energy Crisis Assistance Program.** Based upon previous years' program experience, reasonable funds are reserved until March 15 of each year for Energy Crisis Assistance Program (ECAP) to resolve energy crisis situations to prevent disconnect of service when the household has a 72-hour cut-off notice, restore or start service, or provide a minimum delivery of propane or other heating fuel. ECAP consists of two components:~~

- ~~(1) a scheduled period in March of each year; and~~
- ~~(2) year round assistance available on a case-by-case basis for households experiencing an energy crisis and a life-threatening medical situation.~~

~~(b) When the household applies for ECAP in March and outside of a regularly scheduled Low Income Home Energy Assistance Program (LIHEAP) application period, the maximum benefit for both applications combined cannot exceed the amount shown for ECAP on Appendix C-7-A, Estimated Low Income Home Energy Assistance Program (LIHEAP) Benefit Level For All Households.~~

~~(c) All ECAP applications must be made on Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) - Walk-In Application. Applications are approved or denied by:~~

- ~~(1) human services center (HSC) staff when applications are made during the ECAP application period in March for energy crises only and energy crises that involve a life-threatening medical situation; and~~
- ~~(2) Family Support Services Division (FSSD) LIHEAP Section staff for energy crises that involve a life-threatening medical situation that occur outside of the regularly scheduled LIHEAP application periods in March, July, and December.~~

~~(d) Households may choose heating or cooling as the primary energy source unless ECAP is approved to meet a life-threatening medical situation. When a life-threatening medical situation is involved, the household must choose the energy source that resolves the energy crisis and the life-threatening medical situation.~~

~~(e) Eligibility criteria are detailed in (1) through (5) of this paragraph.~~

- ~~(1) **Eligibility criteria.**~~

~~(A1)~~ Households with an energy crisis must not exceed the income and liquid resource standards on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. Income and resource criteria for ECAP are the same as for heating and cooling assistance per OAC 340:20-1-11.

~~(B2)~~ Household service was discontinued or terminated by the ~~seasonal primary~~ energy supplier, or the household received:

- ~~(iA)~~ notice of a scheduled cut-off within 72 hours;
- ~~(iiB)~~ notice of a refusal to provide additional energy needs by the supplier when supply of fuel will be depleted within 72 hours or less; or
- ~~(iiiC)~~ information regarding fee for a new connection.

~~(C3)~~ ~~The worker must ascertain why the energy bill has not been paid. There must be~~ The household must have experienced a precipitating factor that caused the household to choose between paying the energy bill and another vital household need. Acceptable factors preventing payment of the energy bill include, but are not limited to, situations causing the household to make a choice between paying the energy bill and:

- ~~(iA)~~ purchasing sufficient food for the household;
- ~~(iiB)~~ paying for emergency situations such as medical expenses or disaster recovery; or
- ~~(iiiC)~~ providing clothing for children in the household.

~~(D4)~~ The worker must verify ~~that~~ the energy crisis need cannot be met by available income and liquid resources, even if income and liquid resources are equal to or below the standard.

~~(E5)~~ ~~If the energy supplier refuses to establish or restore service for ECAP is authorized only when~~ the amount of the ECAP payment, combined with whatever other ~~resource is~~ resources are available or can be developed, ~~the ECAP payment cannot be authorized~~ are sufficient to establish, restore, or prevent the cut-off of the energy service for the household.

~~(F)~~ ~~In instances where the maximum amount of ECAP and other available emergency programs do not meet the crisis, the case must be documented as having~~ If a feasible plan for maintaining or restoring service before an ~~cannot be developed, the worker denies the ECAP payment can be authorized~~ application.

~~(2)~~ **Administrative procedures.**

(f) Additional procedural criteria the worker must follow are included in (1) through (3) of this paragraph.

~~(A1)~~ The authorized benefit for ECAP is limited to the amount necessary to connect, restore, or maintain energy service to the household up to the established maximum for the program year.

~~(B2)~~ OKDHS makes payments for crisis assistance directly to energy suppliers with rare exceptions.

~~(C3)~~ The authorized benefit cannot include the cost of propane or butane tank delivery.

~~(D)~~ ~~Payment may only be authorized for the seasonal primary source of energy, although it is possible for the primary energy source to change in some situations. If an interim period of ECAP assistance is implemented, the client may choose the primary energy source.~~

(g) OKDHS staff must approve or deny an ECAP application for an energy crisis that:

(1) involves a life-threatening medical situation within 18 hours of receipt of the application. Authority for designating a crisis situation as life-threatening is limited to

- a:
  - (A) physician;
  - (B) public health official;
  - (C) licensed practitioner of the healing arts; or
  - (D) county director; and

(2) does not involve a life-threatening situation within 48 hours of receipt of the application.

**340:20-1-20. Summer cooling**

(a) Selected households already approved for other benefits administered by the Family Support Services Division (FSSD) are normally pre-authorized during June of each year. Households pre-approved for the Low Income Home Energy Assistance Program (LIHEAP) are those who received a State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits all 12 months of the previous year and met all the criteria shown in (1) through (3).

- (1) The household received LIHEAP the previous year.
- (2) The address remained the same.
- (3) ~~The income did not exceed eligibility guidelines for household size remained the same during the year.~~

(b) ~~All other households~~ Households not meeting preauthorization criteria must complete an application.

(c) The cooling assistance part of the Low Income Home Energy Assistance Program (LIHEAP) normally begins mid-July, and applications are taken until allocated funds are expended.

(d) The same payment schedule is used for unsubsidized renters and roomers with utilities included in their rent except that payments are made directly to approved households.

(e) Payments may be made to purchase cooling equipment such as fans and window air conditioning units or to repair existing cooling equipment.

[OAR Docket #12-502; filed 5-1-12]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES**

[OAR Docket #12-490]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Scope and Applicability  
340:25-1-1.2 [AMENDED]

# Permanent Final Adoptions

340:25-1-2.1 [AMENDED]  
340:25-1-5.1 [AMENDED]  
Subchapter 5. Operational Policies  
Part 9. Disclosure of Information  
340:25-5-66 [AMENDED]  
340:25-5-67 [AMENDED]  
Part 15. Case Initiation, Case Management, and Case Closure  
340:25-5-110.1 [AMENDED]  
340:25-5-117 [AMENDED]  
340:25-5-123 [AMENDED]  
340:25-5-124 [AMENDED]  
Part 17. Past Support  
340:25-5-140 [AMENDED]  
340:25-5-140.1 [AMENDED]  
Part 20. Medical Support  
340:25-5-168 [AMENDED]  
340:25-5-171 [AMENDED]  
Part 21. Establishment  
340:25-5-176 [AMENDED]  
340:25-5-178 [AMENDED]  
340:25-5-179.1 [AMENDED]  
Part 23. Enforcement  
340:25-5-200 [AMENDED]  
340:25-5-200.1 [AMENDED]  
340:25-5-201.1 [AMENDED]  
Part 33. Interstate and International Cases  
340:25-5-270 [AMENDED]  
Part 38. Title IV-D and Non-IV-D Central Case Registry Information  
340:25-5-339 [AMENDED]  
340:25-5-340 [AMENDED]  
Part 39. Accounting and Distribution  
340:25-5-345.2 [AMENDED]  
340:25-5-350.1 [AMENDED]  
340:25-5-350.3 [AMENDED]  
**(Reference APA WF 11-08)**

## **AUTHORITY:**

Commission for Human Services; Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Social Security Act, codified at Chapter 7 of Title 42 of the Code of Federal Regulations; Child Support Performance and Incentive Act of 1998, Public Law 105-200, codified in sections of Title 42 of the United States Code; Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code; Parts 302, 303, and 453 et seq. of Title 45 of the Code of Federal Regulations; Section 1738B of Title 28 and Sections 653, 664 and 666 of Title 42 of the United States Code; Sections 83, 7700-204, and 7700-636 of Title 10 of the Oklahoma Statutes; Section 1-4-702 of Title 10A of the Oklahoma Statutes; Chapters 2, 3, and 21 of Title 12 of the Oklahoma Statutes; Sections 566 and 567 of Title 21 of the Oklahoma Statutes; Section 285.3 of Title 31 of the Oklahoma Statutes; Section 6058A of Title 36 of the Oklahoma Statutes; Title 43 of the Oklahoma Statutes; Sections 183 and 231 through 240.23 of Title 56 of the Oklahoma Statutes; Transparency, Accountability, and Innovation in Oklahoma State Government 2.0 Act of 2011; Turner v. Rogers, 131 S. Ct. 2507 (2011).

## **DATES:**

### **Comment period:**

January 17, 2012 through February 16, 2012

### **Public hearing:**

None requested

### **Adoption:**

February 29, 2012

### **Submitted to Governor:**

February 29, 2012

### **Submitted to House:**

February 29, 2012

### **Submitted to Senate:**

February 29, 2012

### **Gubernatorial approval:**

April 16, 2012

### **Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

### **Final adoption:**

April 26, 2012

### **Effective:**

July 1, 2012

## **SUPERSEDED EMERGENCY ACTIONS:**

n/a

## **INCORPORATIONS BY REFERENCE:**

n/a

## **ANALYSIS:**

The proposed amendments to Chapter 25 Subchapter 1 and Subchapter 5 amend the rules to: (1) implement policy changes recommended during the annual Oklahoma Child Support Services (OCSS) policy review process; and (2) make non-substantive housekeeping changes to improve the clarity of rules.

## **CONTACT PERSON:**

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

## **SUBCHAPTER 1. SCOPE AND APPLICABILITY**

### **340:25-1-1.2. Structure and services**

#### **(a) Structure.**

(1) Under Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, every state must designate a single state agency to administer a statewide plan for child support services. The Oklahoma Department of Human Services is the designated agency in Oklahoma. Oklahoma Child Support Services (OCSS) administers the plan.

(2) OCSS provides services through a state office and other offices throughout the state that may be administered through service agreements or contracts with district attorneys and other entities, such as Community Action Program agencies ~~and Native American tribal organizations~~, to provide legal child support services.

(3) The primary function of OCSS is to provide child support services in all IV-A TANF, IV-E foster care, and non-TANF SoonerCare (Medicaid) cases where eligibility is due to the absence of one or both parents, and in other cases for persons who have applied for services. OCSS also provides these services in cases forwarded by:

(A) IV-D agencies of other states; ~~and~~

(B) Native American tribes; and

(C) foreign jurisdictions, as appropriate.

(4) OCSS is committed to the right of all parties to have access to the justice system for the purpose of enhancing understanding and ownership of the case. In addition to the child support services provided by OCSS as described in this Chapter, when parties want to be heard on child support issues, regardless of whether the positions of the party are contrary to the state's position and may be subject to legal defenses, OCSS:

(A) provides available pro se self-help forms to request a hearing before either the Office of Administrative Hearings: Child Support (OAH) under OAC 340:2-28-17.2 or the district court. OAH or the district court determine whether a hearing is granted; ~~and~~

- (B) ~~refers parties to community resources including, but not limited to:~~
- ~~(i) lawyer referral services;~~
  - ~~(ii) community legal services;~~
  - ~~(iii) other available self-help legal forms; and~~
  - ~~(iv) other available informational materials and community resource materials~~
- assists pro se customers in completing available OCSS self-help forms upon request; and
- (C) refers parties to community resources including, but not limited to:
- (i) lawyer referral services;
  - (ii) community legal services;
  - (iii) other available self-help legal forms; and
  - (iv) other available informational materials and community resource materials.
- (5) OCSS complies with the standards for an effective program and the organization and staffing requirements prescribed by Part 303 of Title 45 of the Code of Federal Regulations.
- (b) **Services.** OCSS services include, but are not limited to:
- (1) establishment of paternity, child support obligations, ongoing medical support, and ongoing child care obligations through administrative and court actions;
  - (2) enforcement of ~~child support, fixed sums and judgments for medical support including birthing costs, health care coverage, fixed ongoing child care costs, judgments for child care costs, and in some instances spousal support obligations~~
- (A) child support;
  - (B) health insurance;
  - (C) fixed sums and judgments for medical support including birthing costs;
  - (D) fixed ongoing child care costs and judgments for child care costs; and
  - (E) certain spousal support obligations when due in conjunction with child support;
- (3) location of noncustodial parents and their assets by establishing intrastate and interstate links with local, state, and federal agencies, private sources, and international central authorities;
  - (4) review of cases for modification of support orders as appropriate;
  - (5) collection and distribution of support payments in accordance with state and federal law; and
  - (6) establishment and maintenance of accounting and other records in accordance with state and federal law.
- (c) **Excluded services.** OCSS services do not include:
- (1) establishment or modification of spousal support, visitation, or custody; ~~and~~
  - (2) establishment of judgment for unreimbursed medical expenses or child care costs that are not included in the fixed monthly child support obligation; ~~and~~
  - (3) enforcement of alimony in lieu of property division.
- (d) **Limited services.** OCSS provides limited services only at the request of an initiating interstate IV-D agency or an international central authority under Sections 601-101 through 901 of Title 43 of the Oklahoma Statutes and Section 303.7 of Title

45 of the Code of Federal Regulations. OCSS provides limited services, when appropriate, even if no individual noncustodial parent or custodial person resides in Oklahoma.

**340:25-1-2.1. Location for information**

(a) **Mailing address.** The mailing address of the state office of Oklahoma Child Support Services (OCSS) is: Oklahoma Child Support Services, Capitol Station Box ~~53552248822~~, Oklahoma City, Oklahoma ~~73152-355273124-8822~~.

(b) **OCSS telephone information.** Addresses of district child support offices throughout Oklahoma and other information may be requested by telephoning 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922. The Relay Oklahoma Teletypewriter (TTY) number for the hearing impaired is 405-522-3792 in the Oklahoma City calling area ~~711, or 1-866-264-47671-800-722-0353 toll-free.~~

(c) **Interpreter services.** The Oklahoma Department of Human Services (OKDHS) provides, at no cost, oral or sign language or foreign language interpretation services.

(d) **Oklahoma Employer Services Center.** The Oklahoma Employer Services Center (OKESC) processes incoming employer questionnaires regarding employment verification and insurance availability, and answers employer questions regarding new hire reporting, income withholding, and medical support. Employer and insurance plan administrator inquiries regarding child support cases may be made by telephoning 405-522-5550 in the Oklahoma City calling area, or toll-free at 1-866-553-2368. ~~OKESC's~~ The OKESC fax number is 405-522-5555. ~~The and the mailing address for OKESC is: Oklahoma Employer Services Center, P.O. Box 248805, Oklahoma City, Oklahoma 73124-8805.~~

(e) **Internet access.** Information about OCSS is available from the OCSS Internet page at <http://www.okdhs.org>.

(1) A customer who has an active child support case(s) and OKDHS customer identification number may use the Internet to access information about the customer's case(s).

(2) A customer may contact OCSS as described in this Section to request a child support customer personal identification number (PIN) and instructions for accessing case information on the Internet.

**340:25-1-5.1. Administrative complaint procedure**

(a) **Purpose and scope.**

(1) The administrative complaint procedure is for Oklahoma Department of Human Services (OKDHS), Oklahoma Child Support Services (OCSS) IV-D customers. OCSS:

(A) represents the state's economic interest in children;

(B) does not represent parents, custodial persons, or children. Parents and custodial persons may apply for OCSS services, and OCSS enforces the duties of parents to support their children; and

(C) considers parents and custodial persons as customers, and treats them with dignity and respect.

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(2) The administrative complaint procedure is established under Section 303.35 of Title 45 of the Code of Federal Regulations and is available to Oklahoma customers and those from other states. The purpose is to provide:

(A) OCSS customers an opportunity to raise concerns about services or treatment received, request an administrative review, and take appropriate action when there is evidence that an error occurred, or an action should have been taken on their case;

(B) customers a fast and effective procedure for reviewing issues that have no other review process. The intent of the complaint procedure is to provide customers a process to have their cases reviewed and not to require formal administrative hearing processes or adjudication of complaints; and

(C) an informal rather than a formal hearing process. It does not replace or extend other child support enforcement processes, such as court processes, that are established by federal or state statutes, rules, or regulations. The complaint process is intended to remedy errors, not to allow individuals to dictate action in a case.

(b) **Procedure.**

(1) **Step 1.** OCSS encourages any customer with a complaint about an OCSS district office or state office center to address the complaint orally or by letter, fax, or ~~e-mail~~ email to the OCSS district or state office for resolution. Interstate customers express their concerns to the IV-D agency in the state where they applied or were referred for services.

(2) **Step 2.**

(A) If the customer receives no response or is dissatisfied with the response from the OCSS district or state office, the customer may contact Oklahoma Child Support Services, Attention: Center for Customer Services (CCS), P.O. Box ~~53552248822~~, Oklahoma City, Oklahoma ~~7315273124-8822~~ by mail, or fax to 405-522-3685, or ~~e-mail~~ email ~~ocss.customeroutreach@okdhs.org~~ OCSS.Contact.CustomerOutreach@okdhs.org, or telephone 405-522-5871. The customer may describe the complaint on Form 03EN012E, Child Support Comments, (available upon request by telephone, at a district office, or on the OKDHS ~~Internet website~~) that elicits the information listed in (i) through (ix), or by letter, fax, or ~~e-mail~~ email, including:

- (i) first and last name;
- (ii) standing of the person submitting the complaint, for example, the noncustodial parent, custodial person, biological parent, or an attorney of record or authorized representative on behalf of the noncustodial parent, custodial person, or biological parent;
- (iii) the first and last names, mailing address, and telephone number of the attorney of record or authorized representative, if any;
- (iv) Social Security number;

- (v) child support case number;
- (vi) mailing address;
- (vii) telephone number;
- (viii) an explanation, including names of people and locations, dates, and times of incidents; and
- (ix) a description of the desired action to resolve the complaint.

(B) The CCS refers complaints about cases to the OCSS district office or state office center for administrative review. The district office or state office center conducts the administrative review and notifies the customer of the review's results and any actions taken within five days after CCS sends the written complaint. The method of notification is requested by the customer. If contact in the manner requested by the customer is unsuccessful, written notification is ~~made~~ mailed.

(3) **Step 3.** If the customer is dissatisfied with the response, the customer may ask for further review by submitting a request to the CCS. This request for review may be made by telephone, letter, fax, or ~~e-mail~~ email.

(A) The division director or a designee reviews the complaint, the administrative review of the complaint, and any action taken.

(B) Within five days after CCS receives the written request for further review, OCSS notifies the customer and the district office or state office center of the results and any actions taken. The method of notification is requested by the customer. If contact in the manner requested by the customer is unsuccessful, written notification is ~~made~~ mailed. The result of this review is the final decision of OCSS.

## SUBCHAPTER 5. OPERATIONAL POLICIES

### PART 9. DISCLOSURE OF INFORMATION

#### 340:25-5-66. Legal basis for release of information

Federal and state laws and the rules adopted by the Oklahoma Commission for Human Services restrict the use and disclosure of information. Release of information from child support program records is based on applicable provisions of:

- (1) Sections OAC 340:2-21-12 through 340:2-21-16, and OAC 340:75-1-44;
- (2) Section 413 of Title 43, Sections 24A.1 through 24A.26 of Title 51, and Sections 183 and 231 through 240.23 of Title 56 of the Oklahoma Statutes;
- (3) Sections 303.15, ~~303.21~~, 303.70, and 307.13 of Title 45 of the Code of Federal Regulations; and
- (4) Sections 653, 654, 654a, and 663 of Title 42 of the United States Code.

#### 340:25-5-67. Information disclosure

(a) **Confidentiality.** *All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of*

*Human Services or any other public or private entity shall be confidential.* [56 O.S. § 183]

(1) All files and records concerning the assistance or services provided under the child support program or concerning an alleged father of a child born out of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237]

(2) Any information Oklahoma Child Support Services (OCSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. ~~OCSS does not disclose or use the contents of any child support records, files, papers, or communications for purposes other than those directly connected to the administration of the child support program.~~ OCSS complies with the limitations imposed by federal regulations per Section 653 of Title 42 of the United States Code.

(3) Nothing in this Section authorizes disclosure of the location of a case participant with a family violence indicator per OAC 340:25-5-67.1.

(b) **Authorized disclosure.** Information, when requested per OAC 340:25-5-68, may be shared with:

(1) persons duly authorized by the United States in connection with the performance of their official duties, [56 O.S. § 183] including, but not limited to:

(A) exchange of information to the extent necessary to carry out the state agency Title IV-D program responsibilities directly and through statewide automated data processing and information retrieval networks within the Oklahoma Department of Human Services (OKDHS), with authorized representatives of OKDHS divisions and other state agencies, other states and countries, and federal and tribal agencies;

(B) exchange of information directly and through statewide automated data processing and information retrieval networks with representatives of OKDHS and other state agencies administering programs under ~~Titles IV-A, through IV-E, and XIX of Subchapter IV, and XXI of Chapter 7 of Title 42 of the United States Code, and the Supplemental Nutrition Assistance Program (SNAP)~~ Titles IV-A, IV-E, and XIX of the United States Code, and the Supplemental Nutrition Assistance Program (SNAP) to the extent necessary to carry out ~~state agency Titles IV-A, IV-E, and XIX~~ the responsibilities ~~of those agencies;~~

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person under Section 663 of Title 42 of the United States Code representing:

(i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the United States Code to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and

(ii) the United States or the State of Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such

court having jurisdiction to make or enforce a child custody or visitation determination; and

(D) release of Social Security numbers for child support purposes; such as:

(i) locating the parents;

(ii) submitting cases for federal administrative and income tax refund offset;

(iii) state income tax refund offset;

(iv) financial institution data match;

(v) enrolling children as beneficiaries of health insurance coverage; and

(vi) processing interstate child support services;

(2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(A) pay records and payment calculations;

(B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;

(C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(D) information required by Titles 43 or 56 of the Oklahoma Statutes disclosed for the purpose of reviewing, establishing, or modifying a support order; ~~and~~

(E) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage; ~~and~~

(F) address of record for service of process under Section 112A of Title 43 of the Oklahoma Statutes. The address of record must only be released per OAC 340:25-5-340.1;

(3) employers and plan administrators, who may only access information necessary to enroll children as beneficiaries of court-ordered health insurance coverage; and

(4) persons as directed by court order or by a subpoena approved by a ~~child support OCSS state's~~ attorney.

**PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE**

**340:25-5-110.1. Applications**

(a) To apply for child support services, a person must submit a completed and signed application form to the address on the form. A one cent application fee is paid by Oklahoma Child Support Services (OCSS) for each application received. An application for child support services is submitted in every circumstance, including applications received by:

(1) former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF Medicaid recipients with the Oklahoma Department of Human Services (OKDHS);

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- (2) former participants in Title IV-D cases;
  - (3) noncustodial parents listed on an existing medical enforcement only case, if the noncustodial parent is requesting a review and adjustment or to open a new case per OAC 340:25-5-198.1; or
  - (4) persons receiving child support payments from the Centralized Support Registry and not currently receiving child support services through OCSS.
- (b) Application forms are obtained at any child support or other OKDHS office or by writing or telephoning OCSS at the address and telephone numbers provided in OAC 340:25-1-2.1. Printable application forms are available from the OCSS ~~Inter-~~website at <http://www.okdhs.org/childsupport/>.
- (c) An applicant who is a custodial person must give OKDHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the custodial person and child(ren).
- (d) OCSS accepts an application and opens a case when:
- (1) the child is a minor or ~~the application is still entitled to current to enforce a child support order for an adult with disabilities under~~ per Section ~~442.1A~~ 112 of Title 43 of the Oklahoma Statutes (43 O.S. § 112);
  - (2) ~~paternity must be established for a minor child against a deceased noncustodial parent consistent with OAC 340:25-5-176; and~~ the application is to enforce a child support order for an adult with disabilities per 43 O.S. § 112.1A;
  - (3) ~~the former custodial person's parental rights have been terminated, then the child was adopted, and the application to collect past due support owed to the former custodial person was received before the adoption.~~ paternity must be established for a minor child against a deceased noncustodial parent consistent per OAC 340:25-5-176; or
  - (4) ~~the former custodial person's parental rights have been terminated, then the child was adopted, and the application to collect past-due support owed to the former custodial person was received before the adoption.~~
- (e) OCSS does not accept applications for collection of past-due support when:
- (1) all children on the application have reached the age of majority and none is an adult with disabilities with an established child support order;
  - (2) the child is deceased; or
  - (3) the child is a minor but no longer resides with the custodial person.
- (f) OCSS accepts applications for locate only services pursuant to OAC 340:25-5-155.

### **340:25-5-117. Initiation of Title IV-D cases**

- (a) **Title IV-A, Title IV-E foster care, non-TANF SoonerCare (Medicaid), and child care subsidy referrals.**
- (1) Oklahoma Child Support Services (OCSS) automatically initiates child support cases without additional application for certified Title IV-A, Title IV-E foster care, non-Temporary Assistance for Needy Families (TANF) (~~Temporary Assistance for Needy Families~~) SoonerCare (Medicaid), and child care subsidy referrals.

(2) Custodial persons who apply for non-TANF SoonerCare (Medicaid) on behalf of themselves and their child(ren) must assign medical support rights to the state per Section 1396k of Title 42 of the United States Code.

(A) A referral from the Oklahoma Health Care Authority (OHCA) means receipt of data that includes verified information with no errors or duplications that is sufficient for OCSS to initiate a child support case.

(B) These custodial persons must cooperate in establishing paternity and obtaining medical support unless an exception exists per Sections 1396a(l)(1)(A), 1396k, or 1396r-6 of Title 42 of the United States Code.

(C) OCSS must open a Title IV-D medical enforcement only case per OAC 340:25-5-169. OCSS may open a full-service case to provide all appropriate Title IV-D services per OAC 340:25-1-1.2 at the custodial person's request.

(3) When OCSS receives a referral from the Family Support Services ~~Division (FSS)~~—worker per OAC 340:40-7-9, OCSS must open a full-service case if any of the applicant's children in the household are certified for a child care subsidy.

(4) When OCSS receives a non-TANF SoonerCare (Medicaid) referral from the OHCA in which assigned court-ordered or cash medical support child support is owed, OCSS must open a full-service case per OAC 340:25-5-169.

(5) Custodial persons who apply for non-TANF SoonerCare (Medicaid) on behalf of their child(ren) only are not required to cooperate in establishing paternity and obtaining medical support. Therefore, except when (a)(3) of this Section applies, OCSS does not provide child support services unless the custodial person has made a request for a full-service case or the case is for medical enforcement only.

(b) **Termination of Title IV-A, Title IV-E foster care, and non-TANF SoonerCare (Medicaid) benefits.** When a family is no longer eligible for assistance under Titles IV-A, Title IV-E foster care, or SoonerCare (Medicaid) programs, all appropriate Title IV-D services continue without application per Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF SoonerCare (Medicaid) cases previously limited to medical support continue as full-service cases. If a custodial person refuses continued Title IV-D services and subsequently requests services, the person must submit a completed and signed Form 03EN001E, Application for Child Support Services, even if OCSS has an active case because of unreimbursed assistance owed to the state.

(c) **Referrals from other jurisdictions.** OCSS accepts cases referred:

- (1) by any state or tribal Title IV-D agency and from other countries when the noncustodial parent resides in Oklahoma. OCSS does not require an application for cases referred from another Title IV-D agency;

(2) by interstate referrals for judgment only collections if the case was opened in the initiating state during the minority of any child on the case; ~~and/or~~

(3) when Oklahoma is an appropriate jurisdiction to establish, enforce, modify, or determine the controlling order per the Uniform Interstate Family Support Act in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes, whether or not the noncustodial parent resides in Oklahoma.

(d) **Responses from noncustodial parents who sign an acknowledgment of paternity.** OCSS opens full-service cases for noncustodial parents who have filed Form 03PA209E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records, and requested child support services by completing and signing Form 03EN001E in response to outreach letters sent to them.

(e) **Other Title IV-D cases.** Except as provided in subsections (a), (c), and (d) of this Section, an applicant must submit a completed and signed Form 03EN001E to receive all appropriate child support services or locate only services.

(f) **Building case balances.**

(1) OCSS builds case balances on new and reopened cases per OAC 340:25-5-140.

(2) When OCSS opens a case and has information the noncustodial parent has made payments in excess of the court-ordered child support order, OCSS only collects the excess payment when a court has determined the amount of the excess payment and ordered that it be satisfied by offset against the monthly current child support obligation.

**340:25-5-123. Case closure system**

(a) Except as provided in subsections (b) and (c) of this Section, Oklahoma Child Support Services (OCSS) closes cases eligible for closure per Section 303.11 of Title 45 of the Code of Federal Regulations (~~CFR~~).

(b) A child support case may not be closed when there is a pending paternity, establishment, or modification action filed with the court by OCSS and the non-applicant has been served, unless the pending action is withdrawn or dismissed at the discretion of the OCSS state's attorney.

(c) A child support case may be closed when any of the criteria in paragraphs (1) through (4) of this subsection applies:

(1) Less than \$500 in court-ordered support is owed to the state, unless there has been:

- (A) a collection during the past six months; or
- (B) a federal or state income tax refund intercept in the past 18 months.

(2) The custodial person is participating in the Oklahoma Department of Human Services (OKDHS) Child Care Subsidy Program, is not receiving Temporary Assistance for Needy Families (TANF) or non-TANF SoonerCare (Medicaid), requests closure, and subparagraphs (A) and (B) of this paragraph apply.

- (A) There is a child support order.
- (B) The custodial person is receiving the full amount of the current monthly child support obligation and has reported to the person's Family Support

Services Division worker receipt of this child support income.

(3) The custodial person is participating in the OKDHS Child Care Subsidy Program, is receiving non-TANF SoonerCare (Medicaid) benefits for a child(ren) only, requests closure, and all the criteria in paragraph (2) of this subsection apply.

(4) The noncustodial parent is receiving Supplemental Security Income, has no income or assets to pay arrears, and the child support order is set at or modified to \$0 per month due to the parent's disability and lack of income.

(d) A child support case may be closed when the custodial person receives non-TANF SoonerCare (Medicaid) child-only benefits when:

(1) the case is received from Oklahoma Health Care Authority as a referral, but OCSS learns the custodial person desires to decline child support services and no service of process is initiated on a legal action filed by OCSS to establish or enforce the child support order, including the medical support portion; or

- (2) the custodial person:
  - (A) cannot be located per Section ~~303.11(b)(10)~~ 303.11(b)(10) of Title 45 of CFR; or
  - (B) fails to cooperate and an action by the custodial person is essential for the next step in providing child support services per Section 303.11(b)(11) of Title 45 of CFR.

(e) When OCSS staff closes a ~~non-public assistance child support~~ case, OCSS:

(1) terminates the ~~Order/Notice~~ Order or Notice to Withhold Income for Child Support with the employer per OAC 340:25-5-201.1;

(2) removes case balances; and

(3) documents the date and amounts removed on the automated Oklahoma Support Information System Case Log (CSLOG) screen.

(f) Per Section 302.33 of Title 45 of the CFR when Title IV-A TANF, Title IV-E foster care, and non-TANF SoonerCare (Medicaid) services are discontinued, OCSS notifies the recipient that OCSS maintains a full-service child support case, unless the custodial person declines services in writing. If the custodial person declines services in writing, OCSS closes the case. If the custodial person fails to respond, OCSS maintains a full-service child support case.

**340:25-5-124. Assignment and transfer of cases to child support offices**

In assigning cases to child support offices, Oklahoma Child Support Services (OCSS) considers whether the case is eligible for assignment to one of the tribal programs under OAC 340:25-5-124.2. OCSS treats an order registered in Oklahoma under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes as an Oklahoma order for purposes of OAC 340:25-5-124(1) and (2). If the case is not assigned to one of the tribal programs, OCSS assigns cases under this Section.

(1) Oklahoma child support cases are assigned to a district office serving the county where a prior Family and

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Domestic district court case exists involving the parents and child(ren), regardless of the case style of the order or whether or not a child support order was entered as to either parent. If there is a guardianship order in effect, the case is assigned to the district office serving the county in which the guardianship action was filed. The district office proceeds to petition the guardianship court to:

- (A) ~~petition the guardianship court to~~ defer jurisdiction of child support to OCSS. The case then follows regular case assignment rules;
  - (B) ~~petition the guardianship court to~~ defer jurisdiction of child support to a pre-existing Family and Domestic court case involving the parents and child(ren) to enforce an existing child support order or establish a child support order. The case is assigned to the district office serving the county with the existing Family and Domestic court order; or
  - (C) ~~petition the guardianship court to~~ establish a child support order. The case is assigned to the district office serving the county of the guardianship.
- (2) Child support orders from another state, or federal or tribal child support orders, are assigned to a district office serving the county in which the order is registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes. If there are multiple Oklahoma support orders, cases are assigned to a district office serving the county where the presumed controlling order for current child support was entered or docketed in district court.
- (3) Cases are assigned to a district office serving the county where the custodian of the child(ren) resides when there is:
- (A) no Oklahoma child support order and there is no prior Family and Domestic district court case on file;
  - (B) a federal or tribal child support order; or
  - (C) a child support order from another state.
- (4) When the applicant for child support services is the noncustodial parent, ~~and~~ the location of the custodial person and child is unknown, and there is no prior paternity or child support order established, cases are assigned to the office responsible for the county in which the noncustodial parent resides until the custodial person and child are located.
- (5) Except in cases where a child support order is registered in Oklahoma, if the custodian of the child(ren) does not reside in Oklahoma, cases are assigned to the district office serving the county where the noncustodial parent or alleged father resides.
- (6) When there is no Oklahoma order and no party resides in Oklahoma, cases are assigned to the district office serving the county with significant contacts with the case. When more than one county has significant contacts with the case, the case is assigned to the district office having the most recent significant contact.
- (7) OCSS does not transfer cases docketed or registered under Sections 601-601 through 601-614 of Title 43 of the Oklahoma Statutes in district court because the

custodial person or noncustodial parent moves to a county outside of the original district office's service area.

(8) OCSS does not transfer cases because the custodial person files a contempt action in a county outside of the original district office's service area.

(9) OCSS reassigns a case to another district office to avoid a conflict of interest under OAC 340:2-1-8.

## PART 17. PAST SUPPORT

### 340:25-5-140. Past support

(a) **Authority.** Oklahoma Child Support Services (OCSS) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order and on the first day of each month thereafter except when another state's law governs the due date.

(2) OCSS bases its determination of past-due support and support for a prior period on information in available records from courts, Title IV-D and other public and private agencies, custodial persons, noncustodial parents, and others.

(3) OCSS may require sworn written statements and supporting documents from custodial persons, noncustodial parents, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

- (A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;
- (B) Section 1738B of Title 28 of the United States Code;
- (C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (D) Sections 83; and 7700-636 of Title 10, Chapters 3 and 21 of Title 12, Title 43, and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) **Enforcement.**

(1) OCSS takes action to enforce past-due support and support for a prior period under OAC 340:25-5, Part 23.

(2) When a case new to OCSS ~~per OAC 340:25-5-117~~ or a case that was previously closed reopens and has an existing order, OCSS does not calculate a past-due support balance or take action to enforce past-due support until 30 days from the date of mailing of the notice of case letter and affidavit of payments document to the noncustodial parent. This does not preclude the initiation of an income assignment to collect current support.

(3) Past-due child support remains due to the custodial person with whom a child resided during the month the past support was due.

(4) When OCSS takes action to enforce past-due support and support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, OCSS applies the provisions of the Servicemembers Civil

Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(c) **Settlement of past support.**

- (1) Settlements of past support may include:
  - (A) a noncustodial parent's lump sum partial payment or a series of payments made toward the total amount of past support;
  - (B) an agreement for the noncustodial parent to pay a specified number of current child support payments in the future; and
  - (C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.
- (2) Settlements of past support must be memorialized in a court order and the custodial person must sign the court order when the past support is owed to the custodial person.
- (3) In accordance with Section 112 of Title 43 of the Oklahoma Statutes, OCSS:

- (A) acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the past child support due to the custodial person; or
- (B) may negotiate the right to collect all or part of past support owed to the State of Oklahoma.

(d) **Annual notice.** OCSS uses the annual notice to the noncustodial parent per Section 237A of Title 56 of the Oklahoma Statutes to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions as provided in OAC 340:25-5, Part 23.

(e) **Death of custodial person.** ~~If the custodial person dies and no past support is owed to any state, OCSS refunds child support payments to the decedent's estate when notified in writing by the administrator of the estate. OCSS does not file a forced probate court action to determine heirs and distribute past support to heirs. When:~~

- (1) ~~OCSS does not receive notice from the administrator of the estate within six months of the custodial person's death, OCSS refunds child support payments to the payor.~~ When the custodial person dies, OCSS issues child support payments for past due support to:
  - (A) the decedent's estate, when notified in writing by the administrator of the estate; or
  - (B) any state owed past due support per OAC 340:25-5-351.
- (2) ~~the payor's address is unknown, or payments are returned due to the inability to distribute, support payments are returned to the noncustodial parent.~~ Except as provided in paragraph (1) of this subsection, OCSS refunds payments to the:
  - (A) payor, when the payor's address is known;
  - (B) noncustodial parent when the payor's address is unknown, or payments are returned due to the inability to distribute.
- (3) ~~past support is owed to any state, OCSS distributes the payments per OAC 340:25-5-351.~~ OCSS does not file a

forced probate court action to determine heirs and distribute past support to heirs.

(f) **Jurisdiction.** When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, OCSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce the child support orders.

**340:25-5-140.1. Interest**

(a) **General.** Oklahoma Child Support Services (OCSS) collects and enforces interest on delinquent Oklahoma court-ordered child support payments per Section 114 of Title 43 of the Oklahoma Statutes.

(b) **Support for a prior period.** OCSS collects interest on support for a prior period per OAC 340:25-5-179.1 from the date of the order.

(c) **Accrual date.** Interest accrues on any unpaid portion of the monthly current child support obligation on the first day of the month following:

- (1) the due date specified in the court order; or
- (2) the entry date of the child support order when a support order does not specify a due date.

(d) **Grace period and accrual.** ~~OCSS may allow~~ OCSS has a grace period when interest is not charged. Interest ~~accrues~~ begins to accrue from the first day of the month following the date the arrears are in excess of one month's current support.

(e) **Interest on cash medical support.** OCSS does not calculate or collect interest on unpaid cash medical support.

(f) **Servicemember relief.**

(1) Upon a servicemember's written request, an interest rate cap of six percent applies to child support arrearages of members of the military service incurred prior to the start of military service per Section 527 of Title 50A of the United States Code.

(2) The servicemember must provide a written request for reduced interest and a copy of the military orders calling the servicemember to service and any orders further extending military service to OCSS no later than 180 days after the date of the servicemember's termination or release from military service.

(3) Upon receipt of these documents, OCSS applies the six percent interest rate to child support arrearages existing as of the date when the servicemember is called to military service and throughout the active military service.

(4) OCSS may initiate a court action to challenge the claim that the servicemember's military duty has materially affected his ability to pay an interest rate over six percent.

(g) **Interest rate.**

(1) OCSS calculates simple interest per Section 114 of Title 43 of the Oklahoma Statutes.

(2) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due until a determination of controlling order is made.

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- (3) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.
- (4) When there are multiple child support orders and Oklahoma is determining the controlling order, OCSS determines the rate of interest charged per Section 601-604 of Title 43 of the Oklahoma Statutes.
- (h) **Order silent as to interest.** When an order that settles or determines a past-due child support amount is silent as to interest, the party with the right to collect has not waived the interest.
- (i) **Enforcement.** Accrued interest is considered child support. Interest is included in enforcement remedies.
- (j) **Incoming interstate cases.** In the absence of an Oklahoma order, OCSS collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that OCSS collect it.
- (k) **Outgoing interstate cases.** Before requesting a responding state to enforce a child support order(s) entered in a state other than the responding state, OCSS calculates the arrears including the accrued interest claimed.
- (l) **Application of payments to interest.** OCSS applies payments to interest per OAC 340:25-5-351.
- (m) **Waiver of interest.** OCSS acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the interest due to the custodial person. OCSS may negotiate the right to collect all or part of the interest owed to the State of Oklahoma. Settlements of interest must be memorialized in a court order and may include:
- (1) a noncustodial parent's lump sum partial payment or a series of payments; or
  - (2) an agreement for the noncustodial parent to pay:
    - (A) a specified number of current child support payments in the future; or
    - (B) non-cash support.
- (n) **Reopening closed cases.** OCSS does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

### PART 20. MEDICAL SUPPORT

#### 340:25-5-168. Establishment of medical support

- (a) **Scope and applicability.** Oklahoma Child Support Services (OCSS) refers to federal and state law for establishment of a medical support order per:
- (1) Section 666 of Title 42 of the United States Code;
  - (2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and
  - (3) Section 6058A of Title 36, Sections 112, 118 through 118I, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes.
- (b) **Medical support provision of child support order.** A child support order established by OCSS must contain a medical support provision.
- (c) **Calculating the cost of medical support.** To calculate the actual premium cost of health insurance, OCSS:

- (1) deducts from the total insurance premium, the cost of coverage for the parent;
  - (2) deducts from the total insurance premium, the cost of coverage for any other adults in the household, when that cost information is available;
  - (3) divides the remainder by the number of dependent children covered; and
  - (4) multiplies the amount per child by the number of children in the child support case under consideration.
- (d) **Standards for medical support provision.** When choosing a medical support provision, OCSS requests the court to apply the standards in paragraphs (1) through (3) of this subsection.
- (1) Health insurance must be reasonable in cost, meaning that the actual out-of-pocket premium cost paid does not exceed five percent of the gross income of the parent ordered to provide health insurance.
  - (2) Health insurance must be accessible, meaning the health care providers must be available to meet the child(ren)'s individual health care needs, and must be located no more than 60 miles one-way from the primary residence of the child(ren).
  - (3) Health insurance must provide coverage for both routine and major medical expenses, including but not limited to: preventive care, office visits, hospitalization, and medication coverage in compliance with Oklahoma Insurance Department per OAC 365:10-5-3(14) and OAC 365:10-5-5(f). Limited Insurance Coverage per OAC 365:10-5-5(k) does not satisfy this requirement. Annual deductibles must be reasonable and relate to the medical circumstances of the child(ren).
- (e) **Exceptions to standards for medical support provision.** When the parents agree or it is otherwise appropriate, OCSS requests the court make an exception to the standards for health coverage when the:
- (1) ~~the~~ reasonable cost of health insurance exceeds five percent of the gross income of the parent ordered to provide health insurance; or
  - (2) ~~the~~ closest insurance provider exceeds 60 miles one-way from the primary residence of the child(ren).
- (f) **Hierarchy of medical support provisions.** The provision for medical support must be consistent with one of the priorities listed in paragraphs (1) through (4) of this subsection.
- (1) Health insurance is provided through a parent's employer or other available group health insurance plan.
  - (2) No coverage is available under paragraph (1) of this subsection, and a private insurance policy or group health insurance is available to the child(ren) through another source; such as a third party custodian or spouse of a parent, OCSS seeks an order for the:
    - (A) ~~an order for the~~ parent to provide health insurance when insurance is provided through the spouse of a parent; or
    - (B) ~~an order for the~~ third party custodian to provide health insurance when insurance is provided through a third party custodian and the third party custodian has requested an order to provide the coverage.

(3) No health coverage is available under paragraphs (1) or (2) of this subsection, and alternative health coverage including, but not limited to, Indian Health Services (IHS) and Defense Eligibility Enrollment Reporting System (DEERS) is available to the child(ren).

(4) If none of the provisions in paragraphs (1) through (3) of this subsection are available at reasonable cost or are not accessible, the custodial person is required to make application for the child(ren) for health coverage through a government medical assistance program, such as SoonerCare (Medicaid).

(g) **Health coverage preference.** When health coverage meeting standards in subsection (d) of this Section is available to both parents, OCSS requests the court give priority to the preference of the custodial person.

(h) **Exceptions to hierarchy.** OCSS requests a cash medical order instead of an order for health coverage by the noncustodial parent under paragraphs (1) or (2) of subsection (f) of this Section when the:

- (1) ~~the~~ court determines an order for health insurance is inappropriate due to family violence concerns; or
- (2) ~~the~~ obligor is an applicant for a governmental medical assistance program, such as Insure Oklahoma, State Children's Health Insurance Program (S-CHIP), or SoonerCare (Medicaid).

(i) **Cash medical support.**

(1) When paragraph (4) of subsection (f) of this Section is chosen as the provision for medical support, OCSS requests the court order cash medical support to be paid by the noncustodial parent(s), until insurance is provided under paragraphs (1) through (3) of subsection (f) of this Section.

(2) OCSS refers to the Cash Medical Income Guidelines Table as found in the child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network site per Section 120 of Title 43 of the Oklahoma Statutes to determine the cash medical support amount.

(3) OCSS computes a cash medical order by applying the Cash Medical Income Guidelines Table, using the combined gross income for the parents of the child in the case under consideration and the number of children in the instant case.

(A) When the combined gross income is at or below the income amount for the number of children in the case, OCSS requests the court order a cash medical order at \$0 per month.

(B) When the combined gross income exceeds the income amount for the number of children in the case, OCSS computes the requested cash medical order by:

- (i) multiplying the amount of \$115, representing the average monthly cost of health care for an uninsured child(ren), by the number of children in the case that are not covered by insurance; and
- (ii) prorating the result by the percentage of income for each parent.

(C) The noncustodial parent's share of the cash medical amount is added to the child support obligation.

(D) When neither parent is the obligor or noncustodial parent due to equally shared physical custody and the application of the parenting time adjustment, OCSS requests the court set cash medical support as follows:

- (i) if the child(ren) receives SoonerCare or other governmental medical assistance, the parent who is not the applicant for governmental medical assistance is ordered to pay the cash medical support;
- (ii) if the child(ren) does not receive SoonerCare or other governmental medical assistance, the cash medical amount is calculated for each parent and the amounts are offset. The parent owing the larger amount is ordered to pay the net cash medical support.

(4) Unless the parties agree or the court orders a greater amount, the prorated cash medical support amount must not exceed five percent of the gross income of the parent who is ordered to pay cash medical support.

(5) OCSS seeks cash medical support only as part of a prospective order for child support. OCSS does not include a cash medical support amount in a judgment for support for a prior period per OAC 340:25-5-179.1.

(6) In a child support modification action, OCSS requests a cash medical support order be effective the first day of the month following the date the modification order is entered.

(j) **Termination of cash medical support.**

~~(1) When OCSS receives notice that the parent ordered to pay cash medical support has enrolled the child(ren) in health insurance, OCSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not actually covered by health insurance, a party may request a review of the termination of cash medical support within ten days from the date of mailing of the notice.~~

~~(2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, OCSS reviews the case within ten days of receipt of the request and determines if termination of cash medical support is proper based on information provided by the contesting party. OCSS notifies the parties of the review decision.~~

~~(3) When the parties disagree with the review decision, the parties have 15 days from the date of mailing the review decision to request a hearing on the termination of cash medical support.~~

~~(4) OCSS files a Notice of Termination of Cash Medical Support with the proper court when:~~

- ~~(A) no party requests a review within the ten day time period; or~~
- ~~(B) no party requests a hearing after OCSS notifies them of the review decision.~~

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- (5) OCSS does not proceed with a separate termination of cash medical support when the child support and medical support order is modified within 30 days of notification that the child(ren) are enrolled in health insurance.
- (6) When a cash medical support order is terminated within a modification action, OCSS requests the termination become effective the date of filing of the Motion to Modify or the date, if later, when the child was actually enrolled in the insurance.**Medical support for OKDHS adopted children.** OCSS does not request health insurance or cash medical support for children who are adopted through OKDHS Adoption Services. OCSS requests a medical support order reflecting that the child(ren) receive SoonerCare through the adoption plan. The parties may agree to cover the child(ren) on health insurance.
- (k) **Fixed medical costs.** When the parties agree or the court orders, OCSS includes the total monthly fixed medical costs in the child support guidelines computation. If the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, OCSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.**Termination of cash medical support.**
- (1) When OCSS receives notice that the parent ordered to pay cash medical support has enrolled the child(ren) in health insurance, OCSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not covered by health insurance, a party may request a review of the termination of cash medical support within ten days from the date of mailing of the notice.
- (2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, OCSS reviews the case within ten days of receipt of the request and determines if termination of cash medical support is proper based on information provided by the contesting party. OCSS notifies the parties of the review decision.
- (3) When the parties disagree with the review decision, the parties have 15 days from the date of mailing the review decision to request a hearing on the termination of cash medical support.
- (4) OCSS files a Notice of Termination of Cash Medical Support with the proper court when no party requests a:
- (A) review within the ten-day time period; or  
(B) hearing after OCSS notifies them of the review decision.
- (5) OCSS does not proceed with a separate termination of cash medical support when the child support and medical support order is modified within 30 days of notification that the child(ren) is enrolled in health insurance.
- (6) When a cash medical support order is terminated within a modification action, OCSS requests the termination become effective the date of filing of the Motion to Modify or the date, if later when the child was actually enrolled in the insurance.
- (l) **Indian Health Services (IHS).**
- (1) A child support order that provides for the enrollment of a child(ren) in IHS may comply with the standards in subsection (d) of this Section. OCSS seeks an order for either or both parents to secure health insurance for the minor child(ren) when:
- (A) IHS does not meet the standards in subsection (d) of this Section; or  
(B) health insurance is available through an employer or other group plan and the custodial person requests it.
- (2) OCSS does not request cash medical support when IHS is the chosen provider.**Reinstatement of cash medical support.**
- (1) OCSS seeks reinstatement of the cash medical order when:
- (A) a child support court order previously ordered the noncustodial parent to pay cash medical support until insurance was available;  
(B) insurance became available;  
(C) the cash medical support was terminated; and  
(D) the insurance subsequently lapsed.
- (2) OCSS uses one of the following processes to seek reinstatement of the cash medical order:
- (A) **Modification.** OCSS seeks modification of the child support order and reinstatement of cash medical support pursuant to OAC 340:25-5-198.1 and OAC 340:25-5-198.2 when:
- (i) the child support order that provided for cash medical support has been modified to include credit for insurance premium costs; or  
(ii) there is another material change of circumstance in addition to the lapse of health coverage.
- (B) **Expedited Process.** When subparagraph (A) of this paragraph does not apply, OCSS uses an expedited process to reinstate the cash medical support. OCSS uses the expedited process when there is an address of record for the obligor.
- (3) OCSS initiates a reinstatement of cash medical support when it receives notice that the parent whose cash medical support was terminated due to the enrollment of the child(ren) in health insurance has allowed the coverage to lapse. OCSS sends a Notice of Proposed Reinstatement of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is covered by health insurance, a party may request a review of the reinstatement within 10 days of the date the notice was mailed.
- (4) A party may file a written objection to the reinstatement of cash medical support and submit it to OCSS with supporting health care coverage documentation. OCSS reviews the case within 10 days of receipt of the objection and determines if reinstatement of cash medical support is proper based on the information provided by the contesting party. OCSS provides the custodial person and the noncustodial parent with written notice of the review decision.

(5) When the parties disagree with the review decision, they have 15 days from the date of the review decision to request a hearing.

(6) OCSS files a Notice of Reinstatement of Cash Medical Support with the proper court when no party requests a:

- (A) review within the 10 day time period; or
- (B) hearing after OCSS notifies them of the review decision.

(m) ~~Notification requirements. The noncustodial parent and the custodial person must notify OCSS in writing within 30 days after:~~

- ~~(1) health insurance becomes available;~~
- ~~(2) the cost of existing health insurance changes; or~~
- ~~(3) other provisions of existing health insurance change.~~

**Fixed medical costs.** When the parties agree or the court orders, OCSS includes the total monthly fixed medical costs in the child support guidelines computation. If the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, OCSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.

(n) ~~Modification request. When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order per Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.~~ **Indian Health Services (IHS).**

(1) A child support order that provides for the enrollment of a child(ren) in IHS may comply with the standards in subsection (d) of this Section. OCSS seeks an order for either or both parents to secure health insurance for the minor child(ren) when:

- (A) IHS does not meet the standards in subsection (d) of this Section; or
- (B) health insurance is available through an employer or other group plan and the custodial person requests it.

(2) OCSS does not request cash medical support when IHS is the chosen provider.

(o) Notification requirements. The noncustodial parent and the custodial person must notify OCSS in writing within 30 days after:

- (1) health insurance becomes available;
- (2) the cost of existing health insurance changes; or
- (3) other provisions of existing health insurance change.

(p) Modification request. When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order per Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

**340:25-5-171. Enforcement of a medical support order**

(a) When a parent has been ordered to provide health insurance for the child(ren) and has failed to voluntarily enroll the

child(ren), Oklahoma Child Support Services (OCSS), uses the National Medical Support Notice (NMSN) to aid in enrolling the child(ren) in the group health plans for which a parent is eligible. OCSS sends the NMSN to the parent's employer as required by Section 666 of Title 42 of the United States Code, Section 609 of the Employee Retirement Income Security Act of 1974, Section 303.32 of Title 45 of the Code of Federal Regulations, and Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(b) In addition to issuing a NMSN, when a parent is ordered to provide medical support for the minor child(ren) and is not complying with the order, OCSS may either:

- (1) enforce the medical support order by a license revocation action under Section 139.1 of Title 43 of the Oklahoma Statutes, or by an indirect contempt of court action under Section 566.1 of Title 21 of the Oklahoma Statutes; or
- (2) seek a modification of the order under OAC 340:25-5-198.2.

(c) When a child is eligible for enrollment in the United States Department of Defense's managed health care program, TRICARE, (a) of this Section does not apply. OCSS notifies the custodial person to contact the Defense Manpower Data Center Support Office at 1-800-538-9552 to enroll the child, using the Defense Enrollment Eligibility Reporting System registration process.

(d) If the employer response to the NMSN indicates that enrollment cannot be completed because the cost of coverage exceeds the limits of earnings subject to income assignment under Section 1171.2 of Title 12 of the Oklahoma Statutes, OCSS applies OAC 340:25-5-168 to determine if other coverage is available at reasonable cost or if a cash medical order is appropriate. OCSS conducts a review of the order under OAC 340:25-5-198.1 and seeks a modified order if the review indicates that modification would result in an enforceable medical support order or that the child support order should be adjusted.

(e) OCSS issues a non-compliance letter to the employer when the employer:

- (1) has not returned the NMSN within 20 business days after the date of the NMSN notifying OCSS that:
  - (A) the employer does not offer group dependent health coverage;
  - (B) the employee is among a class of employees that is not eligible for family coverage under the employer's plans;
  - (C) the employee is not employed by the employer; or
  - (D) state or federal withholding limitations or prioritization of withholding prevent the required employee contribution to obtain coverage;
- (2) has not forwarded the NMSN to the insurer within 20 business days after the date of the NMSN; or
- (3) is the insurer and has not returned the NMSN within 20 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

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(f) OCSS issues a non-compliance letter to the insurer when the insurer has not returned the NMSN within 40 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(g) OCSS may initiate legal proceedings to request the court fine employers and insurers when there is no response indicating full compliance with the requirements of the NMSN within 10 business days after the date of the non-compliance letter. Fines may be imposed by the court for up to \$200 a month per child for each failure to comply with the requirements of the NMSN under Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(h) If the employer or insurer complies with the requirements of the NMSN, OCSS may dismiss the case against the employer or insurer.

(i) Employers and insurers must send any fine(s) imposed by the court, under Section 235 of Title 56 of the Oklahoma Statutes, by check or money order to OCSS, ~~Attention:~~ Finance, P.O. Box ~~53552248822~~, Oklahoma City, Oklahoma ~~73125-355273124-8822~~.

(j) When a parent has been ordered to provide health insurance for the child(ren) and the other parent or custodial person has failed or refused to provide information necessary to enroll the child(ren) in the health insurance plan, OCSS:

(1) releases the information as appropriate per OAC 340:25-5-67 when family violence is not an issue;

(2) determines noncooperation and begins the case closure process per OAC 340:25-5-114, 340:25-5-118, and 340:25-5-123 when the parent refusing to provide the information is the applicant for services;

(3) obtains the necessary information from the parent by a license revocation action per Section 139.1 of Title 43 of the Oklahoma Statutes, or by an indirect contempt of court action per Section 566.1 of Title 21 of the Oklahoma Statutes; or

(4) seeks a modification of the order per OAC 340:25-5-198.2.-

### PART 21. ESTABLISHMENT

#### **340:25-5-176. Establishment of paternity**

(a) In cases where paternity has not been legally established, Oklahoma Child Support Services (OCSS) establishes paternity and provides genetic testing per:

(1) Sections 653, 654, and 666 of Title 42 of the United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Sections 83, 84, 90.4, and 7700-101 through 7700-902 of Title 10, Sections 601-201, 601-401, and 601-701 of Title 43, Sections 230.60 and 231 through 240.23 of Title 56, and Sections 1-311 and 1-321 of Title 63 of the Oklahoma Statutes.

(b) OCSS only initiates a paternity action when the child has no legal father. A child has a legal father when:

(1) paternity has been voluntarily acknowledged in Oklahoma or another state and not rescinded within 60 days; [10 O.S. §§ 7700-301 through 7700-314]

(2) the child has a presumed father and a party initiates a challenge more than two years after the child's birth; or [10 O.S. §§ 7700-204 and 7700-607]

(3) paternity has been established by a district or administrative court order. [10 O.S. § 7700-636]

(c) OCSS provides Form 03PA209E, Acknowledgment of Paternity, for voluntary acknowledgment of paternity under Section 7700-312 of Title 10 and Sections 1-311 and 1-311.3 of Title 63 of the Oklahoma Statutes. OCSS also provides several companion forms described in paragraphs (1) through (4) of this subsection. The forms include instructions for completion. Signed and witnessed forms must be filed with the Oklahoma State Department of Health (OSDH), Division of Vital Records.

(1) When parents of an adult child, age 18 years or older, complete Form 03PA209E, the adult child must give consent to add the natural father's name to the birth certificate. The child indicates consent by signing Form 03PA212E, Adult Child's (18 Years or Older) Consent.

(2) Form 03PA210E, Denial of Paternity, must accompany Form 03PA209E if the mother of a child is married to someone other than the natural father and the child is born within 300 days after the marriage is terminated under Section 7700-204 of Title 10 of the Oklahoma Statutes.

(3) Under Sections 7700-307 and 7700-312 of Title 10 of the Oklahoma Statutes, OCSS provides Form 03PA211E, Rescission of Acknowledgment of Paternity, for a person to use to cancel the legal finding of paternity created by having previously signed Form 03PA209E. This form must be completed, signed, and filed with the OSDH Division of Vital Records within 60 days after the date of the last signature on Form 03PA209E.

(A) When a person submits Form 03PA211E within 60 days after the date of the last signature on Form 03PA209E, OCSS sends notice of the rescission to all other signatories on Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last-known address of the signatories, if different.

(B) When rescissions are submitted to OCSS past the 60-day time period, OCSS sends a letter to the person who submitted Form 03PA211E informing the person that the rescission is invalid because it was not timely submitted.

(4) Under Sections 7700-307 and 7700-312 of Title 10 of the Oklahoma Statutes, OCSS provides Form 03PA213E, Rescission of Denial of Paternity, for a person to use to cancel the legal finding of paternity created by having previously signed Form 03PA210E. Form 03PA213E must be completed, signed, and filed with the OSDH Division of Vital Records within 60 days after the date of the last signature on Forms 03PA209E and 03PA210E.

- (A) When a person submits Form 03PA213E to OCSS within 60 days after the date of the last signatures on Forms 03PA209E and 03PA210E, OCSS sends notice of the rescission to all other signatories of Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last known addresses of the signatories, if different.
- (B) When a rescission of denial is submitted to OCSS past the 60-day time period, OCSS sends a letter to the person who submitted Form 03PA213E informing the person that the rescission of denial is invalid because it was not timely submitted.
- (d) When OCSS establishes paternity against an alleged father or with a custodial person, either of whom is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.
- (e) When OCSS has the cooperation of a deceased alleged father's relatives, OCSS establishes paternity of the child(ren) through genetic testing of the relatives as necessary according to the standards and provisions of the Uniform Parentage Act, Sections 7700-501 through 7700-511 of Title 10 of the Oklahoma Statutes.
- (f) OCSS establishes paternity against an alleged father who is disabled and receiving monthly Supplemental Security Income before reviewing the case for possible closure per OAC 340:25-5-123.
- (g) When a default paternity order has been entered and either party contacts OCSS in writing within 30 days of entry of the default order, OCSS treats the request as a motion to vacate or modify the default order. After the request is filed with the district court or Office of Administrative Hearings: Child Support, OCSS pursues genetic testing and vacates or amends the default order as necessary based on findings.
- (h) Genetic testing costs incurred in paternity establishment cases are paid as follows:
  - (1) OCSS advances the costs for genetic testing and recovers the genetic test costs from the noncustodial parent or as ordered by the court.
  - (2) When OCSS paternity results are contested, OCSS requests payment in advance of a second genetic test by the requesting party.
  - (3) When a court orders OCSS to provide genetic testing and OCSS does not have a case open for services, OCSS requires a party to complete an application for services prior to advancing the costs of genetic testing.
  - (4) In interstate cases, OCSS follows OAC 340:25-5-270.

**340:25-5-178. Establishment of current child support**

- (a) Oklahoma Child Support Services (OCSS) establishes current child support per:
  - (1) Sections 654, 656, and 666 of Title 42 of the United States Code;
  - (2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

- (3) Section 83 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.
- (b) OCSS uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:
  - (1) establish the amount of current support; and
  - (2) prepare a child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site per Section 120 of Title 43 of the Oklahoma Statutes.
- (c) Per Section 118 of Title 43 of the Oklahoma Statutes, OCSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting orders that are fair and equitable.
- (d) To establish the amount of current support, OCSS considers "actual" child care expenses to be the amount paid to the child care provider by the custodial person except when subsection (e) applies. OCSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the noncustodial parent becomes part of the fixed monthly child support obligation.
- (e) When the custodial person is participating in the OKDHS Child Care Subsidy Program per Section 230.50 of Title 56 of the Oklahoma Statutes, OCSS uses OKDHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule to determine the family share co-payment amount considered as actual child care costs on the child support computation form. [43 O.S. § 118]
  - (1) OCSS considers the noncustodial parent's share of the base monthly obligation for child support and the custodial person's gross monthly income as the custodial person's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, OCSS uses the corresponding family share co-payment amount based on the number of children in OKDHS subsidized child care. OCSS allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. ~~Child support~~ OCSS staff perform a separate child support guidelines calculation for each noncustodial parent.
  - (2) If the custodial person has a child(ren) in OKDHS subsidized child care other than a child(ren) included in the child support case being established, OCSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.
- (f) OCSS establishes child support orders in deprived court actions per Section 1-4-702 of Title ~~40~~10A of the Oklahoma Statutes and prepares the child support order on the standard child support order form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site.
- (g) OCSS establishes child support orders for a child(ren) for whom child support is impossible under applicable law.
- (h) When the noncustodial parent is a minor, OCSS establishes paternity per OAC 340:25-5-176 if necessary and

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establishes a child support order. If a minor noncustodial parent or a custodial person is under 16 years of age, OCSS does not impute gross income for the minor parent in the child support computation and only uses actual income. If a minor noncustodial parent or custodial person is between 16 and 18 years of age and regularly and continuously attending high school, unless it is otherwise inappropriate, OCSS uses the greater of imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week, or actual income.

(i) OCSS enforces child support orders for adults with disabilities under Section 112.1A of Title 43 of the Oklahoma Statutes.

(j) OCSS establishes or modifies child support orders to continue after the child reaches the age of majority per Section 112.1A of Title 43 of the Oklahoma Statutes if the application or referral for Title IV-D services is received during the period when child support is due per Section 112 of Title 43 of the Oklahoma Statutes.

(k) OCSS establishes a child support and medical support order on an incarcerated noncustodial parent and requests the court order that the child support obligation begin the first day of the month following a lapse of 45 days from release from incarceration. OCSS requests the court reserve the amount of child support for the time period prior to the entry of the court order as per OAC 340:25-5-179.1 through the time of incarceration to the date the current child support obligation begins.

(l) When OCSS establishes a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(m) OCSS does not impute gross income to a person who has been determined disabled by the Social Security Administration.

(n) When a default order for child support has been ordered and either party contacts OCSS in writing within 30 days of entry of the default order and provides information to calculate an accurate child support obligation, OCSS treats the request as a motion to vacate or modify and requests the court enter a new order consistent with the evidence presented.

### **340:25-5-179.1. Establishment of support for a prior period**

(a) ~~The~~ Oklahoma Child Support Services (OCSS) establishes support for a prior period.

(1) When paternity is being established by court order or when paternity has been previously established by a signed Form 03PA209E, Acknowledgment of Paternity, OCSS establishes current support and support for a prior period at the same time per Sections 83 and 7700-636 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, OCSS establishes support for a prior period per Sections 118 and 119 of Title 43 and Section 238.1 of Title 56 of the Oklahoma Statutes.

(A) OCSS establishes support for a prior period under this subsection only when:

- (i) current child support is sought; and
- (ii) Temporary Assistance for Needy Families (TANF) or Title IV-E eligible foster care has been expended in any month during the past five years.

(B) OCSS may issue a Notice of Support Debt or file a district court action to establish support for a prior period. OCSS limits this prior period to the number of months on TANF or Title IV-E eligible foster care during the five years immediately before the date OCSS issues the Notice of Support Debt, or files the district court action.

(b) When a child support order is entered against a minor noncustodial parent, OCSS establishes support for a prior period under the criteria for establishing current child support per OAC 340:25-5-178. OCSS establishes a monthly payment plan amount of at least \$1 a month.

(c) OCSS does not establish an order for support for a prior period on an incarcerated noncustodial parent. OCSS requests the court reserve the amount of child support for the time period prior to the entry of the court order through the time of incarceration to the date the current child support obligation begins per OAC 340:25-5-178.

(d) When OCSS establishes an order for support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(e) When the noncustodial parent is a current TANF or Supplemental Security Income (SSI) recipient and OCSS:

- (1) ~~OCSS~~ has information that the noncustodial parent had no obligation based on the child support guidelines for the prior time period, OCSS requests the court set the judgment at \$0; or
- (2) ~~OCSS~~ determines that a debt may be owed for a prior period, OCSS requests the court reserve the issue of support for a prior period until the noncustodial parent is no longer receiving TANF or SSI.

## **PART 22. REVIEW AND MODIFICATION**

## **PART 23. ENFORCEMENT**

### **340:25-5-200. Scope and applicability**

(a) **Enforcement.** The Oklahoma Department of Human Services Oklahoma Child Support Enforcement Division Services (CSE/OCSS) follows Part D of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the United States Code, Section 303.6 of Title 45 of the Code of Federal Regulations, and Section 240.1 of Title 56 of the Oklahoma Statutes in initiating enforcement proceedings.

- (1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.

- (2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment. [43 O.S. § 137]
- (3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.
- (4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the real and personal property of the noncustodial parent.
- (b) **Non-Oklahoma support order.** ~~CSEDOCSS~~ registers a support order from another state, Native American tribe, territory, or foreign country, as defined by subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in Section 1738B(b) of Title 28 of the United States Code and Section 601-101(21) of Title 43 of the Oklahoma Statutes when enforcement of the order is sought.
- (c) **Multiple support orders.** When multiple child support orders have been entered in the same or different tribunals involving the same noncustodial parent and child, ~~CSEDOCSS~~ seeks a determination of controlling order under Sections 601-207, 601-307, and 601-601 through 601-603 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-270.
- (d) **Legal remedies.** ~~CSEDOCSS~~ determines appropriate enforcement actions and may use any legal remedy to enforce support obligations. OCSS chooses remedies that are designed to obtain compliance with an obligor's support obligations and does not use any remedy for the purpose of punishment. Remedies ~~CSEDOCSS~~ may use include but are not limited to:
  - (1) annual notice to noncustodial parents as provided in Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213;
  - (2) income assignment, garnishment, and levy as provided in Chapter 21 of Title 12, Sections 115 and 601-501 through 601-507 of Title 43, Sections 237, 240.2, and 240.23 of Title 56 of the Oklahoma Statutes, and Section 666 of Title 42 of the United States Code;
  - (3) hearing on assets as provided in Section 842 of Title 12 of the Oklahoma Statutes;
  - (4) intercept of federal tax refunds as provided in Section 664 of Title 42 of the United States Code, Sections 285.3 of Title 31 and 303.72 of Title 45 of the Code of Federal Regulations, and OAC 340:25-5, Part 25, and intercept of state tax refunds as provided in Section 303.102 of Title 45 of the Code of Federal Regulations, Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes, and OAC 340:25-5, Part 27;
  - (5) administrative offsets as provided in Section 3716 of Title 31 of the United States Code, Section 285.1 of Title 31 of the Code of Federal Regulations, and Executive Order 13019;
  - (6) denial, revocation, or suspension of United States passports as provided in Section 240.1 of Title 56 of the Oklahoma Statutes and Sections 652 and 654 of Title 42 of the United States Code;
  - (7) revocation, suspension, non-renewal, and non-issuance of various licenses including, but not limited to, revocations of certificates of motor vehicle titles as provided in Sections 139 and 139.1 of Title 43, Sections 1-153, 6-201, 6-201.1, and 6-211 of Title 47, and Sections 237.1 and 240.15 through 240.21A of Title 56 of the Oklahoma Statutes;
  - (8) imposing liens and executing and levying on personal and real property, including, but not limited to, workers' compensation benefits, personal injury, wrongful death, and probate actions as provided in Section 135 of Title 43, Section 240.23 of Title 56, and Titles 12 and 58 of the Oklahoma Statutes;
  - (9) registration of foreign support orders under the Uniform Interstate Family Support Act as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;
  - (10) credit bureau referrals as provided in Sections 666 of Title 42 and 1681b of Title 15 of the United States Code, Section 240.7 of Title 56 of the Oklahoma Statutes, and OAC 340:25-5, Part 31;
  - (11) financial institution data match as provided in Sections 666 and 669A of Title 42 of the United States Code, Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes, and OAC 340:25-5-212;
  - (12) seek work orders as provided in Section 240.10 of Title 56 of the Oklahoma Statutes;
  - (13) indirect civil contempt of court as provided in Sections 566 and 567 of Title 21, Section 137 of Title 43, and Section 234 of Title 56 of the Oklahoma Statutes; OCSS does not use contempt as a penal sanction and does not recommend incarceration to the district court at sentencing in an indirect civil contempt proceeding unless there is evidence or information available that the obligor can purge the contempt. OCSS asks the court to set a reasonable purge fee pursuant to the terms of Rule 8.3 of the Rules of the District Courts;
  - (14) action to void the transfer or obtain favorable settlement in cases in which a debtor transferred income or property to avoid payment to a child support creditor under the Uniform Fraudulent Transfer Act, Sections 112 through 123 of Title 24 of the Oklahoma Statutes and Section 666 of Title 42 of the United States Code;
  - (15) registration of foreign judgments under the Uniform Enforcement of Foreign Judgments Act, Sections 719 through 726 of Title 12 of the Oklahoma Statutes;
  - (16) criminal actions brought under Section 852 of Title 21 of the Oklahoma Statutes;
  - (17) civil actions brought under Section 660 of Title 42 of the United States Code;
  - (18) transfer of child support obligation to another custodian under Section 237 of Title 56 of the Oklahoma Statutes;
  - (19) referral to the United States Attorney for federal prosecution under Section 228 of Title 18 of the United States Code;
  - (20) full collection services by the Secretary of the Treasury under Section 6305 of the Internal Revenue Code of 1954; and
  - (21) attachment of lottery prize winnings from the Oklahoma Lottery Commission under Section 724.1 of Title 3A of the Oklahoma Statutes.

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(e) **Servicemember.** When ~~CSEDO~~OCSS initiates proceedings to enforce a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, ~~CSEDO~~OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

### 340:25-5-200.1. Administrative review process

(a) When the opportunity for administrative review is specifically provided by statute, federal regulation, or administrative rule, and a procedure for administrative review is not otherwise prescribed, ~~the Oklahoma Child Support Enforcement Division Services~~ (CSEDO)OCSS uses the procedure described in this Section.

(b) ~~CSEDO~~OCSS notifies parties of the opportunity to request an administrative review of the action by regular mail. Notices include the date of mailing, a description of the grounds for requesting administrative review, and instructions for the time and manner to request the review in writing.

(c) Upon timely receipt of a written request for an administrative review, the ~~CSEDO~~OCSS office conducts a review within 30 days or within a shorter period if otherwise required. Reviews are usually desk reviews rather than meetings completed by OCSS staff using available information from the parties and electronic resources. If a meeting or telephone conference is necessary, ~~CSEDO~~OCSS notifies the parties.

(d) The review is conducted by ~~an OCSS representative of CSED.~~ The representative may contact any of the parties if additional information or clarification is required.

(e) After completion of the review, the ~~CSEDO~~OCSS office issues a notice of administrative review decision regarding the disputed action. ~~CSEDO~~OCSS mails the notice of the administrative review decision to the parties by regular mail.

(f) ~~The administrative review decision becomes the final agency decision and may be appealed to district court within 30 days of the date of the administrative review decision. When the parties disagree with the notice of administrative review decision, the parties have 15 days from the date of mailing the review decision to request a hearing.~~

### 340:25-5-201.1. Termination or amendment of income withholding

Oklahoma Child Support Services (OCSS) amends or terminates the Order/Notice to Withhold Income for Child Support, as appropriate, to stop:

- (1) withholding only current support when a noncustodial parent obtains physical custody of all children who are the subject of the support order, or when the parties to the case reunite. OCSS does not amend the Order/Notice to Withhold Income for Child Support if there is any indication of parental kidnapping or involuntary relinquishment;
- (2) all withholding when the custodial parent applicant for services requests closure of a non-public assistance case; or
- (3) all withholding when the case is updated as medical enforcement only.

## PART 33. INTERSTATE AND INTERNATIONAL CASES

### 340:25-5-270. Interstate cases

(a) **Legal base.** When referring and processing interstate Title IV-D cases, Oklahoma Child Support Services (OCSS) is governed by:

- (1) the Uniform Interstate Family Support Act as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;
- (2) Section 240.9 of Title 56 of the Oklahoma Statutes;
- (3) Sections 1738B of Title 28 and ~~549A~~, 654, 659A, and 666 of Title 42 of the United States Code; and
- (4) Sections 302.36 and 303.7 of Title 45 of the Code of Federal Regulations.

(b) **Interstate central registry.** OCSS operates an interstate central registry per Section 303.7 of Title 45 of the Code of Federal Regulations.

(c) **Forms.** OCSS uses forms issued by the Secretary of the United States Department of Health and Human Services per Section 652 of Title 42 of the United States Code as applicable for processing interstate cases.

(d) **Communication.** When:

- (1) Oklahoma is the initiating state, OCSS obtains information and communicates with the custodial person.
- (2) Oklahoma is the responding state, OCSS communicates to the initiating state with which OCSS has established a case.
- (3) OCSS receives written communication from a party or a party's attorney, OCSS sends copies to the appropriate agency or person within two business days of receipt, as required by Section 601-307 of Title 43 of the Oklahoma Statutes.

(e) **Family violence and nondisclosure.** When Oklahoma is the initiating state and a party claims family violence, OCSS does not release the physical address of the party without a court order. OCSS:

- (1) enters the address of record, if designated, or the district office's address instead of the physical address of the party requesting nondisclosure on the Child Support Enforcement Transmittal # 1, Initial Request, and on the General Testimony, if applicable;
- (2) does not file the interstate transmittal forms with the tribunal;
- (3) does not release a copy of the interstate transmittal form to the other party per OAC 340:25-5-67; and
- (4) seeks an order from the appropriate tribunal regarding release of the information when the responding state or a party requests release of specific identifying information per Section 601-312 of Title 43 of the Oklahoma Statutes.

(f) **Services provided.** Except as provided in paragraphs (1) through (4) of this subsection, OCSS processes interstate cases in the same manner as intrastate cases. OCSS processes intrastate cases per OAC 340:25-1-1.2.

- (1) **Evidence.** If one of the parties is a nonresident of the forum state, OCSS arranges for telephonic testimony at the request of the nonresident party or a Title IV-D

agency and requests the court to admit evidence per Section 601-316 of Title 43 of the Oklahoma Statutes.

(2) **One-state processing.** In the absence of an order to establish paternity or support, OCSS uses a one-state process to establish an order if personal and subject matter jurisdiction may be exercised over a nonresident party per Section 303.7 of Title 45 of the Code of Federal Regulations and Section 601-201 of Title 43 of the Oklahoma Statutes.

(3) **Determination of controlling order.** When there are multiple orders for current support for the same child, OCSS seeks a determination of controlling order (DCO) or a new order from the appropriate tribunal per Sections 601-207 and 601-602 through 601-615 of Title 43 of the Oklahoma Statutes.

(A) When making the arrears calculation for the DCO proceeding, OCSS applies the law of the respective issuing states in determining the arrears under each order.

(B) Once the court issues a DCO, OCSS applies the law of the controlling order state to the consolidated arrears, even ~~if~~ when the support orders of other states contributed a portion to those arrears.

(4) **Redirection of payments.** In accordance with Sections 601-307 and 601-319 of Title 43 of the Oklahoma Statutes:

(A) OCSS issues a notice to redirect payments to the Title IV-D agency in the state in which the custodial person resides and issues an Order/Notice to Withhold Income for Child Support to implement the order when:

- (i) Oklahoma is the state that issued the child support or income assignment order;
- (ii) neither the noncustodial parent, custodial person, or any child lives in Oklahoma; and
- (iii) OCSS or another Title IV-D agency makes the request.

(B) OCSS issues a notice to redirect payments to the Title IV-D agency in the state of residence of the custodial person when:

- (i) a child support or income assignment order has been issued;
- (ii) neither the noncustodial parent, custodial person, or any child lives in the issuing state; and
- (iii) Oklahoma provides child support services.

(C) OCSS furnishes a certified record of payments to a requesting party or tribunal when OCSS receives redirected payments per Section 601-319 of Title 43 of the Oklahoma Statutes.

(g) **Determination of arrears.** When Oklahoma has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, OCSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce.

(h) **Choice of law.** The applicable law for determination of duration of support and other choice of law issues is controlled by subsection (h) of the Full Faith and Credit for Child Support

Orders Act, codified in Section 1738B(h) of Title 28 of the United States Code and Sections 601-604 and 601-611 of Title 43 of the Oklahoma Statutes. The law of the initial controlling order state governs the duration of support even after the order is modified by another state.

(i) **Definition.** For purposes of this Section, forum state means the state in which the hearing is held or the responding court proceeding is filed to establish or enforce a support order.

(j) When genetic testing is required in interstate cases, the responding state is responsible for paying the cost of testing per Section 303.7 of Title 45 of the Code of Federal Regulations and OAC 340:25-5-176.

### PART 38. TITLE IV-D AND NON-IV-D CENTRAL CASE REGISTRY INFORMATION

#### **340:25-5-339. Central Case Registry**

(a) The Oklahoma Department of Human Services, Oklahoma Child Support Enforcement—Division Services (~~CSEDO~~OCSS) maintains a Central Case Registry (CCR) under Section 112A of Title 43 of the Oklahoma Statutes. The mailing address of the CCR is: Oklahoma Child Support Enforcement—Division Services, Central Case Registry, P.O. Box ~~528805~~248843, Oklahoma City, Oklahoma ~~73152-8805~~73124-8843.

(b) In a non-IV-D child support case, under Section 120 of Title 43 of the Oklahoma Statutes, the attorney of record, ~~or~~ the noncustodial parent, or custodial person who is not represented by an attorney, must prepare a Summary of Support Order, present it to the judge with the support order, and mail it to the Central Case Registry.

(c) CCR staff record the support order amount and other information on the statewide automated data processing and information retrieval system so that Oklahoma's Centralized Support Registry can issue support payments to the correct custodial person.

(1) Under Section 413 of Title 43 of the Oklahoma Statutes, non-IV-D payments are properly identified and distributed to the custodial person via Oklahoma's Centralized Support Registry.

(2) Non-IV-D payments are distributed as ~~described~~ in per OAC 340:25-5-350.3.

(d) ~~CSEDO~~OCSS refers non-IV-D support payment inquiries from noncustodial parents, attorneys, employers, and payors to the Customer Assistance Response Effort at the telephone numbers as provided in OAC 340:25-1-2.

#### **340:25-5-340. Collection and maintenance of addresses of record**

(a) **Scope and Authority.** Section 112A of Title 43 of the Oklahoma Statutes provides the basis for Oklahoma Child Support Services (OCSS) to collect and maintain addresses of record for:

- (1) parties and custodial persons subject to paternity orders or child support orders entered in Oklahoma;
- (2) noncustodial parents under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213;

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- (3) parties and custodial persons subject to paternity orders or child support orders entered in other jurisdictions; and
- (4) parties and custodial persons when they voluntarily submit them.
- (b) **Establishment of address of record.** Custodial persons and noncustodial parents establish the initial address of record through:
  - (1) completion of Form 03EN008E, Family Violence - Address of Record Statement;
  - (2) a court order; or
  - (3) a support order summary form when services are ~~being~~ provided under the OKDHS state Title IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes.
- (c) **Updating an address of record.**
  - (1) A person who is responsible for maintaining an address of record on file with OCSS under Section 112A of Title 43 or Section 237A of Title 56 of the Oklahoma Statutes must notify OCSS of any change in the address within 30 calendar days. The person may send changes to OCSS, Central Case Registry, P.O. Box ~~528805248843~~, Oklahoma City, OK ~~73152-880573124-8843~~ or to a district child support office. OCSS may require proof of a person's identity before establishing or changing a person's name or address of record and may attempt to verify or confirm the correctness of addresses of record.
  - (2) A custodial person updates an address of record:
    - (A) by completing and signing a change of records letter;
    - (B) by telephoning OCSS customer service at 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922 and entering an OKDHS customer identification number and personal identification number. This provides restricted access to the custodial person's case information for OCSS to update the address of record by telephone; or
    - (C) through a court order.
  - (3) A custodial person who is represented by an attorney may designate the attorney's address as the address of record pursuant to Sections 112A and 413(F) of Title 43 of the Oklahoma Statutes. The designation must include the signature of the custodial person and the attorney. When a custodial person has designated an attorney's address as the address of record, the address of record can only be updated with the written permission of the custodial person and the attorney. In accepting designation as the custodial person's address of record, the attorney becomes responsible for receiving the custodial person's legal documents and other official papers by regular mail; and may receive the custodial person's payments.
  - (4) OCSS does not change a custodial person's address of record to that of a collection agency to send support payments to the collection agency's address. OCSS denies any such request, unless there has been an assignment of child support to an attorney pursuant to Section 118.4 of Title 43 of the Oklahoma Statutes.

- (5) A noncustodial parent updates an address of record:
  - (A) by completing a change of records letter; or
  - (B) through a court order.

## PART 39. ACCOUNTING AND DISTRIBUTION

### 340:25-5-345.2. Definitions

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

**"Case type"** means a payee, including, but not limited to:

- (A) custodial person;
- (B) support owed to another state; or
- (C) reimbursement for:
  - (i) Temporary Assistance for Needy Families program;
  - (ii) Foster Care program; or
  - (iii) Office of Juvenile Affairs program.

**"Cashier's check"** means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank. [12A O.S. §3-104]

**"Certified check"** means a check accepted by the bank on which it is drawn. [12A O.S. §3-409]

**"Check"** means a draft payable on demand and drawn on a bank. A negotiable instrument may be a check even though it is described on its face by another term such as "money order." [12A O.S. §3-104]

**"Disbursement"** means when funds have been issued to the custodial person, another entity, or refunded to a noncustodial parent.

**"Distributed payments"** means funds have been logged to the case and the resulting issuance, if any, has occurred.

**"Forgery"** means a fraudulently endorsed and subsequently cashed warrant.

**"Negotiable instrument"** means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it meets the criteria outlined in Section 3-104 of Title 12A of the Oklahoma Statutes.

**"Payee"** means the person or entity to whom the check is written.

**"Pended payments"** means funds which are distributed to case balances but the payee has not yet received the money. Pended payments include, but are not limited to, cancelled by statute and stop pay issuances.

(A) **"Cancelled by statute"** means a warrant was issued but was not cashed by the payee within 90 days.

(B) **"Stop pay"** means an Oklahoma Child Support Services (OCSS) warrant was issued but the payee has requested the check not be approved for payment. The payee must complete Form 10AD044E, Affidavit of Lost or Destroyed Warrant, in order to initiate the stop payment process. Upon receipt of Form 10AD044E, OCSS notifies the Oklahoma State Treasurer and issues a replacement warrant.

"Unauthorized signature" means a signature made without actual, implied or apparent authority. The term includes a forgery. [12A O.S. §1-201]

"Undistributed payments" means funds received but not yet distributed to a case balance.

"Warrant" means an unconditional written order by which one person or entity authorizes another person or entity to pay a sum certain of money to a third person or entity. A warrant is also known as a check or bank draft.

**340:25-5-350.1. Return of overcollected support amounts**

(a) When Oklahoma Child Support Services (OCSS) receives:

(1) a support payment in excess of the noncustodial parent's ~~obligation~~ total arrear balance, OCSS returns the excess amount to the payor within 45 days after discovering the overcollection. ~~If the payor's address is unknown, or the payment is returned due to the inability to distribute it, the support payment is returned to the noncustodial parent.~~

(2) a support payment and the custodial person's address is unknown, OCSS applies support collections to any unreimbursed public assistance debt associated with the noncustodial parent.

(3) ~~an erroneous excess~~ a payment made due to an error on the part of the payor that has not been disbursed, OCSS returns it to the payor within 45 days after discovering the overcollection. ~~If the payor's address is unknown, or the payment is returned due to the inability to distribute it, the support payment is returned to the noncustodial parent.~~ OCSS is not required to correct, redirect, or recover the payment unless it has been retained by the Oklahoma Department of Human Services (OKDHS).

(4) a payment that cannot be disbursed to a custodial person, or returned to the payor or noncustodial parent, and there is no debt to the State of Oklahoma, OCSS remits the payment to the ~~Oklahoma Department of Human Services (OKDHS)~~ General Revenue Fund Treasury.

(b) When a noncustodial person makes an overpayment, the minimum amount for a refund payment is \$3. Amounts less than \$3 are not refunded, but are remitted to the OKDHS General Revenue Fund Treasury.

**340:25-5-350.3. Payment of support through Centralized Support Registry**

(a) **Centralized Support Registry.** Oklahoma Child Support Services (OCSS) operates a Centralized Support Registry (Registry), also known as the State Disbursement Unit, for the receipt, recording, allocation, distribution, and disbursement of support payments. OCSS operates the Registry under Sections 410 and 413 of Title 43 of the Oklahoma Statutes, Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations, and Sections 654b and 657 of Title 42 of the United States Code.

(1) This Section applies to both Title IV-D and non-IV-D cases, unless the context clearly indicates otherwise.

(2) When a non-IV-D child support case has an income assignment in place, the Registry processes child support payments received from unemployment compensation benefits as income assignments per federal and state law.

(b) **Support payments.**

(1) Support payments must be paid as instructed in writing by OCSS to the Registry.

(2) OCSS offices may accept support payments when:  
 (A) a noncustodial parent offers a payment in connection with a court action; or  
 (B) a payment is made as part of a settlement agreement on a lien or levy on real or personal property.

(c) **Method of payment.** OCSS may require payors and persons to provide information needed to identify and properly allocate and distribute payments and to submit payments to the Registry ~~in accordance with~~ per Section 413 of Title 43 of the Oklahoma Statutes.

(1) Support payment amounts are converted from a foreign country's order amount to a United States (U.S.) dollar amount at the time the order is registered and that exchange rate remains in place until the child support order is modified or the arrears are confirmed.

(2) OCSS:

(A) allocates and distributes support payments under OAC 340:25-5-351;

(B) modifies or enforces international orders under OAC 340:25-5-285;

(C) safeguards case information and records received from payors and persons. Information and records concerning Title IV-D and non-IV-D recipients of services through the Registry are confidential under Section 183 of Title 56 of the Oklahoma Statutes except as provided in OAC 340:25-5-67;

(D) sends custodial persons a quarterly written notice of the amount of current support, arrears, and interest collected, and the amount of collections paid to the custodian. Custodial persons may also obtain this information over the Internet or by telephoning OCSS as described in OAC 340:25-1-2.1;

(E) reserves the right to refuse to accept a personal or business check or direct debit after receiving a dishonored personal or business check, direct debit, electronic funds transfer (EFT), or other negotiable instrument from the same payor or on the same case; and

(F) considers the date of collection the date that payments are received by the Registry.

(3) When OCSS refuses to accept a personal or business check, direct debit, EFT, or other negotiable instrument from a payor under (2)(E) of this subsection, the payor:

(A) must submit the payment by cashier's check, certified check, money order, or online using a debit or credit card;

(B) is added to the OCSS Returned Payments List;

(C) remains on the Returned Payments List until OCSS receives the equivalent of 12 months of payments unless:

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- (i) the payment is returned due to missing endorsement;
  - (ii) payor provides prior notification that payment will be returned and remits a replacement payment within ten days of notification in the manner required by OCSS;
  - (iii) returned payment is insufficient funds caused by an OCSS Financial Institution Data Match levy; or
  - (iv) the reason for returned payment is deemed by OCSS to be out of payor's control;
- (D) must request removal from the Returned Payments List by contacting OCSS as described in OAC 340:25-1-2.1.
- (4) OCSS notifies the payor by mail:
- (A) of the reason for the returned payment;
  - (B) that the payor has been placed on the Returned Payments List;
  - (C) that the payor must submit payments as outlined in (3)(A) of this subsection; and
  - (D) how the payor can be removed from the Returned Payments List.
- (5) When OCSS removes the payor from the Returned Payments List and subsequently has another payment returned, payor is added back to the Returned Payments List and remains there indefinitely.
- (d) **EFT support payments.** Noncustodial parents, employers, and other payors may register to make electronic payments through the OCSS' online child support payment system (WebPay) at <https://www.okdhs-paycs.com/Login.aspx>.
- (1) To transfer child support payments electronically, noncustodial parents, employers, and other payors must:
- (A) call OCSS at the telephone numbers provided in OAC 340:25-1-2.1 to set up the EFT process;
  - (B) have a valid ~~e-mail~~ email account;
  - (C) have access to the Internet;
  - (D) be a legal owner of:
    - (i) a bank account held at a financial institution within the U.S.; or
    - (ii) a VISA or MasterCard credit or debit card held at a financial institution within the U.S.; and
  - (E) register to use WebPay.
- (2) WebPay payments do not replace federally mandated income withholding and will not stop or cancel income withholding orders for noncustodial parents.
- (3) OCSS may adjust and release payroll deductions that have been electronically transferred from a noncustodial parent's wages. When an adjustment cannot be processed in time to effect the change on the next scheduled electronic funds transfer, employers do not refund money to the employee, make adjustments to subsequent EFT payments, or take any other action to correct the amount deducted.
- (4) OCSS reserves the right to:
- (A) ~~limit use of WebPay by imposing limits, hold times, or other measures if OCSS believes that suspicious activity has occurred or may occur on a payor's account;~~
- ~~(B)~~ close a WebPay account and impose fees and charges if a scheduled payment transaction is returned for any reason;
- ~~(C)~~ add payor to Returned Payments List under (c)(3) of this Section; and
- ~~(D)~~ specify what payment formats are used to conduct the electronic transfer of funds between businesses to state child support entities.
- (i) Formats for electronically transferring funds and their identifying information have been developed by the Bankers Electronic Data Interchange (EDI) Council of the National Automated Clearing House Association (NACHA). These formats specify how employers and payroll companies electronically send the information and the capabilities that states must have to receive the information.
  - (ii) Cash Concentration and Disbursement (CCD) and Corporate Trade Exchange (CTX) payment formats are used within the NACHA network to transfer funds between businesses to state child support entities.
  - (iii) Addenda Records are used to transmit personally identifying information about noncustodial parents such as Social Security numbers along with their payments. Addenda Records identify the employer sending the payment and the payor to receive credit for the payment. A CCD entry accompanied by an Addenda Record is referred to as a CCD+.
  - (iv) OCSS accepts CCD+ and CTX formats from employers sending child support payments.
  - (v) OCSS does not accept Prearranged Payment and Deposit (PPD) formats because PPD formats lack the EDI Addendum Record.
- (e) **Payment issuance.** Under Section 654 of Title 42 of the United States Code and Section 302.38 of Title 45 of the Code of Federal Regulations, OCSS issues payments to the custodial person only by transferring funds electronically, also known as direct deposit, or through debit cards. In interstate cases, OCSS issues payments to the initiating state Title IV-D agency by electronic funds transfer and only issues payments by paper warrant to initiating states that do not have an electronic funds transfer system.
- (1) Payments issued by debit card.
- (A) When an Oklahoma Department of Human Services (OKDHS) customer already has a debit card, at the point of OCSS initial child support payment issuance for a custodial person, a letter is mailed explaining that child support funds are added to the existing debit card account.
  - (B) When an OKDHS customer has not been issued an Oklahoma debit card, at the point of OCSS initial child support payment issuance, a letter is mailed explaining the debit card activation process and that the debit card should be expected within ten business days. The custodial person must activate the debit card within 90 days of issuance.

(i) When a card is not activated, OCSS mails a second letter to the custodial person after 45 days and a third letter after 90 days. The letters explain the importance of activating the debit card and that when the card is not activated within 90 days, the payment is no longer available on the debit card.

(ii) Payments issued to a custodial person who has not activated the debit card are returned to OCSS after 90 days. When payments are returned to OCSS, payments are applied under OAC 340:25-5-350.4. When the payments have been distributed to other case balances or returned to the noncustodial parent, the payments are not redistributed to the custodial person.

(2) Payments issued by direct deposit. After receiving a debit card, the custodial person may enroll in direct deposit by calling the toll-free customer service telephone number located on the back of the debit card. There are no charges or fees for receiving child support payments by direct deposit. A custodial person must have a bank account held at a financial institution within the United States to receive direct deposit child support payments and normal banking charges may apply.

(f) **Forged endorsement on warrants.**

(1) When a custodial person reports that a warrant has been fraudulently cashed,—OCSS compares the payee's signature against the endorsement on the warrant and verifies that the signatures do not match.

(2) OCSS sends the following documentation that has been completed and signed by the payee to the OST:

- (A) Form 10AD044E, Affidavit of Lost or Destroyed Warrant;
- (B) Form 10AD045E, Affidavit of Forged Endorsement; and
- (C) Form 10AD046E, Investigation Questionnaire.

(3) OCSS issues a replacement warrant to the payee after OCSS receives the return of funds from the Oklahoma State Treasurer's Office (OST) and the mandatory 60-day holding period imposed by the OST has lapsed.

(g) **Overcollected support amounts.** OCSS returns overcollected support amounts as described in OAC 340:25-5-350.1.

(h) **DistributionPayment errors.** When payments have been disbursed, OCSS manages distribution payment errors as described in this subsection.

(1) ~~OCSS is not responsible for overpayment, underpayment, nonpayment, misdirection of payment, or other distribution error caused by either incorrect payments or information submitted to OCSS, or OCSS receiving no information or payment. OCSS does not attempt to recover, redirect, forward, repay, or otherwise correct this type of error. If a payor makes a payment error, OCSS is not required to correct, redirect, or recover the distributed payment, unless it has been retained by OKDHS.~~

(2) When OCSS errs, OCSS recovers overpayments to parties or custodial persons in Title IV-D and non-Title IV-D cases as described in per OAC 340:25-5, Part 37.

~~(3) OCSS sends refunds to noncustodial parents by mailing a paper warrant.~~

(i) Suspicious payment activity. OCSS restricts use of payment methods by imposing limits, hold times, or other measures if OCSS believes that suspicious activity has occurred or may occur on a payor's account.

[OAR Docket #12-490; filed 5-1-12]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

[OAR Docket #12-504]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 7. Eligibility  
340:40-7-8 [AMENDED]  
340:40-7-11 [AMENDED]  
(Reference WF 11-14)

**AUTHORITY:**  
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Sections 98.16 and 98.20 of Title 45 of the Code of Federal Regulations (CFR).

**DATES:**  
**Comment period:**  
January 17, 2012 through February 16, 2012

**Public hearing:**  
None requested

**Adoption:**  
February 28, 2012

**Submitted to Governor:**  
February 29, 2012

**Submitted to House:**  
February 29, 2012

**Submitted to Senate:**  
February 28, 2012

**Gubernatorial approval:**  
April 16, 2012

**Legislative approval:**  
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

**Final adoption:**  
April 26, 2012

**Effective:**  
July 1, 2012

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**ANALYSIS:**  
The proposed revisions to Subchapter 7 of Chapter 40 amend the rules to: (1) clarify how minimum wage is determined and actions taken when the client earns less than minimum wage; (2) clarify allowances included in military pay are counted as earned income; (3) define who is considered self-employed; (4) add clarifying language regarding self-employment income calculations; (5) add clarifying language regarding examples of on-the-job training (OJT); and (6) other clarifying language.

**CONTACT PERSON:**  
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

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## SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

### SUBCHAPTER 7. ELIGIBILITY

#### 340:40-7-8. Defining the need factor for child care benefits

(a) **Employment.** Employment means the parent or the caretaker earns wages for work performed.

(1) The client must provide proof of his or her work hours. ~~If~~When the client has the flexibility to set his or her own work hours, the client and worker jointly determine if they can reduce the number of hours the child needs care by rearranging the client's work schedule. This is especially important in two-parent or two-caretaker families.

(2) The worker limits approval of child care to the number of days and hours the client is working plus reasonable travel time. In two-parent or two-caretaker working families, the worker limits approval to the days and hours they are both working at the same time plus reasonable travel time. When the child attends school or Head Start during part of the work hours, the worker reduces the number of hours he or she approves child care accordingly.

(3) ~~When the caretaker who is legally and financially responsible for the child or~~Unless the client is an adoptive parent who meets criteria per OAC 340:40-7-12(6) or a caretaker not legally and financially responsible for the child per OAC 340:40-7-6(a)(6), the parent is not makingclient must make at least minimum wage for the number of hours he or she is working, the worker may limit the number of days and hours of care initially approved with one exception referred to as the minimum wage rule, in order to meet the employment need factor, with the exception of circumstances in (D) of this paragraph. The exception to a parent not meeting the minimum wage rule is when care is approved for an adopted child who meets criteria at OAC 340:40-7-12(6). When the minimum wage rule applies, the worker counsels with the person regarding increasing his or her income. If counseling is unsuccessful, the worker decides whether to further reduce or terminate the subsidized child care benefits.

(A) Minimum wage is determined by the federal government.

(B) To determine whether the client makes minimum wage when the client:

(i) works for an employer, is not considered self-employed, and the pay information does not show the client's hourly rate of pay, the worker divides the number of hours the client works from the gross pay for the pay periods used to calculate income; or

(ii) is considered self-employed per OAC 340:40-7-11(b)(2), the worker divides the number of hours the client works by the net pay after applicable business expenses, when declared, for the pay periods used to calculate income. When the client and spouse are self-employed in the

same business, the worker adds their work hours together and then divides the work hours from the net pay for the pay periods used to calculate income.

(C) When the client works for an employer, whether considered self-employed or not per OAC 340:40-7-11(b)(2), is paid a set wage less than minimum wage, and the employer refuses to begin paying at least minimum wage, the worker denies or closes child care benefits.

(D) When the client works for himself or herself or works for an employer who pays wages based on commission or other performance measures rather than a set wage, is not making at least minimum wage, and the client has been performing this work:

(i) less than one year, the worker counsels with the client to develop a plan for increasing his or her income within three to six months. When the client does not cooperate in developing a plan or does not agree to implement the plan that was developed, the worker closes or denies the child care benefit.

(I) When the client's income increases to at least minimum wage during this time frame, no further monitoring is needed until the next review.

(II) When after three to six months the client's income increases, but is still less than minimum wage, the worker may approve an additional three to six months of care, if after evaluating the client's circumstances, such as how well the client followed the plan, the rate at which income has increased, and whether modifications can be made to increase income, it is reasonable to presume the client will make at least minimum wage during this time frame.

(III) When it is not reasonable to presume the client's income will increase to at least minimum wage within three to six months, the worker closes the child care benefit; or

(ii) at least one year without any substantial change, the worker denies or closes the child care subsidy benefit.

(4) A person employed and working from his or her own home may be approved for subsidized child care benefits in an out-of-home child care home or center.

(5) Subsidized child care benefits can be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used at no cost to the Oklahoma Department of Human Services (OKDHS) during the night working hours. Night working hours are defined as the hours between 11:00 p.m. and 7:00 a.m.

(A) The maximum amount of time the worker approves child care allows the client eight hours of sleep plus travel time to and from the child care provider.

(B) In two-parent or two-caretaker families care may only be approved for this reason when both parents have night time jobs or when one parent has a

night time job and the other parent or caretaker works during the day while the other parent is sleeping.

(6) Job search meets the definition of employment and child care may be approved for a single or two parent or caretaker household only when a recipient client who has received subsidized child care benefits for at least 30 calendar days loses employment or successfully completes a formal education or training program and requests child care to look for a job.

(A) Child care may be approved for a maximum of 30 calendar days from the date the client loses employment or successfully completes a formal education or training program as long as the child continues to attend the same child care facility.

(i) Job search may be approved no more than twice per calendar year.

(ii) The client must have been employed or going to school for at least 90 calendar days between approval periods.

(B) When the recipient client reports a new job within the job search period and provides all required verification to prove continued eligibility, a new application is not needed. When the recipient client does not report a new job or required verification within the job search period, he or she must complete a new application before being approved for further child care.

(b) **Training.** A training program is defined as a course of study that when completed qualifies a person to meet requirements for a job that the client could not have obtained without the certificate of completion, accreditation, or licensure. Child care can be approved for one parent or caretaker to attend a training program. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. Care is only approved for an on-line Internet based course or televised course if-when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If-When the program is self-paced and can be completed whenever the client chooses is able to choose his or her own school hours, care is not approved.

(4) The client must provide proof of progress when requested. If-When the client is not making satisfactory progress, further child care for this reason is not approved.

(5) Once the client completes a training program, further child care is not approved for training or education. The client is expected to look for jobs that require his or her training credentials. The client may be eligible for

subsidized child care benefits to job search if-when he or she meets requirements at (a)(6) of this Section.

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must have been employed in a job requiring the training credentials he or she has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional verifying the reason. The professional must also state that the client is capable of performing the job tasks of the training program where the client wants to enroll;

(B) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a Workforce Investment Act (WIA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training will increase the person's earning potential. The client must provide proof the starting salary for a person with the training credentials the client wants to obtain is higher than he or she is currently earning.

(c) **Education program.** An education program may include:

(1) **High school.** Child care may be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval the client must provide proof that he or she is enrolled, the days and hours the client is attending, and when he or she is expected to graduate.

(2) **General Educational Development (GED), literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one parent or caretaker to attend GED, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care approval. If-When the class has open enrollment and no established end date, the client must provide proof of progress and how it is measured.

(B) Within the first month of classes, the client must provide proof of initial testing showing the client's education and/or literacy level.

(C) The worker reviews the client's progress when the class is expected to end prior to approval for further child care for this reason. If-When the class is open-ended, the worker reviews progress no later than

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12 months from the date care was approved for this reason. At review, the client must provide a statement from the school that includes:

- (i) whether the client is attending regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time it will take to complete the program; and
- (iv) what days and hours the client is currently attending classes.

(D) ~~If/When~~ the client has not been attending regularly or making satisfactory progress, further child care for this reason is not approved.

**(3) English as a Second Language (ESL) classes.**

The program must require classroom attendance with an instructor present. Child care may be approved for a single parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. ~~If/When~~ the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. ~~If/When~~ the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. The client must provide a statement from the school that includes:

- (i) whether the client is attending regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time it will take to complete the program; and
- (iv) what days and hours the client is currently attending.

(C) ~~If/When~~ the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

**(4) Formal education program.** A formal education program is defined as a course of study that leads to the attainment of an associate or bachelor's degree. Child care can be approved for one parent or caretaker to attend a formal education program and to participate in activities required to maintain a scholarship. Only required scholarship activities for scholarships disbursed through the school's financial aid office qualify for child care. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client is attending school or participating in activities required to maintain a scholarship, and when he or she is expected to complete the degree.

(C) The degree program must require classroom attendance on the school campus with an instructor present. Care is only approved for an on-line Internet based course or a televised course ~~if/when~~ it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. ~~If/When~~ the program is self-paced and can be completed whenever the client chooses, care is not approved.

(D) The client must provide proof of progress when requested. ~~If/When~~ the client is not making satisfactory progress, further care for this reason is not approved.

(E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree. The client may be eligible for subsidized child care benefits to job search ~~if/when~~ he or she meets requirements at (a)(6) of this Section.

(F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:

- (i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the degree program in which the client wants to enroll;
- (ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a WIA contracted entity, OESC, or DRS; or
- (iii) the client can establish receipt of the second degree may increase the person's earning potential. The client must provide proof ~~that~~ the starting salary for a person with the degree the client wants to obtain is higher than he or she is currently earning.

**(d) Temporary Assistance for Needy Families (TANF) Work activity.** When a client receives a TANF benefit, subsidized child care benefits may be provided for any activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, per OAC 340:10-2-1.

- (1) Need for child care is also met when the person is waiting to enter an approved TANF Work activity. Approval is limited to a time period not to exceed:
  - (A) two weeks; or
  - (B) one month on an exception basis where child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period.
- (2) TANF applicants referred for immediate employment may be approved for subsidized child care benefits to job search. TANF applicants are advised:
  - (A) child care to job search is limited to 20 days that must be used within 30 calendar days from the date of request;
  - (B) in-home child care arrangements are not available for TANF applicants;
  - (C) child care may only be used during the times the applicant is actually looking for a job; and
  - (D) he or she must notify the worker immediately upon securing employment.
- (e) **Protective or preventive child care.** Subsidized protective or preventive child care benefits may be used as an early intervention strategy in certain critical situations to help prevent neglect, abuse, or exploitation of a child. The worker may approve child care in these situations to help stabilize the family situation or enhance family functioning. In most instances, Child Welfare (CW) staff completes protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. When CW staff contracts with an outside agency to provide protective or preventive services and child care is recommended, Family Support Services (FSS) staff completes the child care requests with help from contracted agency staff.
  - (1) Subsidized protective or preventive child care benefits are temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.
  - (2) The worker must complete a face-to-face interview with the client prior to approving subsidized protective or preventive child care benefits in order to better assess all of the service needs of the family.
  - (3) The client must provide a statement from a professional working with the family stating:
    - (A) the reason child care is recommended;
    - (B) how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and
    - (C) the length of time this care is expected to be needed.
  - (4) The family may or may not be expected to help in paying the cost of these subsidized child care benefits depending on the unique circumstances of the family.
  - (5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt ~~that~~ the additional financial pressure of paying for child care may result in further deterioration

of family stability and functioning. The client must also provide a plan for reducing his or her debt.

- (6) The worker may approve subsidized protective or preventive child care benefits for a maximum of 30 calendar days. ~~If~~When determining ongoing eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information during this 30 calendar day period.
- (7) ~~If~~When the family requests subsidized protective or preventive child care benefits beyond this initial 30 calendar day period, the worker sends a memo and supporting documentation to the Family Support Services Division (FSSD) Child Care Subsidy Section staff to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.
- (f) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental Security Income (SSI) to develop socialization skills and to transition into a group setting, such as a classroom. ~~If~~When a child is not receiving SSI benefits, the child is not eligible for subsidized enrichment child care benefits.
  - (1) The need for subsidized enrichment child care benefits is based solely on the needs of the child's condition of delay or disability rather than on the activities of the parent or caretaker.
  - (2) Child care for enrichment is limited to a maximum of two days per week not to exceed ten full-time or part-time days per month.
  - (3) The parent or caretaker must provide a written recommendation from a professional who is working directly with the child in some capacity that states how child care would be beneficial to the child. The professional could be the child's doctor, occupational therapist, physical therapist, or special education teacher.
  - (4) Enrichment child care is only approved for a child who has not started school or Head Start unless, due to the child's disabilities, the child receives instruction from a teacher in his or her home.
  - (5) When subsidized enrichment child care benefits are approved, care must be provided outside of the child's home and at least one other child must attend during the same hours.
  - (6) The worker obtains approval from staff in the FSSD Child Care Subsidy Section prior to authorizing care for this need factor.

**340:40-7-11. Sources of income considered**

- (a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded per OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. ~~Gross income is treated the same for both types of income.~~
- (b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. Temporary disability insurance payment(s) and temporary worker's compensation

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payments are considered as earned income ~~if~~when payments are employer funded and the person remains employed.

(1) **Wages.** Wages include total money ~~received~~earned for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made, such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Countable wages for military personnel include ~~Variable Housing Allowance (VHA), Basic Allowance for Quarters (BAQ), and any allowance included on the earnings statement,~~ such as the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS).

(B) Only the portion of the cafeteria plan the client controls is counted as income.

(C) Reimbursements for expenses, such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(D) Payments made for annual leave, sick leave, or severance pay are considered earned income during the month such income is received whether paid during employment or at termination of employment.

(E) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** ~~Earnings derived from a business enterprise owned solely or in part by the person are considered self-employment.~~ Self-employment income is considered based on procedures listed in this subsection.

(A) **Persons considered self-employed.** A person is considered self-employed when:

(i) he or she declares himself or herself to be self-employed;

(ii) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even when required to do so by law; or

(iii) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(~~A~~)B) **Records used and income calculation.** The worker uses the records described in (i) through (iii) of this subparagraph to calculate income. When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) ifWhen the person filed a federal income tax return for self-employment income for the most recent year, whether the person's income is derived from his or her own business or from working for an employer, the worker uses the net self-employment income shown on the person's federal income tax return and divides the income by 12 or the number of months the business has been in existence or the person started work for the employer, ifwhen less than 12 months. The worker verifies the person's start date with the

employer when the person states he or she has not worked for the employer for at least 12 months.

(ii) ifWhen the person did not file an income tax return for the most recent tax year for his or her own business, the worker calculates self-employment income using the person's business records for the last 12 months or the number of months the business has been in existence ifwhen less than 12 months. ifWhen the client declares he or she has business expenses, the worker subtracts 50% of the gross self-employment income to arrive at the net profit.

(iii) When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income. When the person works for an employer, did not file a federal tax return as self-employed, and receives earnings from an employer, the person must provide proof of the last 12 months of income from the employer. The worker divides the gross income by 12 or the number of months the person has worked for the employer to determine monthly income. When the person declares he or she has business expenses, the worker subtracts 50% of the gross self-employment income before dividing the income by the applicable number of months to determine monthly income.

(~~B~~)C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(~~C~~)D) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. ifWhen the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(~~D~~)E) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(~~E~~)F) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged and annualized over a 12-month period, even ifwhen the income is received in a short time period.

(i) If the averaged annualized amount does not accurately reflect the person's actual monthly

circumstances because the person experienced a substantial increase or decrease in income, the worker calculates the self-employment income is based on anticipated earnings, using the business records that reflect the current situation.

(ii) The worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns, when an increase or decrease of business has occurred.

(I) When the person has received the self-employment income for less than 12 months, the income must be averaged over the applicable number of months and the monthly amount projected for the coming year.

(II) When the person has received the self-employment income for a short time and there is insufficient data to make a reasonable income projection, the worker does not consider income from this source until the review is due. At the review, the worker averages income over the number of months received until a full year's information is available.

**(FG) Income from rental property.** Income from rental property is considered self-employment income.

**(GH) Income from room and board.** Payments from roomers or boarders are considered self-employment ~~if~~when the roomer or boarder is paying a reasonable amount. ~~If~~When the roomer or boarder is an adult non-relative opposite sex individual (AN-ROSI), OAC 340:40-7-6(b)(4) applies.

(3) **On-the-job training.** Earned income from regular employment for on-the-job training (OJT) is considered as earned income. This includes OJT provided under Sections 204(b)(1)(c) or 264(c)(1)(A) of the Workforce Investment Act for persons 19 years of age or older.

(4) **Workforce Investment Act (WIA).** Income earned in ~~on the job training~~OJT positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training. Refer to OAC 340:40-7-12(24)(G) for other types of excluded WIA income.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded per OAC 340:40-7-12.

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income. When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit that is used to meet the minor child's needs is considered income. This may include cash given directly to the minor child or money paid to a third party for room and board for the minor child. The parent or caretaker or, ~~if~~when appropriate, the minor child must take action to become the payee within 90 calendar days as required at OAC 340:40-7-9(d). ~~If~~When action is not taken within 90 calendar days, the worker counts the total Social Security benefit as income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, made directly to the household from non-household members are counted as unearned income.

(A) ~~If~~When a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) ~~If~~When the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment that must be met before the Oklahoma Department of Human Services (OKDHS) makes a subsidy payment to the provider.

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs ~~that~~ the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation,

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military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

[OAR Docket #12-504; filed 5-1-12]

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #12-506]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Application Process  
340:50-3-1 through 340:50-3-3 [AMENDED]  
Subchapter 5. Non-financial Eligibility Criteria  
Part 1. Household Definition  
340:50-5-3 [AMENDED]  
Part 3. Special Households  
340:50-5-28 [AMENDED]  
Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees  
340:50-5-45 [AMENDED]  
Subchapter 7. Financial Eligibility Criteria  
Part 3. Income  
340:50-7-29 through 340:50-7-30 [AMENDED]  
Subchapter 9. Eligibility and Benefit Determination Procedures  
340:50-9-1 [AMENDED]  
340:50-9-4 through 340:50-9-6 [AMENDED]  
(Reference WF 11-10)

### AUTHORITY:

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Title 7 Code of Federal Regulations Section 271.2 (7CFR271.2); 7CFR 273.2(c), (d)(2), and (h); 7CFR273.5; 7CFR 273.9(b); and 7CFR 273.11.

### DATES:

#### Comment period:

January 17, 2012 through February 16, 2012

#### Public hearing:

None requested

#### Adoption:

February 28, 2012

#### Submitted to Governor:

February 29, 2012

#### Submitted to House:

February 29, 2012

#### Submitted to Senate:

February 29, 2012

#### Gubernatorial approval:

April 16, 2012

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

#### Final adoption:

April 26, 2012

#### Effective:

July 1, 2012

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The proposed revisions to Subchapter 3 of Chapter 50 amend the rules to: (1) add language regarding electronically filing applications; (2) correct the disqualification time period when a household fails to cooperate with an Office of Inspector General (OIG) Quality Control review; (3) update a policy citation; (4) add a policy citation regarding postponement of the interview when the household appears eligible for expedited services; (5) specify the time frame given and the form used to request proof of eligibility; (6) update language to current terminology; and (7) add clarifying language.

The proposed revisions to Subchapter 5 of Chapter 50 amend the rules to: (1) correct language regarding the age at which a child can be considered a separate household from adult household members; (2) remove language requiring shelters for battered women and children to provide the majority of the resident's meals for residents to be eligible to receive food benefits; (3) reorder and clarify information regarding student classification; and (4) add policy citations regarding how to consider income and deductible expenses for ineligible students.

The proposed revisions to Subchapter 7 of Chapter 50 amend the rules to: (1) add language regarding how to consider guardianship and Department of Veterans Affairs (VA) Aid and Attendance payments; (2) remove obsolete terminology regarding military allowances; (3) add the definition of a self-employed person; (4) add clarifying language regarding self-employment income calculations; and (5) add clarifying language.

The proposed revisions to Subchapter 9 of Chapter 50 amend the rules to: (1) remove language regarding delayed applications from one Section and add revised language regarding delayed applications to another Section; (2) update language to current terminology; and (3) add clarifying language.

#### CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

### SUBCHAPTER 3. APPLICATION PROCESS

#### 340:50-3-1. The application process

(a) **General.** The application process for the Supplemental Nutrition Assistance Program (SNAP) begins with a request for an application form and ends with determining the household's eligibility and entering that determination into the computer system.

(1) The application must be processed no later than 30 calendar days after the signed application is filed

~~is submitted~~ to the Oklahoma Department of Human Services (OKDHS) ~~human services center (HSC).~~

(2) Expedited services must be available to those households who are in immediate need as defined in OAC 340:50-11-1 through 340:50-11-6.

(3) Persons having lawful alien status must have status verified through Systematic Alien Verification for Entitlements (SAVE) ~~in accordance with~~ per OAC 340:65-3-4.

(4) Benefits must be provided retroactively to the date of application for households who have timely completed the application process and who have been determined eligible.

(b) **Filing applications.** Each household wishing to participate in the SNAP must file a separate application. ~~See~~ Refer to OAC 340:50-5-1 for household definition. The designated head of household is not required to make the food benefit application. Applications may be made by a responsible household member or authorized representative. A responsible household member or authorized representative completes an authorization for release of information at the time of application, if necessary. Applications may be filed in person, electronically, or by mail.

(1) **Right to same day filing.** Since the time limit for providing benefits is calculated from the date the application is actually received in the human services center (HSC) or submitted online, households are advised of their right to complete and file an application on the same day they contact ~~the HSC~~ OKDHS. They are also advised they do not have to be interviewed before filing the application and they may file an incomplete application ~~form~~ as long as the ~~form~~ application contains the applicant's name, address, and signature of either an adult member of the household or the household's authorized representative. Food benefits households are encouraged to file the application ~~form~~ on the same day they or their authorized representative ~~contacts the HSC~~ contact OKDHS.

(A) ~~Application forms are~~ Form 08MP001E, Request for Benefits, is made readily accessible to potentially eligible households, groups, and organizations that assist persons in completing ~~application forms~~ applications for food benefits.

(B) If the household ~~has contacted the HSC~~ contacts OKDHS by telephone but is unable to file an application online at [www.okdhslive.org](http://www.okdhslive.org) or at the HSC on the same day, or the household has requested food benefits in writing, ~~the HSC staff~~ mails Form 08MP001E, Request for Benefits, to the household on the same day the written request or telephone call is received.

(C) To facilitate participation in SNAP, households in which all members are applying for a State Supplemental Payment (SSP) or Temporary Assistance for Needy Families (TANF) must be allowed to apply for food benefits at the same time they apply for financial assistance. However, the household's eligibility and benefit level are based on food ~~benefits~~ benefit eligibility criteria and the household is certified ~~in accordance with~~ per SNAP policy. Policy for taking

and processing food ~~benefits~~ benefit applications for SSP and TANF households are provided in OAC 340:50-11-20 through ~~340:50-11-11~~ 340:50-11-27.

(D) Immediately upon receipt in ~~the HSC~~ an OKDHS office, all ~~application forms~~ applications are screened to determine whether ~~or not~~ the household is entitled to expedited services. ~~HSC screening procedures are instituted for screening applications received through the mail and applications filed in the HSC.~~ All initial applicant households that qualify under the provisions in OAC 340:50-11-1 through 340:50-11-6 must receive expedited processing if certified for food benefits whether requested by the ~~client~~ household or not. When the household appears eligible for expedited services and meets the criteria at OAC 340:50-3-2(c), the worker postpones the interview requirement and approves the household for initial benefits.

(2) **Head of household.** A household may select, as head of household, an adult parent of children of any age living in the food benefit household, or an adult who has parental control over children ~~under 18~~ 17 years of age and younger living in the food benefit household provided all adult household members agree to the selection.

(A) Households select their head of household at each certification action or when there is a change in household composition.

(B) If all adult members do not agree to the selection or decline to select an adult head of household, the household may select another head of household or the worker may designate a head of household.

(C) In no event does the failure to select an adult who has parental control of children delay the certification or result in the denial of benefits for an otherwise eligible household.

(3) **Authorized representative.** An authorized representative is a person who is knowledgeable of the household circumstances and who is designated in writing by the head of the household, spouse, or other responsible household member to act on behalf of the household in applying for and obtaining food benefits. In the event the only adult member of the household is classified as a non-household member, that person may be designated as the authorized representative for minor household members.

(A) When an authorized representative has been designated in writing to make application on behalf of a household, the household is informed they will be held liable for any overissuance which results from erroneous information given by the authorized representative. When possible, the head of the household or spouse prepares or reviews the application, even though the authorized representative actually files the application and is interviewed.

(B) Employees of OKDHS and their relatives who are authorized to accept food benefits may not act as authorized representatives without the specific written approval of the local county director after a

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determination has been made that no one else is available to serve as the authorized representative.

(C) A disqualified person may not act as an authorized representative during the period of disqualification unless the person disqualified is the only adult member of the household able to act on its behalf and the HSC ~~staff~~ worker determines there is no one else available to serve as an authorized representative.

(4) **Documentation and control of authorized representatives.** The worker ensures an authorized representative is properly designated and has not been disqualified. Limits are not placed on the number of households an authorized representative may represent. Care is taken by the worker to ensure the household:

(A) has freely requested the assistance of the authorized representative;

(B) circumstances are correctly reported; and

(C) is receiving the correct amount of benefits.

(5) **Disqualification of authorized representative.**

An authorized representative is disqualified from serving as an authorized representative in SNAP for up to one year when evidence demonstrates the person has misrepresented a household's circumstances, has knowingly provided false information pertaining to the household, or has made improper use of benefits. Information indicating that a person should be disqualified as an authorized representative is forwarded to the Family Support Services Division (FSSD) SNAP Section, for a decision. The HSC is notified in writing of the decision. If the person is disqualified, appropriate notification is mailed to the household by FSSD SNAP Section staff. This provision does not apply to persons serving as authorized representatives for group homes or drug addiction and alcoholic treatment programs.

(c) **Processing initial applications.** The application date for online submissions is the date the household submits the application via the OKDHS Live! website as shown on the OKDHS Live! report form. When the HSC receives an application form is received that contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative, the date of household's application date is the date it is received and stamped into the HSC except as stipulated at per OAC 340:50-9-1(c) and OAC 340:50-9-6(e). When the application form has been signed by the responsible person or authorized representative for a household who is also applying for SSP or TANF, the application is processed ~~in accordance with~~ per OAC 340:50-11.

(1) **Normal processing standard for initial applications.** The worker must provide eligible households who complete the initial application process with food benefits within 30 calendar days following the date the initial application was filed.

(2) **Withdrawing of application.** A household may voluntarily withdraw its application at any time prior to the determination of eligibility.

(d) **Second 30 days.** A new application is not needed when a household fails to complete the application process within 30

calendar days if they provide the required verification within 60 calendar days. This includes verification waived for expedited services. When there is a break in the certification, the worker changes the application and certification dates ~~are changed~~ to the date the verification is provided.

### 340:50-3-2. Interview process

(a) **Face-to-face interview.** All households initially applying for food benefits, including those submitting applications electronically or by mail, must have a face-to-face interview with a worker except when the household:

(1) requests the face-to-face interview be waived because the household is unable to appoint an authorized representative and does not have a household member able to come into the human services center (HSC) because of hardship conditions. Hardship conditions include, but are not limited to:

(A) education, training, or work hours that make it difficult to come into the HSC during office business hours;

(B) illness or the need to care for a family or household member;

(C) bad weather conditions;

(D) transportation problems of any kind;

(E) residence in a rural area; or

(F) advanced age or disability; or

(2) is being recertified for food benefits. At ~~recertification~~ certification renewal, the interview may be conducted face-to-face or over the telephone. ~~Recertification~~ Certification renewal interviews may be waived for households when all adult members are elderly or disabled and have no earned income.

(b) **Waiver of face-to-face interview.** When the face-to-face interview is waived, the worker conducts the interview as soon as possible either by phone or at a location convenient to the household, such as a home visit.

(1) The seven day expedited service or 30 calendar day processing standards apply.

(2) The home visit or telephone interview is scheduled in advance with the household.

(3) The household must provide the required verification. If the household is unable to furnish the required verification, the worker provides assistance.

(c) **Postponed interviews.** Households applying for food benefits ~~who that~~ complete and sign an online application or drop off, mail, or fax a complete and signed Form 08MP001E, Request for Benefits, to the HSC and appear eligible for expedited services per OAC 340:50-11-1 may have the interview postponed in certain circumstances.

(1) The interview may be postponed when the:

(A) ~~the~~ applicant's identity is verified; and

(B) ~~the~~ worker is unable to contact the household or determines that an interview cannot be scheduled within seven calendar days.

(2) When the interview is postponed, the worker sends the household is sent Form 08AD092E, Client Contact and Information Request, setting an interview date and listing verification that must be provided before further benefits

are approved. Per OAC 340:50-3-1 and 340:50-11-5, the interview must be completed and postponed verification provided within 30 calendar days of the application date in order to avoid a break in benefits. If the household completes the interview is completed and provides postponed verification provided within 60 calendar days of the date of application, a new application is not needed. Benefits are prorated from the date the interview is completed and verification provided.

(d) **Who must be interviewed.** The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. The household may bring any person of their choice to the face-to-face interview.

(e) **Worker responsibilities during the interview.** During the face-to-face interview, the worker:

- (1) reviews with the household the information on the application and resolves unclear and incomplete information;
- (2) inquires whether changes have occurred in the household's income, deductions, or other circumstances since the application was filed;
- (3) advises the household of its rights and responsibilities, including reporting requirements;
- (4) conducts the face-to-face interview as an official and confidential discussion of household circumstances limited to facts related to food benefit eligibility factors; and
- (5) gives Form 08MP006E, Information for Benefit Renewal, to the household and explains benefit renewal procedures; and
- (6) ensures the household's right to privacy is protected.

(f) **Scheduling interviews.** The worker schedules the face-to-face interview or alternate interview method is scheduled as promptly as possible after the filing of the application to ensure the household, if eligible, may participate within 30 calendar days following the date of application. ~~If~~ When the person to be interviewed is employed, the worker schedules an appointment to minimize the person's absence from work even if it must be scheduled outside normal business hours. ~~If~~ When the person is unable to attend a scheduled face-to-face interview for any of the reasons stated in (a) of this Section, the worker offers to waive the face-to-face interview and schedule a telephone interview or home visit.

(1) **Timely ~~reapplication~~ certification renewals.** ~~A~~ When the household ~~making~~ submits a timely ~~reapplication~~ certification renewal, ~~has~~ the worker schedules the interview ~~scheduled~~ as early as possible, but not later than the last day of the month.

(A) If the household fails to appear for the first interview, ~~further interviews are not scheduled~~ the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(2) **Untimely ~~reapplication~~ certification renewals and initial applications.** ~~A~~ When the household ~~making~~ submits an untimely ~~reapplication~~ certification renewal or an initial application is ~~scheduled for~~, the worker schedules an interview as early as possible, but not later than 20 calendar days from the application date.

(A) If the household fails to appear for the scheduled interview, ~~further interviews are not scheduled~~ the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(g) **Household cooperation.** To determine eligibility, the application must be completed and signed, the household or its authorized representative must be interviewed, and required information on the application verified to determine eligibility.

(1) If the household refuses to cooperate with the worker in completing this process, the application is denied at that time.

(A) For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take the necessary actions required to complete the application process.

(B) The household is also ineligible if it refuses to cooperate in any subsequent ~~review of eligibility~~ benefit renewal, including reviews ~~review~~ generated by reporting changes, recertification ~~certification renewals~~, or an Office of Inspector General Quality Control (QC) review.

(2) If an application is denied or food benefits are ~~terminated~~ closed for refusal to cooperate, the household may reapply, but may not be determined eligible until it cooperates.

(3) If food benefits have been ~~terminated~~ closed for refusing to cooperate with the QC reviewer and ~~reapplication is made~~ the household reapplies after ~~95~~ 125 calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors only for the ~~reapplication~~ new application. For example, if a household had a QC review during the October ~~2009~~ 2010 through September ~~2010~~ 2011 annual QC review period and food benefits were ~~terminated~~ closed for refusal to cooperate with the QC review, the household is required to only provide verification for the ~~reapplication~~ only new application if it is filed after ~~January 2, 2011~~ February 2, 2012.

**340:50-3-3. Verification**

(a) **General standards for verification.** Verification is the use of third party information or documentation to confirm the accuracy of statements made on the application ~~form~~. For specific policy regarding required verification of non-financial eligibility criteria ~~see~~ refer to OAC 340:50-5, and ~~for~~ of financial eligibility criteria ~~see~~ refer to OAC 340:50-7. ~~The~~ When ~~the household is provided a clear written statement explaining what the household must do to cooperate in obtaining~~

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~~verification and completing the application must provide documentation to verify eligibility before receiving or continuing to receive benefits, the worker provides Form 08AD092E, Client Contact and Information Request, to the household giving at least ten calendar days to provide needed verification.~~

(b) **Sources of verification.** Sources of verification that provide the worker with evidence that may be used to establish eligibility include, but are not limited to (1) through (4) in this subsection.

(1) **Documentary evidence.** The worker uses documents, whenever possible, as the primary source of verification. Examples of documentary evidence include wage stubs, rent receipts, and utility bills.

(A) Although documentary evidence is the primary source of verification, verification cannot be limited to a single document or source.

(B) When information from another source contradicts statements made by the household, the household is immediately afforded the opportunity to resolve the discrepancy.

(C) When documentary evidence cannot be obtained, the worker uses alternate sources of verification, such as collateral contacts and home visits.

(D) In all cases, the worker records the method of verification in the case record.

(2) **Collateral contacts.** The worker has the responsibility to verify all factors of eligibility for food benefits which may require one or more collateral contacts. The client's signature on the application for food benefits grants the necessary authorization for securing required information or verification.

(A) A collateral contact is a verbal confirmation of a household's circumstances by a person outside the household. The collateral contact may be made either in person or over the phone.

(B) The acceptability of a collateral contact is not restricted to a particular person, but may be anyone that can be expected to provide an accurate third party verification of the household's statement. Examples of acceptable collateral contacts are:

- (i) employers;
- (ii) community action groups;
- (iii) migrant service agencies;
- (iv) neighbors of the household; or
- (v) other persons outside the household.

(C) If the collateral source is one which requires written authorization before supplying information to the Oklahoma Department of Human Services (OKDHS), the worker obtains the household member's signature of the client on Form 08AD060E, Request for Release of Information, ~~must be obtained~~. If information is needed regarding another adult household member, that person may need to sign Form 08AD060E before the collateral source agrees to release information.

(3) **Home visits.** A home visit can be used as verification if documentary evidence cannot be obtained from

other sources and the visit is scheduled in advance with the household.

(4) **Field investigation.** The worker conducts an intensive field investigation when a household is suspected of withholding information or of intentional program violations. A field investigation is made after the worker has exhausted all other methods of verification and still does not have enough evidence to certify, deny, or close food benefits.

(A) The intensive field investigation includes all questionable factors of eligibility. The worker makes every effort to obtain the most reliable second-party verification available. Contacts may include, but are not limited to, the applicant or recipient, other adult household members, employers, banks, government agencies, landlords, neighbors, and utility companies. The client household does not have to provide specific written authorization unless it is required by the collateral source before they can or will furnish the requested information.

(B) Persons who are contacted for information related to a client's household's eligibility must be advised of the reason the information is needed and how it will be used. If the person providing the information is unwilling to have his or her identity revealed to the client household, the information is not used to make an eligibility decision nor is it recorded in the case record. The worker must attempt to verify the information using an alternate source.

(C) The worker contacts the client household when the information gathered during the investigation differs from that given by the client household. The client household is given the opportunity to clear up conflicting information when possible. When the client household cannot be contacted, the worker documents, in the case record, what attempts were made.

(D) The worker documents in the case record all verified evidence gathered during the course of the investigation. This documentation must include:

- (i) what information was received, dates related to the information, source of the verification, and the date the information was received;
- (ii) a complete explanation of conflicting information and what attempts were made to resolve the differences with the client household; and
- (iii) when the client household refuses to cooperate in determining eligibility, information to clearly show that the client household was given the opportunity to cooperate and was able to do so.

(E) When the eligibility determination is delayed due to a field investigation, the worker manually issues Form 08MP039E, Notice to Client of Action Taken, informing the client household of the pending status of the application.

(c) **Responsibility for providing verification.**

(1) **Household responsibility.** The household has primary responsibility for providing documentary evidence to support its income statements and to resolve any

questionable information. Households may supply documentary evidence in person, through the mail, or through an authorized representative.

(2) **Worker responsibility.** The worker assists the household in obtaining this verification provided the household is cooperating with the worker.

(A) The worker accepts any reasonable documentary evidence provided by the household and is primarily concerned with how adequately the verification confirms ~~the statement~~statements on the application.

(B) If it would be too difficult or impossible for the household to obtain documentary evidence in a timely manner, the worker offers assistance to the household in obtaining the documentary evidence.

(C) The household is not required to provide multiple sources of verification when the household has already provided information which adequately supports the statements on the application. However, the worker may require households to provide additional verification when the existing verification is incomplete.

(D) An application is never denied solely because a person outside the food benefit household fails to cooperate in providing information, verification, or other help needed to process an application. Disqualified or ineligible persons are considered members of the food benefit household for this provision.

(d) **Documenting case files.**

(1) **Case files.** Case files must be documented in detail to support eligibility, ineligibility, and benefit level determinations.

(2) **Documentation.** Documentation must include:

(A) sources of verification, dates of the sources of verification, and amounts verified;

(B) computations used to arrive at monthly income deductions;

(C) why verification is required to resolve questionable information;

(D) what documentation was used to resolve the questionable information; and

(E) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.

(e) **Questionable information.** Prior to certification, the worker must verify questionable factors of eligibility, including all factors affecting household composition, only if these would affect a household's entitlement. A household's report of expenses which exceed its income prior to deductions may be grounds for a determination that further verification is required.

(1) **Questionable information.** To be considered questionable, the information on the application must be inconsistent with:

(A) statements made by the applicant;

(B) other information in the case record; or

(C) other information received by OKDHS.

(2) **Documentation.** There must be documentation as to:

(A) the reason the information was considered questionable;

(B) what documentation was used to resolve the questionable information; and

(C) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.

(3) **Determination.** When determining if information is questionable, the worker bases the decision on each household's individual circumstances.

**SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA**

**PART 1. HOUSEHOLD DEFINITION**

**340:50-5-3. Persons who cannot be separate food benefit households**

Separate food benefit household status may not be granted to persons living together, as described in (1) through (4), even if they customarily purchase food and prepare meals for home consumption separate and apart from the others, except as otherwise specified in this ~~section~~Section. Separate status may not be granted to:

(1) a spouse, ceremonial or common law, of a household member;

(2) children, 21 years of age and ~~under~~younger, living with their natural or adoptive parent(s) or stepparent(s);

(3) children, ~~18~~17 years of age and ~~under~~younger who live with and are under the parental control of an adult who is someone other than their natural or adoptive parent(s) or stepparent(s).

(A) Per Chapter 4 of Title 10 of the Oklahoma Statutes, a minor may be considered emancipated if the district court confers upon the minor the rights of majority.

(B) The worker considers the child to be under parental control for purposes of this provision when he or she is financially or otherwise dependent on a member of the household.

(C) This provision does not apply to foster children or children placed in the home by the Developmental Disabilities Services Division (DDSD); or

(4) persons who live together and customarily purchase and prepare meals together except as described in ~~per~~OAC 340:50-5-1(5).

**PART 3. SPECIAL HOUSEHOLDS**

**340:50-5-28. Shelter for battered women and children**

Residents of shelters for battered women and children may file an application and are certified using program requirements applicable to any other household. ~~To be eligible for~~

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special eligibility rules in this Section, the shelter for battered women and children must provide a majority of the residents' meals. Residents of shelters providing meals voluntarily apply for food benefits on their own behalf. They may name a shelter member or other person to act as an authorized representative for application and certification purposes; however, the residents are expected to control the use of their own allotment food benefits.

(1) **Verification for shelter status.** ~~Human services center (HSC)~~ Oklahoma Department of Human Services (OKDHS) staff are responsible for verifying that the shelter for battered women and children meets the definition specified in OAC 340:50-5-7(b).

(A) Verification of non-profit status is accomplished by seeing correspondence from Internal Revenue Service (IRS) stipulating that the organization is tax-exempt as a charitable or educational entity under Section 501(c)(3) of the IRS code.

(B) If IRS documentation is not available, the worker sends a copy of the shelter's by-laws to the Family Support Services Division Supplemental Nutrition Assistance Program (SNAP) Section.

(C) SNAP Section staff notify the worker of the determination of non-profit status.

(D) ~~HSC~~ OKDHS staff are responsible for keeping a list of shelters in their county for battered women and children in their county whose status has been verified and must also keep documentation of that verification.

(2) **Separate households.** Shelter residents who are included in another active household may participate as a separate household if the active household which includes them is the household containing the person who subjected them to abuse. They may receive an additional allotment as a separate household only once a month. The worker takes prompt action to remove shelter residents from the active household's composition and allotment.

(3) **Income and expenses.** The worker certifies residents applying as a separate household solely on the basis of their own ~~income and~~ income and the expenses for which they are responsible. Income and the expenses of their former household are ~~disregarded~~ excluded. Room payments to the shelter are considered as shelter expense.

## PART 5. STUDENTS, STRIKERS, RESIDENT FARM LABORERS, MIGRANT HOUSEHOLDS, SPONSORED ALIENS, AND SCHOOL EMPLOYEES

### 340:50-5-45. Students

(a) **Student classification.** Persons are classified as students when they are enrolled at least half-time in an institution of higher education ~~are considered students through vacation and breaks as well as normal periods of class attendance. Persons who graduate, are expelled or suspended, dropout, or do not intend to register for the next normal school term, excluding summer school, are no longer considered students.~~

Student enrollment status begins on the first day of the school term of the

(1) An institution of higher education includes:  
(A) business, technical, trade, or vocation school that normally requires a high school diploma or equivalency certificate to enroll. Schools or courses that do not require a high school diploma or equivalency certificate are not considered an institution of higher education; or

(B) A college or university which that offers degree programs is considered an institution of higher education even when a high school diploma or equivalency certificate is not required to enroll. A college includes a junior, community, two-year, or four-year college, or university.

(Ai) Students enrolled at least half time in the regular curriculum are considered enrolled in higher education.

(Bii) Persons enrolled at a college or university in special programs, such as courses for English as a second language, or other courses which are not part of the regular degree programs are not considered enrolled in higher education. Special programs include:

(I) courses for English as a second language;

(II) other courses not part of the regular degree programs; or

(III) Temporary Assistance for Needy Families (TANF) Special Projects Expansion Project.

(2) ~~Business, technical, trade, or vocational schools which normally require a high school diploma or equivalency certificate for enrollment in the curriculum are also considered higher education.~~ Student status begins on the first day of the school term for students who have:

(A) not attended an institution of higher education previously; or

(B) had a break of more than a semester since they last attended.

(3) ~~Courses in business, technical, trade, or vocational schools which do not require a high school diploma or equivalency certificate for enrollment are not considered higher education.~~ Persons are classified as students during normal periods of class attendance and through vacations and other breaks.

(4) Persons who graduate, are expelled or suspended, dropout, or have completed school and do not intend to register for the next normal school term, excluding summer school, are no longer considered students.

(b) **Students not subject to eligibility restrictions.** The students described in this subsection may participate in the Supplemental Nutrition Assistance Program (SNAP) if all other eligibility criteria are met. Eligibility restrictions discussed in subsection (c) of this Section do not apply if the students are:

(1) under age 18 or age 50 or older;

(2) physically or mentally unfit.

- (A) If mental or physical unfitness is claimed and the unfitness is not evident to the worker, verification may be required.
- (B) Appropriate verification may consist of:
  - (i) receipt of temporary or permanent disability benefits issued by governmental or private sources;
  - (ii) participation in a state vocational rehabilitation (VR) program; or
  - (iii) a statement from a physician or licensed or certified psychologist;
- (3) attending high school;
- (4) participating in an on-the-job training (OJT) program. Students are considered participating in OJT programs only during the period of time the students are being trained by the employer;
- (5) attending an institution of higher education less than half-time; or
- (6) enrolled half-time or more in schools and training programs which are not institutions of higher education.
- (c) **Eligibility restrictions for students.**
  - (+) Persons between the ages of 18 and 50 who are physically and mentally fit and are enrolled at least half-time in an institution of higher education may participate in the SNAP only if:
    - (A1) employed for an average of 20 hours per week or 80 hours per month and paid for that employment. Earning wages equal to the federal minimum wage times 20 is not a substitute for this restriction;
    - (B2) self-employed for an average of 20 hours per week or 80 hours per month and receives weekly earnings at least equal to the federal minimum wage times 20;
    - (C3) participating in a state or federally financed work study program during the regular school year.
      - (iA) To qualify under this provision, the students must be approved for work study at the time of application for food benefits.
        - (i) The work study must be approved for the school term and the students must anticipate actually working during the school term.
        - (ii) The exemption begins with the month the school term begins or the month work study is approved, whichever is later.
        - (iii) Once begun the exemption continues until the end of the month the school term ends, or it becomes known the students have refused an assignment.
      - (iiB) The exemption does not continue between terms when there is a break of a full month or longer unless the student is participating in a work study program during the break;
    - (D4) responsible for the care of a dependent household member under the age of six. Only one person may be considered as responsible for a dependent child. The caretaker need not be the person providing for the child's support;
    - (E5) responsible for the care of a dependent household member six through 11 years of age when the worker

determines that adequate child care is not available to enable the student to attend class and work an average of 20 hours per week or participate in a state or federally financed work study program. The reasons for lack of adequate child care include, but are not limited to, location of the nearest child care facility or availability of funds to pay child care expenses. Determination of availability of adequate child care is made on a case-by-case basis. Only one person may be considered as responsible for a dependent child. The caretaker need not be the person providing for the child's support;

(F6) single parents enrolled in an institution of higher education on a full-time basis as determined by the institution and responsible for the care of a dependent child under age 12, regardless of the availability of child care.

(iA) This provision applies in those situations where only one natural, adoptive, or stepparent regardless of marital status is in the same food benefit household as the child.

(iiB) If no natural, adoptive, or stepparent is in the same food benefit household as the child, another full-time student in the same food benefit household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse;

(G7) Temporary Assistance for Needy Families (TANF) recipients; or

(H8) assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the employment and training programs identified in (A) through (E) of this paragraph. "In compliance with" means the person self-enrolled in the school during the period of time he or she was enrolled in an employment and training program and the program has a component for enrollment in an institution of higher education and accepts the placement. Employment and training programs include:

(iA) the Workforce Investment Act (WIA) Program;

(iiB) a food benefit employment and training program;

(iiiC) the Job Opportunities and Basic Skills (JOBS) program under Title IV of the Social Security Act;

(ivD) a program under Section 236 of the Trade Act of 1974 currently known as The Trade Adjustment Assistance Program and administered by the Oklahoma Employment Security Commission; or

(vE) a state or local employment or training program, as determined appropriate by the United States Department of Agriculture, Food and Nutrition Service (FNS).

(2) ~~Only one person may be considered as responsible for a dependent child. The caretaker need not be the person providing for the child's support.~~

(d) **Income and deductible expenses of an ineligible student.** When the student is not eligible to receive food benefits, he or she is considered a non-household member per OAC

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340:50-5-5. His or her income is not considered and household expenses may be prorated per OAC 340:50-5-6.

## SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

### PART 3. INCOME

#### 340:50-7-29. Income inclusions

(a) **Sources of income considered.** The worker considers all household income, unless specifically excluded at OAC 340:50-7-22, in determining monthly gross income. Income is classified as earned or unearned.

(1) When one or more household members are absent from the home, before deciding whether to consider the absent household member's income, the worker must determine if the person returns to the home for part of the month.

(A) ~~When the household member does not return for part of the month, per~~ Per OAC 340:50-5-2, the worker does not include the absent member in the benefit amount and only counts the portion of his or her income that he or she makes available to the rest of the household when the household member does not return for part of the month.

(B) When the household member returns for part of each month, the worker includes him or her in the benefit amount and counts all of his or her income unless excluded ~~at~~per OAC 340:50-7-22.

(2) Per OAC 340:50-5-5, the household has the option of including a child receiving a foster payment, that includes a payment for kinship care, in the food benefit. When the household chooses not to include the child receiving a foster care payment in the food benefit, the worker does not count the child's income, including the foster payment.

(3) When the household adopts a child previously in the custody of the Oklahoma Department of Human Services (OKDHS) and receives an adoption subsidy payment for the child, the worker includes the child in the food benefit and counts the child's income, including the adoption subsidy payment.

(4) When a member of the household becomes the guardian of a child and receives a guardianship payment from OKDHS, the payment is considered as income. The child for whom the payment is received must be included in the food benefit.

(b) **Earned income.** Earned income is income ~~which~~ a household receives in the form of wages, commission, self-employment, or training allowances and for which a person puts forth physical labor. Temporary disability insurance payments and temporary worker's compensation payments are considered earned income if payments are employer funded and the person remains employed. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma, are considered earned income.

(1) **Wages.** The worker counts as earned income all wages and salaries for services performed as an employee, including sick pay paid by the employer to an employee who plans to return to work when recovered. This includes wages garnisheed or diverted and paid to a third party for a household's expenses. Countable wages for military personnel include ~~Variable Housing Allowance (VHA), Basic Allowance for Quarters (BAQ), and any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS).~~

(2) **Self-employment.** The worker determines the household's total gross income from a self-employment enterprise per procedures described ~~at~~per OAC 340:50-7-30.

(3) **Title I payments of the Domestic Volunteer Services Act.** Countable earned income includes payments paid to a household member under Title I of the Domestic Volunteer Services Act of 1973 as amended [Public Law (P.L.) 93-113] unless excluded per OAC 340:50-7-22.

(4) **On-the-job training (OJT).** The worker counts income earned in ~~on-the-job training~~ OJT positions as earned income. This includes ~~on-the-job training~~ OJT provided under Section 204(b)(1)(c) or Section 264(c)(1)(A) of the Workforce Investment Act for persons 19 years of age or older.

(c) **Unearned income.** In general, unearned income is that income which a household receives and is not in the form of wages, self-employment, or training allowances and for which a person does not put forth physical labor. The types of income listed in (1) through ~~(5)~~(6) of this subsection, while not all inclusive, are considered unearned.

(1) **Assistance payments.** The worker counts payments from a federally aided public assistance program, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments as unearned income.

(A) A household's food benefit amount does not increase when the benefit received from another program is reduced, suspended, or terminated because of a penalty imposed for an intentional failure to comply with a requirement of that program. The other program must be a means-tested, federal, state, or local welfare or public assistance program which is governed by welfare or public assistance laws or regulations and which distributes public funds, such as, SSI and TANF. OAC 340:10-2-2 explains the TANF penalty considered for Supplemental Nutrition Assistance Program (SNAP).

(i) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, ~~Oklahoma Department of Human Services (OKDHS)~~ is not held responsible. The worker must make a good faith

effort to get the needed information and record the details and results of this effort in the case file.

(ii) The worker does not reduce, suspend, or terminate the household's current food benefit amount when the benefits under another assistance program are decreased.

(iii) When the worker adds eligible members to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means-tested program.

(iv) Changes in the household circumstances which are not related to the penalty imposed by another federal, state, or local welfare or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(v) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement under Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income. The worker considers disability payments as:

(A) unearned income when the person is no longer considered an employee of the company and an agency outside of the company pays the disability benefits; and

(B) earned income when the person is still considered an employee of the company and the company pays the disability benefits.

(3) **Support and alimony.** The worker counts as unearned income support and alimony payments paid directly to the household from non-household members. The worker also counts as unearned income, money deducted or diverted to a third party to pay a household expense when the court order directs ~~that~~ the payment be made to the household. The worker does not count as income money the court order states must be paid to a third party.

(4) **Grants, dividends, royalty, and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, grants, dividends, royalties, interest, and all other direct money payments from any source which can be construed to be a gain or profit are considered as income. The worker treats income from these sources as unearned income. The household must provide proof of income from these sources so income can be averaged to determine monthly countable income.

(5) **Monies which are withdrawn or dividends which are or could be received by a household from trust funds.** Dividends which the household has the option of either receiving as income or reinvesting in the trust are considered as income in the month they become available to the household.

(6) Department of Veteran's Affairs (VA) Aid and Attendance. When a person receives VA Aid and Attendance income and does not pay someone outside the food benefit household to care for him or her, this is countable income. Any portion of the VA Aid and Attendance paid to someone outside the food benefit household for care is excluded.

(d) **Income of disqualified or ineligible household members.** OAC 340:50-5-10.1 gives a complete list of reasons for disqualification of household members. ~~Income~~ The worker counts the income of disqualified persons and unqualified aliens ~~is counted~~ as indicated in paragraphs (1) and (2) of this subsection.

(1) **Income of a person disqualified for failure to comply with food benefit Employment and Training (E&T) Program requirements, a fleeing felon disqualification, or willful misrepresentation or fraud.** All income of a person disqualified for failure to comply with food benefit E&T requirements, a fleeing felon disqualification, or willful misrepresentation or fraud, is counted in it's entirety as available to the remaining household members. The worker does not prorate utility, medical, dependent care, and excess shelter deductions.

(2) **Income of persons disqualified for reasons other than willful misrepresentation, a fleeing felon disqualification, or failure to comply with E&T requirements.** The worker prorates the income of persons disqualified for reasons other than those stated in paragraph (1) of this subsection among all household members.

(A) A pro rata share of the income of a disqualified person is considered as income available to the remaining members. The worker calculates the pro rata share by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified member.

(B) The worker counts all but the disqualified member's share as income available to the remaining household members. The earned income deduction from OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, applies to the prorated income attributed to the household if it was earned by the disqualified member.

(C) The portion of the household's allowable shelter and dependent care expenses that are either paid by or billed to the disqualified member is divided evenly among the household members, including the disqualified member. When the household is using the utility standard, it ~~too~~ is evenly prorated. All but

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the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

- (3) **Determining eligibility and benefit level.** The worker does not consider the needs of a disqualified or ineligible household member when determining the household's size for purposes of assigning a benefit level to the household or comparing the household's monthly income with the income eligibility standard.

### 340:50-7-30. Self-employed households

(a) **Person considered self-employed.** A person is considered self-employed when:

- (1) he or she declares himself or herself to be self-employed;
- (2) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even if required by law to do so; or
- (3) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(b) **Self-employment income.** ~~Households~~ Self-employment income received by household members whose income is derived ~~either wholly or in part~~ from a self-employment enterprise owned solely or in part by the household member or when the household member works for an employer, but is considered self-employed per (a) of this Section, are treated in accordance with the procedures listed in paragraphs (1) through (10) of this subsection.

(1) **Capital gains.** ~~The worker counts as income the proceeds from the sale of capital goods or equipment is income for program purposes and is calculated~~ calculates it in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment ~~is~~ are taxed for federal income tax purposes, the worker counts the full amount of capital gain as income.

(2) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

- (A) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or
- (B) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(3) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1,000 or more from the farming enterprise.

- (A) Farming is defined as cultivating or operating a farm for profit either as owner or tenant.
- (B) A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and plantations, ranches, ranges, and orchards.

(i) A fish farm is an area where fish are grown or raised and where they are artificially fed, protected, and cared for, and does not include an area where they are only caught or harvested.

(ii) A plant nursery is a farm for purposes of this definition.

(C) A loss of income for a self-employed farmer cannot be used to offset income from other household income. When a self-employed farmer reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(4) **Monthly self-employment income.** Self-employment income received on a monthly basis, but which represents a household's annual support, is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(5) **Seasonal self-employment income.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(6) **Annualized self-employment income.** Self-employment income which represents a household's annual support must be annualized over a 12-month period, even if the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period if the income represents the farmer's annual support.

~~(A) If the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced substantial increase or decrease in business, the worker calculates the self-employment income on anticipated earnings.~~

~~(B) The worker does not calculate self-employment income on the basis of prior earnings such as income tax returns when an increase or decrease of business has occurred.~~

~~(iA) If~~ When the household's self-employment enterprise ~~has been in existence~~ income has been received for less than a year, the income ~~from that self-employment enterprise~~ must be averaged over the period of time ~~the business has been in operation~~ received and the monthly amount projected for the coming year.

~~(iiB) If~~ When the ~~business has been in operation~~ household's self-employment income has been received for a short time and there is insufficient data to make a reasonable income projection, ~~self-employment~~ the worker does not consider income is recomputed at each new certification until a full year's information is available from this source

until the benefit renewal or certification renewal month. At benefit renewal or certification renewal, the worker averages the income over the number of months received until a full year's information is available.

~~(7) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.~~

~~(A) For those households whose self-employment income is calculated on an anticipated basis, the worker adds any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divides this amount by 12. This amount is used in successive certification periods during the next 12 months except that a new average monthly amount must be calculated over this 12 month period if the anticipated amount of capital gain changes.~~

~~(B) The worker adds the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtracts the cost of producing the self-employment income.~~

~~(8) **Determining net monthly annualized self-employment income.** When the household has business expenses associated with its self-employment income, the business expenses must be deducted before determining whether the household meets the maximum gross income standards shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. When the household does not have business expenses, the gross self-employment income is used.~~

~~(A) When the household has filed an income tax return on its self-employment income for the most recent year, the worker uses the net self-employment income shown on the income tax return and divides the net self-employment income by the number of months to be averaged.~~

~~(B) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) to determine the net monthly self-employment income.~~

~~(i) The worker computes gross self-employment income, including capital gains, using the client's household's self-employment business records or employer records, if applicable.~~

~~(ii) If the client household declares incurred business expenses, the worker subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.~~

~~(iii) The worker then divides the net self-employment income by the number of months to be averaged.~~

(C) The worker adds monthly net self-employment income to all other earned income received by the household. When the household reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) The worker adds the total monthly earned income less the earned income deduction according to OKDHS Appendix C-3 to all other monthly income received by the household.

(ii) The worker subtracts the standard deduction, dependent care, and shelter costs as for any other household per OAC 340:50-7-31 to determine the monthly net income of the household.

~~(8) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in income, the worker does not calculate self-employment income on the basis of prior earnings such as income tax returns. Instead, the worker calculates the self-employment income using only the income that can reasonably be anticipated to project future earnings. The worker uses procedures in (b)(7)(B) and (C) of this Section to determine net monthly self-employment income.~~

~~(9) **Household with income from boarders.** A household that operates a commercial boarding house may be considered a food benefit household and self-employed as shown in paragraph (8) of this subsection. A household with boarders or roomers that is not a commercial boarding house may receive food benefits as shown in subparagraphs (A) through (C) of this paragraph.~~

(A) The worker excludes a person paying a reasonable amount for room and board from the household and counts payments from the boarder as self-employment income when determining the household's eligibility and benefit level.

(i) The income from a boarder includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) The worker does not count expenses paid directly by a boarder to someone outside the household as income to the household.

(B) The worker excludes 50% of the boarder payment as the cost of doing business.

(C) The worker includes the net income from self-employment with other earned income minus the earned income deduction.

(i) The worker computes the shelter cost incurred by the household, even if the boarder contributes part of the shelter expense, to determine if the household qualifies for a shelter deduction.

(ii) The shelter and utility cost must not include any expense billed to and directly paid by the boarder to a third party.

(10) **Income from rental property.** The worker considers income received from rental property as self-employment income.

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(A) The worker treats rental income as earned income if a member of the household actively manages the property an average of at least 20 hours per week.

(B) When a household member does not actively manage the property at least 20 hours each week, the worker considers the income as unearned. The person is eligible for business expenses described at paragraph (§7) of this Section.

## SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

### 340:50-9-1. Determining the food benefit allotment

#### (a) Cases with unverified deductible expenses.

(1) **Food benefits without deductions.** If a deductible expense that must be verified per OAC 340:50-7-31 cannot be verified before the 30-day processing standard for applications expires, the worker determines the household's benefit level without giving a deduction for the claimed, but unverified expense. If the household:

(A) is eligible without allowing the expense, an allotment that does not reflect deduction of the expense is ~~provided~~approved within 30 calendar days after the application is filed; or

(B) chooses to claim expenses for an unoccupied home, the worker verifies the household's utility expenses for the unoccupied home and uses the appropriate utility standard.

(2) **Benefits delayed.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the household application is held pending or denied.

(b) **Determining household eligibility.** In calculating net monthly income, cents are used in determining each source of each person's monthly income and the household's monthly dependent care, shelter, legally binding child support payments, or medical expense. When the monthly amount of each person's source of income or each of the household's expenses is established, and at all other steps of the net income computation, cents are rounded to the nearest dollar. ~~The worker rounds one cent through 49 cents is rounded down and 50 cents through 99 cents is rounded up.~~ Due to changes in household composition or circumstances, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker is required to change one income standard to the other when any change is made to adjust the household's eligibility, benefit level, or certification period, or at ~~recertification~~certification renewal, whichever is earlier.

(1) **Households without elderly or disabled members.** If the household does not have an elderly or disabled member, the household's total gross monthly income and household size are the first basis for determining eligibility. The household is not eligible if the total gross income exceeds the Maximum Gross Income Standard for the appropriate household size as shown on Oklahoma

Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. After gross income and non-financial conditions of eligibility are established, the net food benefit monthly income is computed and compared to the Maximum Net Income Standard for the appropriate household size as shown on OKDHS Appendix C-3. If the net food benefit income does not exceed this standard, the household is determined eligible. The steps in (A) through (H) are used to determine the household's net food benefit monthly income.

(A) Add gross monthly income earned by all household members including any net self-employment income minus the earned income exclusions to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction according to the OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract monthly dependent care expenses. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an employment and training (E&T) program or other source.

(F) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(G) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions given in subparagraphs (A) through (F) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, proceed to the next step.

(H) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income if the total of excess shelter costs does not exceed the maximum shown in OKDHS Appendix C-3. If the total of the shelter costs exceeds the standard shown in OKDHS Appendix C-3, only the amount not exceeding the standard is deducted.

(2) **Households with an elderly or disabled member.** When a household that includes an elderly or disabled member meets the non-financial conditions of eligibility, the household's net food benefit, monthly income, and household size are the basis for determining eligibility. The net food benefit monthly income is compared to the

Maximum Net Income Standards for the appropriate household size as shown on OKDHS Appendix C-3. If the net food benefit income does not exceed this standard, the household is determined eligible. The steps listed in (A) through (I) of this paragraph are used to determine the household's net food benefit income if the household includes an elderly or disabled member.

(A) Add gross monthly income earned by all household members, including any net self-employment income minus the earned income exclusions, to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction from OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract medical expenses that exceed \$35 for elderly or disabled household members only. Thirty-five dollars is subtracted only once for the household rather than for each household member.

(F) Subtract monthly dependent care expenses. A dependent care deduction cannot be allowed for dependent care expenses that are reimbursed or paid for under an E&T program or other source.

(G) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(H) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions in (A) through (G) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(I) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income.

(c) **Food benefit allotment.**

(1) **Initial month proration.**

(A) Initial month means the first month the household is certified for food benefits following any period during which the household was not certified. Food benefit allotments for an initial month are based upon the date of the application and prorated from the date of application.

(i) Proration of benefits from the application date applies to the new case if one food benefit household separates into two or more food benefit households.

(ii) Migrant and seasonal farm worker's food benefits are not prorated when the household has received food benefits in the prior month.

~~(iii) While a~~For the initial month, the worker considers the household's eligibility for the initial month is determined by considering the household's circumstances for the entire month of application, even though the benefit is based on the day of the month the household applies for benefits.

(iv) Per OAC 340:65-3-5(4), Temporary Assistance for Needy Families (TANF) cash assistance payments are also prorated from the date of application. ~~The monthly benefit that the recipient would be eligible to receive if proration did not apply must be determined prior to computation by using the prorated benefit on~~When the worker certifies the household for TANF and food benefits for the same month, the worker uses OKDHS Appendix B, Prorated TANF and Food Benefits: Proration Payment Form, or by using the formula:  $(31 \text{ minus the application date}) \times \text{monthly benefit divided by } 30 = \text{the prorated benefit}$  to determine TANF countable income for the initial month.

(B) The prorated benefit is rounded down to the lower dollar. If the answer is less than \$10, the household is denied for the month of application but certified for the next month. If the household applies on the 31st day of the month, use the 30th for the application date for purposes of this provision. Households that apply after the 15th of the month are issued the prorated benefits for the month of application and the benefits for the first full future month on the same day.

(C) When ~~at~~ the worker certifies the household is certified for the month following the month of initial application because the household failed to furnish necessary information, benefits are prorated from the date the household furnished the information. The application date becomes the date information was furnished to OKDHS.

(2) **Monthly benefit.** The monthly benefit for all months except the initial month is the amount listed on OKDHS Appendix C-3 for the appropriate household size and net income.

~~(d) **Delayed applications.** Applications that are not approved or denied by the 30th calendar day are considered delayed applications. On the 30th calendar day following the application date, every delayed application is assessed to determine who caused the delay. The purpose of this assessment is to determine if the benefits are denied and what date is used to prorate benefits if the household is determined eligible at a later date.~~

(1) ~~**Delay caused by OKDHS.** When the processing delay is caused by OKDHS, the application remains in pending status. At the end of the first 30 calendar days the household is notified of the reason the application is still pending using Form 08MP039E, Notice to Client of Action Taken. If the household is later determined eligible, the case is certified back to the date of application.~~

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OKDHS caused delays include, but are not limited to, the circumstances given in (A) through (F) of this paragraph.

(A) ~~The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview but subsequently failed to provide the required verification. During the interview the worker did not explain to the household or provide the information in writing regarding:~~

- ~~(i) what factors must be verified;~~
- ~~(ii) what is considered acceptable verification; or~~
- ~~(iii) by what date the information must be supplied.~~

~~(B) An interview was never scheduled for the household.~~

~~(C) The worker did not offer or provide assistance to the household in obtaining the verification as required or did offer assistance but failed to follow through on collateral contacts or release of information.~~

~~(D) The worker discovered that additional information was required after the interview but the client did not have ten calendar days between the request for the verification and the 30th calendar day of the application process.~~

~~(E) The household missed their first interview on or before the 30th calendar day and requested that the interview be rescheduled. The human services center (HSC) was unable to schedule the second interview date until after the 30th calendar day.~~

~~(F) The eligible household provided all the required verification on or before the 30th day, and the application was not approved or denied.~~

(2) ~~**Delay caused by the household.** When the processing delay is caused by the household, the application is denied on the 30th calendar day. The household is notified by computer-generated notice that the application is denied. When the household provides the required verification in the second 30-calendar days, a new application is not required. If the household is determined eligible, the food benefit allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (A) through (C) of this subparagraph.~~

~~(A) The household's first interview was scheduled on or before the 20th calendar day following the date of application. The household appeared at the interview but subsequently failed to provide the required verification. The worker provided the household with a statement of required verification, offered to assist the household in obtaining the verification, and also allowed the household sufficient time to provide the verification.~~

~~(B) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The interview was rescheduled to be held on the 30th calendar day; however, the~~

~~household did not provide all the required verification at the rescheduled interview.~~

~~(C) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The household stated they could not come in until after the 30th calendar day.~~

(ed) **Certification periods.** Definite certification periods are established for each eligible household to receive benefits. At the expiration of each certification period, entitlement to food benefits is established ~~only upon a recertification~~ based upon a newly completed application, an interview, and required verification provided per OAC 340:50-3-2 and 340:50-3-3. ~~{OAC 340:50-3-2}~~ Under no circumstances are benefits continued beyond the end of a certification period without a ~~redetermination of eligibility~~ completion of a certification renewal.

(1) **Month of application.** The month of application is the first month in the certification period for initial applicants if eligibility is determined within the 30-day period.

(A) Because of anticipated changes, a household may be eligible for the application month, but ineligible for the subsequent month. In this situation, the household is certified for the application month only.

(B) If a household is found to be ineligible and is denied benefits for the application month, but is eligible for subsequent months, a new application is not needed and ~~the case is certified~~ the worker certifies food benefits effective the month following the application month.

(2) **Missed interview.** During the application process, a household who did not appear for their first scheduled interview may request a new interview date be scheduled through the 30th day following their application date. ~~See Refer to OAC 340:50-9-4 for information regarding delayed applications in paragraph (d) of this Section to determine the proration date of the food benefit allotment.~~

(3) **Information furnished after the application is denied.** When ~~the worker denies an application is denied~~ because the household did not provide the requested information and the applicant furnishes the required information to determine eligibility within the second 30-day period, a new application is not required. The worker certifies food benefits using the date the household provides required information or verification is ~~furnished~~ as the application, certification, ~~or~~ and proration date.

(fc) **Length of certification periods.** ~~Households are assigned~~ The worker assigns the longest certification period possible based on the predictability of the household's circumstances.

(1) **One month.** ~~A~~ The worker assigns a one-month certification is assigned to:

(A) households eligible only for the application month; and

(B) migrant farm worker households, in the work stream, who apply before the 16th of the month.

(2) **Two months.** ~~A~~ The worker assigns a two-month certification is assigned to:

(A) households eligible only for the certification month and subsequent month; and

(B) migrant farm worker households, in the work stream, who apply after the 15th of the month.

(3) **Twelve months.**

(A) ~~The worker assigns a 12-month certification period is assigned to households at certification unless:~~

- (i) the household includes an able-bodied adult without dependents (ABAWD) member who is not meeting the work requirement or is not otherwise exempt; or
- (ii) all adult household members are elderly or disabled with no earned income.

(B) These households are required to complete a ~~review~~benefit renewal at six-month intervals. They are known as semi-annual ~~reporters~~reporting households.

(4) **Twenty-four months.** ~~The worker assigns a 24-month certification period is assigned to households when all adult members are elderly or disabled with no earned income. These households are required to complete a review~~benefit renewal at 12-month intervals. They are known as annual ~~reporters~~reporting households.

**340:50-9-4. Determining cause for processing delays**~~Delayed applications~~

(a) **Delayed applications.** ~~If the worker cannot make an eligibility determination within the 30 days provided for completion of an~~When applications are not approved or denied by the 30th calendar day, they are considered delayed applications. On the 30th calendar day following the application, the worker determines the cause of date, every delayed application is assessed to determine whether the Oklahoma Department of Human Services (OKDHS) or the household caused the delay, using the criteria in (1) through (2) of this subsection, and manually issues a notice to the client explaining the delay. The purpose of this assessment is to determine:

(1) **Household fault.** ~~A delay is considered the fault of the household if the household has failed to complete whether to immediately deny the application process and the worker has taken all the action that is required to assist the household or leave it pending in application status; and~~

(2) **Worker fault.** ~~The worker must take the actions in (A) through (D) of this paragraph before a delay can be considered the fault of what date to certify benefits if the household is determined eligible at a later date.~~

(A) ~~For households that fail to complete an application form, the worker must offer, or attempt to offer, assistance in its completion.~~

(B) ~~If one or more members of the household fail to register for work, the worker must inform the household of the need to register for work and give the household at least ten days from the date of notification to register.~~

(C) ~~In cases where verification is incomplete, the worker must provide assistance when required, and allow the household sufficient time to provide the missing verification. Sufficient time is at least ten~~

~~days from the date of the worker's initial request for the particular verification that is missing.~~

(D) ~~If the household fails to appear for an interview, but requests another appointment within 30 days of the date the application was filed, the rescheduled appointment date must be within the same 30-day period.~~

(b) **Delay caused by OKDHS.** ~~When the processing delay is caused by OKDHS, the application remains in pending status. At the end of the first 30 calendar days, the worker sends the household Form 08MP039E, Notice to Client of Action Taken, explaining why the application is still pending. If the household is later determined eligible, food benefits are approved back to the date of application. OKDHS caused delays include, but are not limited to, the circumstances given in (1) through (6) of this subsection.~~

(1) ~~The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview, but subsequently failed to provide the required verification. During the interview the worker did not provide to the household Form 08AD092E, Client Contact and Information Request, and explain:~~

- (A) ~~what factors must be verified;~~
- (B) ~~what is considered acceptable verification; and~~
- (C) ~~the date verification must be supplied.~~

(2) ~~The worker never scheduled an interview for the household.~~

(3) ~~The worker did not offer to provide assistance to the household in obtaining the verification or offered assistance, but failed to follow through on collateral contacts or release of information.~~

(4) ~~The worker discovered that additional information was required after the interview, but the household did not have ten calendar days between the request for the verification and the 30th calendar day of the application to provide the verification.~~

(5) ~~The household missed their first interview on or before the 30th calendar day and requested the interview be rescheduled. The worker was unable to schedule the second interview date until after the 30th calendar day.~~

(6) ~~The household provided all the required verification on or before the 30th day and the application was not approved or denied timely.~~

(c) **Delay caused by the household.** ~~When the processing delay is caused by the household, the application must be denied by the 30th calendar day. The household receives a computer-generated denial notice. When the household provides the required verification in the second 30 calendar days, a new application is not required. If the household is determined eligible, the food benefit allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (1) through (3) of this subsection.~~

(1) ~~The household's first interview was scheduled on or before the 20th calendar day following the date of application. The household appeared at the interview, but subsequently failed to provide the required verification.~~

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The worker provided the household with Form 08AD092E showing required verification, offered to assist the household in obtaining the verification, and allowed the household sufficient time to provide the verification.

(2) The household missed their first interview and requested the interview be rescheduled on or before the 30th calendar day. The worker rescheduled the interview on or before the 30th calendar day; however, the household did not provide all the required verification by the 30th day.

(3) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The household stated they could not come in or complete an interview over the telephone until after the 30th calendar day.

### 340:50-9-5. Changes after application and during the certification period

(a) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within ten calendar days of the date of the notice.

(b) **Certified households.** Those households assigned a certification period other than 12 or 24 months are required to report within ten calendar days changes in:

- (1) sources of income;
- (2) unearned income of \$50 per month or more;
- (3) earned income of more than \$100 per month;
- (4) household composition, such as an addition or loss of a household member;
- (5) residence and resulting changes in shelter costs; and
- ~~(6) the acquisition of licensed vehicles not fully excluded; and~~
- ~~(7) the legal obligation to pay child support.~~

(c) **Change affecting food benefit.** If a reported change affects the household's eligibility or food benefit amount, the household is notified of the adjustment to be made and the effective date. The worker has ten calendar days from the date the change is reported to take the necessary action.

(1) If the household fails to report a change within the ten-day period and, as a result, receives benefits to which it is not entitled, an overpayment claim is referred to the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section.

(2) If the worker fails to take action on a reported change within the prescribed time limits and benefits are lost, they are restored to the household.

(d) **Changes that increase benefits.** Changes resulting in a benefit increase must be verified. The household is allowed ten calendar days to verify the information.

(e) **Changes that decrease or close benefits.** Food benefits are closed, **never** suspended, if a change in household circumstances causes a household to be ineligible for food benefits. When a household's benefit decreases or closes, an advance notice is required unless exempt from such a notice for a reason listed in (1) and (2) of this subsection. When an advance notice is required, the decrease or termination of the benefit is effective no later than the month following the month in which the

advance notice period expired. When the change is reported less than ten calendar days before the advance notice deadline, the action must be taken before advance notice deadline the following month. Advance notice is not required when the:

(1) Oklahoma Department of Human Services (OKDHS) receives a clear written statement signed by a responsible household member stating he or she no longer wishes food benefits or gives information which requires closure or reduction of food benefits and stating that he or she understands the food benefit will be reduced or closed. The household retains its right to a fair hearing and continuation of benefits if a fair hearing is requested within ten calendar days of the change notice; and

(2) reduction or closure of food benefits is based on situations listed in (k) of this Section.

(f) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information when:

(1) policy and procedures were not administered correctly. The food benefit is reopened back to the first day of the month of closure; or

(2) the household provides all required verification by the last day of the month of closure for failure to complete the ~~review~~benefit renewal. The food benefit is reopened and prorated from the date the ~~review~~benefit renewal is completed.

(g) **Annual reporting households.** Food benefit households with all adult members elderly or disabled with no earned income are known as annual reporters. A 24-month certification period is automatically assigned. These households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size unless it is the ~~review~~benefit renewal or ~~recertification~~certification renewal month. The worker must act on any changes reported by households that increase or decrease their benefits. The system determines if the change results in an increase or decrease in benefits. Between ~~review~~benefit renewal or ~~recertification~~certification renewal months, a decrease in benefits does not occur unless the:

- (1) household has requested closure of the case; or
- (2) worker has information about the household's circumstances considered verified upon receipt.

(h) **Benefit ~~review~~renewal for annual reporters reporting households.** Annual reporting households are sent notification in the 11th month of certification that the ~~review~~benefit renewal is due. An interview is not required. In order to continue to receive benefits, the household must complete the ~~review~~benefit renewal. This includes providing all required verification; by the last day of the 12th month of certification. ~~OKDHS~~The worker reviews information to determine whether changes are needed.

(1) ~~Changes~~The worker must act on changes reported at ~~review~~must be acted on benefit renewal.

(2) If the reported changes result in a decrease or closure of benefits, an advance notice must be sent to the household.

(3) If the household fails to provide sufficient information regarding a deductible expense requiring verification, ~~the review is processed~~ worker processes the benefit renewal without regard to the deduction.

(i) **Semi-annual reporting households.** All food benefit households, except those considered annual reporters or certain households containing one or more ~~able-bodied~~ able-bodied adults without dependents (ABAWD), are assigned a 12-month certification period.

(1) Between the month of ~~review~~ benefit renewal or ~~recertification~~ certification renewal, households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size unless their household contains an ABAWD meeting the work rule per OAC 340:50-5-64(a). Households with an ABAWD meeting the work rule at certification must report if the hours decrease below an average of 20 per week or 80 per month.

(2) The worker must act on any changes reported by households that increase or decrease their benefits. The system determines if the change results in increase or decrease in benefits.

(3) Between the month of ~~review~~ benefit renewal or ~~recertification~~ certification renewal a decrease in benefits does not occur unless the:

- (A) household has requested closure of the case; or
- (B) worker has information about the household's circumstances considered verified upon receipt.

(j) **Review Benefit renewal for semi-annual ~~reporters~~ reporting households.** Semi-annual reporting households are sent notification in the fifth month of certification that the ~~review~~ benefit renewal is due. An interview is not required. In order to continue receiving benefits, the household must complete the ~~review~~ benefit renewal that includes providing all required verification, by the last day of the sixth month of certification. ~~OKDHS~~ The worker reviews information provided to determine whether changes are needed.

(1) ~~Changes~~ The worker must act on changes reported at ~~review~~ must be acted on benefit renewal.

(2) If the reported changes result in a decrease or closure of benefits, an advance notice must be sent to the household.

(3) If the household fails to provide sufficient information regarding a deductible expense, ~~the review, is processed~~ worker processes the benefit renewal without regard to the deduction.

(k) **Notice of adverse action not required.**

(1) **Mass changes.** The individual notification requirement is waived when changes affecting the entire caseload or significant portions of the caseload are initiated because of changes or requirements in federal or state law. In these situations, FSSD mails notices to the households informing them of the changes that are about to be made.

(2) **Notice of death.** If the worker determines, based on reliable information, that all members of the household are deceased, notice of adverse action is not required.

(3) **Moved out of ~~county~~ state.** Notice of adverse action is not required when the worker determines, based on reliable information, ~~that the household has moved out of the county and that a transfer request has not been received~~ state.

(4) **Completion of restoration of lost benefits.** Notice of adverse action is not required if the household is previously notified in writing when restoration of lost benefits is completed and the household's food benefit is reduced due to completion of restoration of lost benefits.

(5) **Variable food benefit.** The household benefit amount varies from month to month within the certification period to take into account changes that were anticipated at the time of certification and the household was so notified at the time of certification.

(6) **Willful misrepresentation.** Notice of adverse action is not required if a person in the household is disqualified for willful misrepresentation. If there is more than one person in the household, the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member.

(7) **Food benefit recoupment.** A notice of adverse action is not required if the household fails to make agreed upon cash or food benefit repayment of an overpayment.

(8) **Drug or alcohol treatment center or group home loses approved status.** If a household's eligibility is being terminated because the drug or alcohol treatment center or group home facility where they reside is no longer approved, an individual notice of adverse action is not required.

(1) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within ten calendar days of the date shown on the adverse action notice, the household may continue to receive food benefits.

**340:50-9-6. Procedures relating to food benefit ~~recertification~~ certification renewals**

(a) **Worker action.** The worker completes the application process, approves or denies applications for ~~recertification~~ certification renewal, and provides eligible households with an opportunity to participate in a timely manner. The worker cannot continue benefits to the household beyond the certification period ~~unless~~ until the worker certifies the household is recertified again.

(b) **Notice of expiration.**

(1) After deadline the month prior to the last month of the certification period, ~~the Family Support Services Division prepares and mails Form 08FB036E, a computer-generated Expiration of Food Benefits Notice of Expiration of Eligibility, is sent~~ to all non-public assistance (non-PA) households receiving food benefits who have been certified for three months or more. ~~Form 08FB36E has a section the household can complete and return to the local Oklahoma Department of Human Services (OKDHS) human services center office to reapply.~~ The ~~form~~ notice informs households:

- (A) ~~it has~~ they have the right to apply;
- (B) ~~when~~ the date food benefits expire;

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- (C) ~~when to make reapplication to avoid lapse of benefits;~~
- (D) ~~they must reapply may complete, sign, and return the notice by the 1<sup>st</sup>5<sup>th</sup> day of the last month of eligibility to avoid a lapse of benefits delay in receipt of further food benefits;~~
- (D) ~~the local Oklahoma Department of Human Services (OKDHS) office schedules interview appointments after receipt of the signed notice; and~~
- (E) ~~that further entitlement to food benefits cannot be established without reapplication by will not be issued until the household, an interview, and recertification of the household's eligibility reapplies and is interviewed.~~
- (2) Households certified for two months or less are notified by computer-generated notice of the effective date and expiration date of the certification. The notice is generated and mailed at the time the household is certified eligible.
- (c) **Timely ~~recertification~~certification renewal.**
- (1) ~~Reapplications~~Certification renewals are processed within the time frames described in (A) through (B) of this ~~subsection~~paragraph.
- (A) **Prior certification of fewer than three months.** A household with a prior certification period of fewer than three months and who ~~apply~~applies by the 1<sup>st</sup>day of the last month of the certification period ~~are~~is provided with the opportunity to participate, if eligible, no later than 30 calendar days after the date the household last had an opportunity to obtain its food benefits.
- (B) **Prior certification of three months or more.** ~~Reapplications~~Certification renewals filed on or before the 1st day of the last month of the certification period are considered timely ~~reapplications~~. If the household meets all of the requirements and completes all the processing steps, the worker certifies or denies the application prior to the end of the certification period.
- (i) Any eligible household who ~~reapplies~~renews benefits timely is provided an opportunity to participate by its normal issuance date in the month following the end of the current certification period.
- (ii) To retain this right to uninterrupted benefits, the household must have attended any interview and/or provided all required verification due on or after the deadline for filing timely ~~reapplications~~certification renewals.
- (iii) Although a household loses its right to uninterrupted benefits, it retains its right to complete the process and receive benefits, if eligible, within 30 calendar days of the application date.
- (2) Households who have timely ~~reapplied~~renewed but, due to worker error, are not timely determined eligible are ~~recertified and given an opportunity to participate~~certified immediately upon being determined eligible. If the delay in ~~recertification~~certification renewal extends into the

following month, the certification is made retroactive to the first day of the month following expiration of the certification period. (3) A household applying for ~~re-certification~~certification renewal in the last month of its certification period is not entitled to expedited services. When the ~~re-certification~~certification renewal is teleprocessed on or before the last day of the month of the old certification period, the subsequent month's benefit is issued on the second working day of the month.

(d) **Untimely ~~reapplication~~certification renewal.** A household who fails to submit a timely application for ~~re-certification~~submits an untimely certification renewal, without good cause, loses its right to uninterrupted benefits, and the worker has 30 calendar days to certify or deny the application and provide an opportunity to participate if the household is eligible. If an application for ~~re-certification~~When a certification renewal is not received until after the certification period expired, ~~then that~~the application is considered an initial application and benefits for that month are prorated. ~~Even though a household fails to make a timely recertification they are~~The household is entitled to expedited service if the household qualifies ~~under~~per OAC 340:50-11-1.

(e) **Good cause for failure to timely ~~reapply~~renew food benefits.** ~~If the worker determines that the household's failure to make~~When the household had good cause for its failure to submit a timely ~~application~~certification renewal or to otherwise complete the certification process in a timely manner was for good cause, and the household did not receive food benefits in the month following expiration of benefits, it is entitled to restoration of lost benefits if, as a result of its failure, the household was unable to participate in the month following the expiration of its certification period per OAC 340:50-11-4. ~~Determination of~~The worker determines good cause is made on a case-by-case basis, and includes, but is not limited to, Good cause reasons may include failure to receive timely notice of expiration; or personal illness.

[OAR Docket #12-506; filed 5-1-12]

### TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES

[OAR Docket #12-508]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
340:65-1-2 [AMENDED]  
Subchapter 3. Eligibility for Benefits  
340:65-3-1 [AMENDED]  
340:65-3-4 [AMENDED]  
340:65-3-7 through 340:65-3-8 [AMENDED]  
Subchapter 5. Procedures Relating to Case Changes  
Part 1. General Provisions  
340:65-5-1 [AMENDED]  
(Reference WF 11-15)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Sections 71, 161, 164, and 168 of Title 56 of the Oklahoma Statutes (O.S.); Section 20j of Title 74 O.S.; Section 272.8 of Title 7 of the Code of Federal Regulations (CFR); Sections 435.940 and 435.952 of Title 42 of the CFR; Sections 205.51 and 205.56 of Title 45 of the CFR; and summary of the last Internal Revenue Service (IRS) SafeGuard Review in May 2010.

**DATES:**

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None requested

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**Gubernatorial approval:**

April 16, 2012

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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

**Final adoption:**

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July 1, 2012

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The revisions to Subchapter 1 of Chapter 65 amend the rules to add detailed information regarding practices for safeguarding case information and raw tax data.

The revisions to Subchapter 3 of Chapter 65 amend the rules to: (1) clarify information regarding the client's right to apply for benefits in the human services center of choice; (2) reorganize citizenship, collateral contact, and denial procedures information; (3) add additional information regarding collateral contacts, denial process, and fair hearing rights; (4) change the time frame to resolve data exchange discrepancies; (5) add policy citations regarding safeguarding of information.

The revisions to Subchapter 5 of Chapter 65 amend the rules to reorganize and update information regarding notices and fair hearing procedures.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

**SUBCHAPTER 1. GENERAL PROVISIONS**

**340:65-1-2. Confidential nature of case material**

(a) **Legal basis.** The Oklahoma Department of Human Services (OKDHS) maintains the confidentiality of all applications, information, and records concerning any applicant or recipient in accordance with the Oklahoma Social Security Act, the Federal Social Security Act, and Section 183 of Title 56 of the Oklahoma State Statutes.

(b) **Custody of records.** All case information including electronic data procured by, or available to, any staff member of OKDHS is the property of OKDHS and is used by staff only in accordance with the provisions of the law and the rules adopted by OKDHS.

(1) **Authority to disclose information.** The county director is responsible for the custody of records in the human services center (HSC) and for their proper use. All requests for information from an OKDHS record are referred to the county director, except in those instances where the request originates within OKDHS in carrying out its regular functions. Staff members of each of the OKDHS operating divisions have access to records of the other divisions so that a mutual exchange of information, on the same family or related to a case under care, may be constructive.

(2) ~~Nature~~ **Safeguarding of case information to be safeguarded.** Case information must be safeguarded in accordance with OAC 340:1-1-20, OKDHS:2-41-15, OKDHS:2-45, OKDHS:115-3-2, and as provided in this subsection. The county director or delegated custodian of records is responsible for ensuring compliance with the applicable rules when the records are located in a HSC or any alternate work location. Alternate work locations, as defined in OKDHS:2-1-301, must have the capacity for safeguarding case information. If an alternate work location cannot meet safeguarding standards, case information cannot be received, stored or processed at that location.

(A) Practices for safeguarding information include:

(i) secure physical storage of records in locked buildings, rooms, and containers;

(ii) secure storage and care of OKDHS owned electronic equipment;

(iii) controlled or restricted access to areas containing case information;

(iv) case information:

(I) must be secured in a storage area when an employee is not present, such as in a desk or file cabinet;

(II) may not be stored on any electronic device or storage media that is not the property of OKDHS; and

(III) may not be sent outside OKDHS via email unless it is encrypted;

(v) raw tax data which includes any written, typed, photocopied, or printout of information from the Income Eligibility Verification System-Internal Revenue Service (IEVS-IRS), Beneficiary and Earnings Data Exchange System (BENDEX), and Beneficiary Earnings Exchange Record (BEER):

(I) must be secured in a storage area, such as a locked desk or file cabinet;

(II) may not be viewed or stored on any electronic device that is not the property of OKDHS or the State of Oklahoma;

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(III) may not be printed or maintained in a non-electronic format;

(IV) may not be sent via email; and

(V) may not be transmitted via fax; and

(vi) reasonable privacy or restricted viewing of electronic data visible on computer screens or mobile devices.

~~(B) Except as provided in this subsection, information~~ Information which must be safeguarded includes:

~~(A)i~~ names and addresses, including lists;

~~(B)ii~~ information contained in an application;

~~(C)iii~~ reports of investigations;

~~(D)iv~~ medical data which includes, but is not limited to, diagnosis and past history of disease and disability;

~~(E)v~~ correspondence and other records concerning the condition or circumstances of any person from whom or about whom information is obtained, regardless of whether it is recorded;

~~(F)vi~~ evaluations of such information;

~~(G)vii~~ warrant registers;

~~(H)viii~~ all data items available on computer screens. Disclosure to any unauthorized person is a violation of federal and state agency regulations. Persons considered to be authorized are:

~~(i)~~ the client;

~~(ii)~~ the client's authorized representative;

~~(iii)~~ OKDHS staff;

~~(iv)~~ authorized volunteers; and

~~(v)~~ staff of outside agencies with a contract or agreement allowing access to specific data; and

~~(ix)~~ raw tax data which is ~~any written, typed, photocopied, or printout of information from the Income Eligibility Verification System Internal Revenue Service (IEVS IRS), Beneficiary and Earnings Data Exchange System (BENDEX), and Beneficiary Earnings Exchange Record (BEER).~~ Raw tax data may include:

~~(i)~~ the client's name;

~~(ii)~~ Social Security number;

~~(iii)~~ Internal Revenue Service (IRS) reporting firm, company, political subdivision;

~~(iv)~~ state agency account number;

~~(v)~~ type of income; and

~~(vi)~~ the amount of income or resource.

### (3) Nature of information to be made available.

General information not identified with any particular person or group of persons, such as total expenditures made, number of recipients, and other statistical information and social data contained in reports or surveys do not fall within the type of material to be safeguarded.

(A) Requested information is released to representatives of agencies which are authorized, by law, to have the information. Information may be released to other agencies only when they give assurance that the:

(i) confidential character of the information will be preserved;

(ii) information will be used only for purposes related to the administration of the assistance program and the functioning of the inquiring agency; and

(iii) standards of protection established by the agency to which information is disclosed are equal to those established by OKDHS, both in regard to the use of the information by the staff and the provision of protective procedures.

(B) Addresses of clients can be disclosed to federal, state, and local law enforcement officers who furnish the client's name, Social Security number, and notify OKDHS that the location or apprehension of the client is within their official duties and ~~that~~ the client is:

(i) a fugitive felon who is fleeing to avoid prosecution, custody, or confinement after conviction; or

(ii) violating a condition of probation or parole.

(C) The days and hours a child is approved for the Child Care Subsidy Program can be disclosed to a child care provider.

(D) Upon written request, information used to establish eligibility that is not otherwise protected by law is made available to the client or the client's representative during normal business hours. Confidential information, including the names of persons who have disclosed information about the client without the client's knowledge and the nature or status of pending criminal prosecutions is withheld.

(E) Information obtained by the worker from collateral sources, other than public records or the worker's written evaluation of the client's situation, cannot be made available to the client or to any other person without the consent of the person who gave the information. Prior to a fair hearing, HSC staff is responsible for supplying the client with a copy of the written summary, documents, and other records which HSC staff present at the hearing per OAC 340:2-5. ~~{OAC 340:2-5}~~

(4) **Release of information at request of client.** If the client or the client's representative requests OKDHS make available to him, her, or to other persons, courts, or agencies, certain information which he or she has given OKDHS regarding himself or herself, it is proper to do so, provided the release is to the designated person and the material is related to the specific subject involved.

(A) A written inquiry from an interested person, accompanied by the client's written permission, is considered sufficient to identify the person as the authorized representative of the client and information may be furnished.

(B) If a letter of inquiry does not conclusively show that the person making inquiry has been asked to obtain such information in behalf of the client, no action is taken without ascertaining the client's wishes in the matter.

(5) **Release of information to courts.** Information about the client in his or her record is made available in court proceedings only upon subpoena, except upon request by court officials in cases of abandonment and desertion, neglect of children, or restitution when such cases have been referred to the court by OKDHS. In these situations OKDHS staff testimony is limited to material affecting the administration of the public assistance law except when participating in a case requested by the client or the client's representative in which his or her personal interests are at stake.

(A) When an employee of OKDHS is subpoenaed by the court for the purpose of giving testimony based upon OKDHS records, the county director confers with the district attorney (DA) regarding recognition by the court of the right of OKDHS under the law to protect its records, and of the confidential character of information made available to OKDHS in the process of administering assistance.

(B) If there is reason to believe that the court will not respect the confidential character of OKDHS records, the county director communicates immediately with the Legal Division regarding the steps to be taken.

(6) **Release of information to the DA.** Information is released to the DA, as necessary, to carry out OKDHS policy regarding support from an absent parent. In every instance, the relative making application for Temporary Assistance for Needy Families (TANF) is informed of the requirement for obtaining support from an absent parent.

(7) **Release of medical information.** Medical information paid for by OKDHS is not released, even at the request of the person to whom it pertains, except to another agency to which the person has applied for services with the objective to protect or advance the person's welfare. There is nothing in Oklahoma law or federal law to prevent a physician from releasing medical information to his or her patient or an authorized representative of the patient. The physician, in such instances, is governed by the physician-patient relationship.

(A) The OKDHS Legal Division is responsible for determining whether the particular medical information being requested may be released under federal regulations and OKDHS policies. When such clearance has been made, the Legal Division notifies FSSD. FSSD contacts HSC staff regarding the action to take.

(B) Medical information that HSC staff has obtained from the Veterans Administration or from the Social Security Administration cannot be released to anyone outside OKDHS.

(C) When a client requests a hearing on a medical decision, all medical records or reports except for psychological and psychiatric records, which were considered in establishing the medical decision, are provided to the client or authorized representative at a reasonable time before the date of the hearing. Copies of psychological and psychiatric records are

not made available unless the release of these records is consented to by the treating physician or practitioner or are ordered released by a court of competent jurisdiction upon a finding that it is in the best interest of a patient.

### SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

#### 340:65-3-1. Determination of eligibility

(a) **Eligibility determination.** The determination of eligibility is a continuous process that begins with an application. It includes the final disposition of the application and all subsequent activities related to determining continued eligibility. The applicant has the right and the responsibility to participate in the eligibility determination and is relied on as the first source of information.

(1) In instances when it is difficult for the applicant to complete the application, someone acting on the applicant's behalf such as an authorized representative or a person with power-of-attorney may complete the application for all programs except Temporary Assistance for Needy Families (TANF).

(2) When someone other than the applicant applies on behalf of the applicant, he or she must bring a signed statement from the applicant giving this person permission to act on behalf of the applicant or the applicant must have designated this person as his or her authorized representative on the signed application. The SoonerCare (Medicaid) programs allows allow others to apply for the applicant without a written designation.

(b) **Filing an application.** Each household wishing to apply for the Child Care Subsidy Program, Low Income Home Energy Assistance Program (LIHEAP), SoonerCare (Medicaid) Program, Supplemental Nutrition Assistance Program (SNAP), State Supplemental Payment (SSP), Supplemental Security Income Disabled Children's Program (SSI-DCP), or TANF must complete an application. The applicant may request one or more benefits on the same application with the exception of LIHEAP which is not an ongoing benefit.

(1) The applicant may apply for benefits in the human services center (HSC) of his or her choice. This also applies when someone living in a different county applies on behalf of the applicant at the HSC in his or her own county instead of the county in which the applicant lives.

(2) When the applicant applies for TANF benefits in a county in which he or she does not live, the applicant's TANF Work activities are assigned in the county which the applicant states creates the least barrier to participation.

(c) **Signature requirements.** The applicant, guardian, or someone acting on the applicant's behalf such as an authorized representative or a person with power-of-attorney must sign the application. TANF applications must be signed by the applicant. If the applicant is living with his or her spouse, both must sign the application. The applicant may voluntarily withdraw the request for benefits or services either before or after signing the application. An applicant who is:

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- (1) eligible for Medicare signs the application using the name on his or her Medicare Health Insurance Benefits (HIB) card; or
  - (2) not eligible for Medicare signs the application using the name shown on his or her Social Security card.
- (d) **Interview requirements.** Whether an interview is required varies depending on the program.
- (1) Prior to approval for benefits, the applicant must complete a face-to-face interview for:
    - (A) SNAP. Exceptions are found at OAC 340:50-3-2; or
    - (B) the TANF Program.
  - (2) A telephone or face-to-face interview is required for the:
    - (A) Child Care Subsidy Program;
    - (B) SSP Program;
    - (C) SoonerCare (Medicaid) long-term care programs such as Advantage Waiver, nursing home care, or personal care; or
    - (D) SoonerCare (Medicaid) programs that categorically relate to the aged, blind, and disabled population such as Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), Qualified Disabled and Working Individuals (QDWI), or Qualified Medicare Beneficiary Plus (QMBP).
  - (3) An interview is not required prior to approval for the SoonerCare (Medicaid) population in Online Enrollment with the Oklahoma Health Care Authority (OHCA) or LIHEAP benefits.
- (e) **Worker responsibilities.** The worker is responsible for:
- (1) advising the applicant during the application process of the:
    - (A) Oklahoma Department of Human Services (OKDHS) responsibility for reaching a decision and notifying the applicant of eligibility or ineligibility within the appropriate time limits;
    - (B) applicant's right to request a fair hearing per OAC 340:2-5, either orally or in writing, and be represented at the hearing by any person the applicant chooses. A hearing may be requested when there is a:
      - (i) delay beyond the established time limits for determining eligibility per OAC 340:65-3-5; or
      - (ii) disagreement with any action taken on the case;
    - (C) applicant's legal responsibility for reporting all facts pertinent to eligibility;
    - (D) types of changes the applicant must report within ten calendar days;
    - (E) penalty for failure to report changes;
    - (F) information needed to establish eligibility. When requesting information or verification from the applicant, the worker uses Form 08AD092E, Client Contact and Information Request, and gives the applicant at least ten calendar days to respond to the request per OAC 340:65-3-2.1;
    - (G) assistance provided by OKDHS in establishing eligibility;
    - (H) permission the applicant gives OKDHS to obtain information from sources other than the applicant by signing the application; and
    - (I) requirement that the applicant must cooperate with state and federal officials if the applicant's case is selected for a Quality Control review;
  - (2) collecting information necessary for determining the applicant's initial and continuing eligibility. Information considered verified upon receipt if that information is not questionable or inconsistent with known facts, and the provider of the information is the primary source of the information, is the:
    - (A) applicant's statement concerning:
      - (i) residency;
      - (ii) relationship;
      - (iii) age;
      - (iv) living in the home of a relative payee;
      - (v) minor parent living in the home of a relative;
      - (vi) Social Security number (SSN);
      - (vii) non-liquid resources;
      - (viii) household members;
      - (ix) school attendance; and
      - (x) third party insurance;
    - (B) unearned income information obtained through:
      - (i) Beneficiary and Earnings Data Exchange System (BENDEX), from the Social Security Administration (SSA);
      - (ii) Supplemental Security Income (SSI)/State Data Exchange System (SDX), from SSA;
      - (iii) Unemployment Insurance Benefits (UIB), from the Oklahoma Employment Security Commission (OESC); and
      - (iv) workers' compensation documents from Workers' Compensation Court; and
    - (C) alien status information obtained through Systematic Alien Verification for Entitlements (SAVE), from the United States Citizenship and Immigration Services (USCIS);
  - (3) contacting other persons who may be able to help in establishing eligibility if the applicant is unable to participate in the eligibility determination because of physical or mental disability, inability to speak English, or other difficulties;
  - (4) determining whether the applicant is currently receiving benefits from another state when he or she has lived in Oklahoma less than 12 months;
  - (5) recognizing expressed or implied needs which includes:
    - (A) determining whether there is a need for crisis intervention;
    - (B) addressing the applicant's social services needs; and
    - (C) making appropriate referrals; and
  - (6) denying the application if sufficient facts are available to substantiate ineligibility.

(f) **Requirement for SSN.** A verifiable SSN or application for a SSN is required for every person whose needs are included for food benefits, SSP, SSI-DCP, LIHEAP, or TANF benefits. The requirement for a verifiable SSN also applies to all persons whose needs are included for SoonerCare (Medicaid) benefits, except newborn children deemed eligible and aliens who are residing in the United States (U.S.) unlawfully.

(1) The worker accepts the applicant's statement to document the SSN unless the information is inconsistent or there are other facts or observations which cause the worker to question the statement.

(A) Persons for whom a SSN is required but not available must be referred to the appropriate SSA office for SSN enumeration.

(i) The worker uses Form 08AD101E, SSN Enumeration Referral, to refer persons to the SSA office for a SSN application.

(ii) The return of Form 08AD101E to the ~~human services center (HSC) OKDHS~~ validates the application(s) or indicates which persons have not provided SSA appropriate original evidence of age, identity, and citizenship.

(B) Parents of newborns who participate in Enumeration at Birth (EAB) receive from hospital personnel Form SSA-2853-OP3, Message From Social Security. This receipt form is verification the newborn was enumerated at birth.

(2) The worker denies the application or does not include the person for benefits if the person fails or refuses to furnish or to apply for a SSN.

(A) For TANF purposes, the person's needs are included; however, a 25% payment standard reduction penalty is imposed until an application for or a SSN is provided.

(B) For food benefit and SoonerCare (Medicaid) purposes, only the needs of the person for whom a SSN is not provided or applied for are not included.

(g) **Citizenship requirement.** All persons ~~who are~~ applying for state or federal public benefits such as child care subsidy, food benefits, LIHEAP, SoonerCare (Medicaid), SSP, or TANF must declare ~~whether they are residing in the U.S. lawfully. Initially, the applicant must declare~~ the citizenship or alien status for each household member applying for such benefits on the application or review. When the payee requests benefits for additional household members between application and review, the payee completes and signs Form 08MP022E, Declaration of Citizenship Status, to declare the citizenship or alien status of the additional household members. Citizenship and alien status for persons applying for SoonerCare (Medicaid) benefits is determined using specific program requirements found at OAC 317:35-5-25. ~~The following citizenship requirements are pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes. Form 08MP022E, Declaration of Citizenship Status, is completed to declare the citizenship or alien status of additional household members who request benefits after certification. The application and Form 08MP022E contain a statement advising the applicant that fraudulent claims of citizenship or~~

~~lawful alien status are reported to the U.S. Attorney and may be subject to criminal prosecution.~~

(1) When the applicant declares that some or all of the household members applying for benefits are aliens, the worker must follow the SAVE procedures described at OAC 340:65-3-4 to determine if the documents provided to verify legal alien status are valid.

(2) The worker also must follow specific program policy regarding citizenship and alien status requirements to determine benefit eligibility found at:

(A) OAC 340:40-7-5 for child care subsidy benefits;

(B) OAC 340:50-5-67 for food benefits;

(C) OAC 340:20-1-8, 340:20-1-10, and 340:50-5-67 for LIHEAP;

(D) OAC 317:35-5-25 for SSP; and

(E) OAC 340:10-15-1 for TANF.

(3) The citizenship requirements at (g)(3)(A) through (C) and (g)(4) of this Section are pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.

~~(3A)~~ Lawful status in the U.S. is considered verified if each person applying for benefits has furnished a SSN or Form 08AD101E from SSA indicating that the person has completed the application to apply for a SSN. OKDHS, through an automated data exchange transaction, attempts to match SSN data exchange information with SSA.

~~(4B)~~ When prior to receiving benefits, when OKDHS is unable to match the SSN with SSA for a person 14 years of age or older who is applying for benefits, that person must:

(i) sign and have notarized Form 08MP005E, Citizenship Affidavit, attesting to his or her U.S. citizenship or alien status unless lawful status has been verified by a; or

(ii) provide a U.S. birth certificate, U.S. passport, or a Certificate of Naturalization. Documents acceptable as verification of citizenship for SoonerCare (Medicaid) described at OAC 317:35-5-25 are also acceptable as verification of lawful status.

~~(5C)~~ When the person fails or refuses to sign and have notarized Form 08MP005E or provide one of the documents described at (g)(3)B(ii) of this Section, benefits are denied or closed for that person.

(4) The application, review, and Form 08MP022E contain a statement advising the applicant that fraudulent claims of citizenship or lawful alien status are reported to the U.S. Attorney and may be subject to criminal prosecution.

~~(65)~~ When the worker finds that a person who signed Form 08MP005E attesting to U.S. citizenship or legal alien status made a false claim:

(A) the worker sends to Family Support Services Division (FSSD) any applicable evidence and a memo that includes:

(i) the benefits the person fraudulently applied for or obtained;

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- (ii) the time frame benefits were received; and
- (iii) how the worker knows the claim was false;
- (B) FSSD staff in consultation with Office of General Counsel staff review the memo and any evidence provided by the worker; and
- (C) when FSSD and Office of General Counsel staff determine the person made a false claim, a complaint is filed with the U.S. Attorney for the applicable district based upon the venue in which the affidavit was executed.

### 340:65-3-4. Investigation of eligibility conditions and services planning

The worker is responsible for collecting information necessary for determining the client's eligibility for benefits and addressing the client's social services needs. When verification of information from a source other than the client's statement is necessary, the sources described in this Section are used.

(1) **Home visits.** Home visits are sometimes necessary for Field Operations Division (FOD) Family Support Services (FSS) staff to provide services and benefits and to promote safety and stability for families. All home visits must be planned and coordinated to prevent duplication of efforts.

(A) FOD, Adult Protective Services (APS) staff may make home visits and client contacts outside normal working hours within policy as outlined in OAC 340:5.

(B) All other FSS workers may make home visits or other client contacts outside normal working hours when it is in the best interest of the client and approved by appropriate supervisory personnel. Home visits are made when:

- (i) there is a need to confirm the accuracy of statements and documentation cannot be obtained from other sources;
- (ii) an office visit would create a hardship for the household;
- (iii) a Temporary Assistance for Needy Families (TANF) case is closed due to failure to cooperate per OAC 340:10-2-2;
- (iv) it is the best method to complete or review the employability plan;
- (v) protective services are needed; or
- (vi) the worker deems it necessary.

(2) **Collateral source contact.** A collateral contact is a verbal confirmation of a household's circumstances by a person outside the household. The collateral contact may be made either in person or over the phone.

(A) The acceptability of a collateral contact is not restricted to a particular person, but may be anyone that can be expected to provide an accurate third party verification of the household's statement. Examples of acceptable collateral contacts are:

- (i) employers;
- (ii) agencies, businesses, or community action groups;
- (iii) migrant service agencies;

- (iv) neighbors of the household;
- (v) landlords; or
- (vi) other persons outside the household.

(B) The client's signature on the application or review is the necessary authorization for securing required information or verification from collateral sources contacts. This authorization includes the permission of the client's spouse for information regarding his or her circumstances to be given in connection with the same application or review and of the client's parents when the client is a dependent child who is blind or disabled.

(i) If the collateral source contact requires written authorization before supplying information to the Oklahoma Department of Human Services (OKDHS), the client signs Form 08AD060E, Request for Release of Information, to give authorization. This authorization includes the permission of the client's spouse for information regarding his or her circumstances to be given in connection with the same application or review and of the client's parents when the client is a dependent child who is blind or disabled. The worker is responsible for discussing with the client any inconsistent information obtained from collateral sources related to the client's eligibility.

(ii) When information is needed regarding another adult household member, that person may need to sign Form 08AD060E before the collateral contact agrees to release information for another adult household member.

(A) The worker advises persons contacted for information related to the client's eligibility of how the information is used and the reason it is needed. If the person is unwilling for the client to know his or her identity, the person's name is not recorded in the case record and is not revealed to the client.

(B) When someone contacts OKDHS with information related to the client's eligibility and requests anonymity, that person's name is not recorded in the case record nor revealed to the client.

(E) The worker is responsible for discussing with the client any inconsistent information obtained from collateral contacts related to the client's eligibility. The client is given the opportunity to clear up conflicting information when possible.

(3) **Public records.** Sources of information in the form of public records that provide essential information may be obtained without consent from any person whose transactions are involved.

(4) **Data exchange.** Automated data exchange with other agencies provides benefit, wage, tax information, and verification of Social Security numbers. The information obtained is electronically compared with data stored within OKDHS electronic records to determine if there are discrepancies that need to be addressed. Automated data exchange information is also available within the OKDHS system to determine discrepancies. Refer to

OAC 340:65-1-2 for information regarding practices for safeguarding case information and raw tax data. The worker is responsible for:

- (A) reviewing data exchange information at the time of application and review of eligibility. Data exchange information screens available are:
    - (i) Beneficiary and Earnings Data Exchange System (BENDEX);
    - (ii) Buy-In Data Exchange (BIL);
    - (iii) Supplemental Security Income (SSI)/State Data Exchange System (SDX);
    - (iv) Social Security Administration (SSA) Beneficiary Earnings Exchange Record (BEER/BWG);
    - (v) New Hire Employee list (NHL);
    - (vi) Social Security Number (SSN) Verification - SSN Enumeration;
    - (vii) Wage Data Exchange;
    - (viii) Unemployment compensation; 12 and
    - (ix) Unearned Income Eligibility Verification System (IEVS) income report (IEVS-IRS) and resource data from the Internal Revenue Service (IRS);
  - (B) initiating appropriate queries; and
  - (C) resolving data exchange discrepancy messages within ~~30~~45 calendar days of the date the message is posted on the data exchange inquiry screen.
- (5) **Systematic Alien Verification for Entitlement (SAVE).** All applicants and recipients of the TANF, SoonerCare (Medicaid), Supplemental Nutrition Assistance Program (SNAP), Low Income Home Energy Assistance Program (LIHEAP), State Supplemental Payment (SSP), and Child Care Subsidy Program benefits are required to declare their citizenship status. Persons who declare themselves or their minor child non-citizens must present documentation of their legal alien status from the United States Citizenship and Immigration Services (USCIS) or other acceptable source. The status, as determined from the documentation, must be verified through the Alien Status Verification Index (ASVI) maintained by USCIS.
- (6) **Workers' compensation.** Family Support Services Division (FSSD) staff reviews copies of all Workers' Compensation Court documents by matching SSNs with OKDHS records. Any court action that appears to potentially impact eligibility is forwarded to the servicing ~~human services center (HSC)~~OKDHS office for clearance. A copy of the document is retained in the case record.
- (7) **Birth verification.** For persons born in Oklahoma, OKDHS has an agreement with the Oklahoma State Department of Health to verify birth electronically for persons with an open SoonerCare (Medicaid) benefit.
- (8) **Food stamp disqualification (FSD).** When a client has been disqualified for food benefits due to fraud, the FSD screen shows the date the disqualification began and the length of the disqualification period.

**340:65-3-7. Denial of application**

If the applicant is unwilling to cooperate in establishing eligibility or if eligibility cannot be established, the worker denies the application is denied. Any unsigned application placed in application status must be denied. A computer-generated notice of denial is sent to the applicant or his or her representative. In case of an applicant's death, the worker sends a letter to the applicant's authorized representative or nearest relative.

(1) Refer to OAC 340:65-3-2 for the definition of what constitutes an application for each program.

(~~2~~) Before denying an application with incomplete verification, the social services specialistworker must giveprovide the applicant a written request with Form 08AD092E, Client Contact and Information Request, giving at least ten calendar days to provide the missing verification. The social services specialistWhen the applicant requests assistance in obtaining verification, the worker must assist the applicant in obtaining the missing verification.

(~~3~~) When an applicant desiresverbally asks to withdraw his or her application before eligibility is determined, it is advisable thatthe worker asks the applicant to put the request for withdrawal be in writing. Action to deny the ease is takenThe worker denies the application based on the applicant's informationreason given by the applicant. A computer generated notice of denial is sent to the applicant or his or her representative. In case of an applicant's death, a letter is sent to the applicant's representative or nearest relative.

(4) When the worker is unable to locate the applicant to complete the application, he or she denies the application.

(5) The applicant may request a fair hearing within the specified time of the notice when he or she disagrees with the action taken. Refer to OAC 340:2-5 for fair hearing procedures.

**340:65-3-8. Determination of continuing eligibility**

(a) **Determination of continuing eligibility.** Determining continuing eligibility is a process which must be carried out at appropriate intervals. The appropriate interval for reviewing eligibility depends on the type of benefit received. The worker is responsible for:

- (1) advising the recipient at each contact of ~~the recipient's~~his or her responsibility to report changes within ten calendar days of the date the change becomes known;
- (2) making contacts at unspecified intervals to ensure continuing eligibility;
- (3) synchronizing the review dates for all benefits received by the household when possible; and
- (4) determining continuing eligibility.

(b) **Review or ~~recertification~~Supplemental Nutrition Assistance Program (SNAP) certification renewal time frames.** The periodic review or ~~recertification~~SNAP certification renewal time frame varies depending on the program.

(1) A review must be completed at six month intervals with a:

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- (A) Temporary Assistance for Needy Families (TANF) recipient due to:
- pending required immunizations per OAC 340:10-14-1;
  - payment standard reductions because of program violations per OAC 340:10-3-57(g);
  - hardship extension approvals per OAC 340:10-3-56(a)(2)(E);
  - earned income per OAC 340:10-3-31 through 340:10-3-40; or
  - a work-eligible person exempt from TANF Work activities because of incapacity or to care for a disabled family member living in the household per OAC 340:10-2-1;
- (B) child care recipient per OAC 340:40-9-1; or
- (C) food benefit recipient subject to a semi-annual review per OAC 340:50-9-5(i) and (j).
- (2) A review or ~~recertification~~ SNAP certification renewal must be completed at 12-month intervals, unless an earlier review date is warranted, with a:
- TANF recipient;
  - State Supplemental Payment (SSP) recipient;
  - child care recipient who is receiving TANF or SSP benefits;
  - food benefit household subject to an annual review per OAC 340:50-9-5(g) and (h);
  - food benefit household whose ~~recertification~~ SNAP certification renewal must be completed at 12-months per OAC 340:50-9-6; or
  - SoonerCare (Medicaid) recipient per OAC 317:35.
- (3) The worker completes a ~~food benefit recertification~~ SNAP certification renewal at 24 month intervals for households subject to an annual review per OAC 340:50-9-6.
- (c) **Eligibility review or ~~recertification~~ SNAP certification renewal.** The recipient is sent notification when the review or ~~recertification~~ SNAP certification renewal is due for food benefits SNAP certification renewal, subsidized child care benefits, TANF, SSP, or SoonerCare (Medicaid) benefits. The recipient must complete the review or ~~recertification~~ SNAP certification renewal in order to continue receiving benefits.
- (d) **Signature requirements.** The recipient, guardian, or a person acting on the recipient's behalf, such as an authorized representative or a person with power-of-attorney must sign the review. TANF reviews must be signed by the recipient. If the recipient is living with his or her spouse, both must sign the review. ~~The only exception to the signature requirement is for a SoonerCare (Medicaid) review completed over the telephone.~~
- (e) **Interview requirements.** Whether an interview is required for a review or ~~recertification~~ SNAP certification renewal varies depending on the program.
- A face-to-face interview is required for the:
    - TANF Program; or
    - Supplemental Security Income-Disabled Children's Program SSI-DCP service plan review per OAC 340:70-8-1.
  - A telephone or face-to-face interview is required at ~~recertification for households receiving food benefits~~ SNAP certification renewal except for (e)(3)(C) of this Section.
  - An interview is not required for:
    - any of the SoonerCare (Medicaid) programs as long as the review is complete, including the signature, all required verification provided, and none of the information is questionable. When information is not complete or is questionable, the worker contacts the recipient to obtain needed information;
    - the Child Care Subsidy Program reviews unless the child care recipient receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8; or
    - food benefit households completing a:
      - review, not a ~~recertification~~ SNAP certification renewal, at six or 12-month intervals; or
      - ~~recertification~~ SNAP certification renewal when all household members are elderly or disabled and there is no earned income in the household.
- (f) **Eligibility determination.** An eligibility determination is made once the review or ~~recertification~~ SNAP certification renewal is signed, all required information has been provided, an interview, if required, is conducted, and all information evaluated.
- The eligibility determination may be to:
    - complete the review without changes;
    - complete the review with changes; or
    - close the benefit or benefits.
  - Benefits closed may be reopened when the recipient provides required information by the last day of the month of closure.

## SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES

### PART 1. GENERAL PROVISIONS

#### 340:65-5-1. Case changes

(a) The client must report within ten calendar days any changes in his or her circumstances that would result in an increase or decrease in benefits. For the Supplemental Nutrition Assistance Program (SNAP), see OAC 340:50-9-5 for reporting exceptions. The worker gives the client ten calendar days to provide any required proof. The worker promptly acts on changes that increase or decrease benefits or result in benefit closure. To be considered prompt, the change must be made within ten calendar days of the date the change was reported and required proof was received. Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

- household income;
- household resources;
- household composition;

- (4) the client's address or telephone number;
  - (5) legal alien status of non-citizens;
  - (6) insurance coverage;
  - (7) in addition, for the for the Temporary Assistance for Needy Families (TANF) Program:
    - (A) deprivation of parental support;
    - (B) when the TANF Work activity stops or starts; and
    - (C) when a child in the assistance unit stops attending school; and
  - (8) in addition for the Child Care Subsidy Program the:
    - (A) ~~the~~ names of household members in child care;
    - (B) ~~the~~ reason child care is needed for the Child Care Subsidy Program;
    - (C) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed; and
    - (D) ~~the~~ name of the child care facility the child is attending.
- (b) After certification, all reported changes, except those reported prior to certification, must be processed by ~~the~~ deadline dates shown on Oklahoma Department of Human Services (OKDHS) Appendix B-2, Deadlines for Case Actions, to be effective the first day of the month following the deadline.
- (1) A computer-generated notice is sent to advise the recipient/client of any increase or decrease in benefits. ~~Advance notice of adverse action may be required.~~ A computer-generated notice is not sent when the action taken does not affect the benefit level.
- ~~(1) Advance notice require when fraud is not probable. If the reason for the suspension, termination, or reduction is other than one of the items listed under paragraph (3) and there is no indication of probable fraudulent acts on the part of the client, a computer-generated notice is sent to the client.~~
- ~~(A) If advance notice is required, action must be taken by the date shown on Schedule I, of OKDHS Appendix B 2 to be effective on the first day of the following month.~~
  - ~~(B) Following the issuance of the advance notice, the recipient may present information to show that the action is incorrect and request reinstatement until the last day of the month of closure.~~
  - ~~(C) When the client requests a fair hearing regarding the action and wants benefits to be reinstated at the same level until a hearing decision is made, he or she must request the fair hearing within ten calendar days following the issuance of the advance notice. The worker is responsible for explaining to the client that if benefits are continued and the appeal is not decided in the client's favor, he or she will be expected to repay the benefits.~~
    - ~~(i) If the Office of General Counsel Appeals Unit denies the appeal, benefits are continued through the end of the month in which the final decision on the fair hearing is reached.~~
- ~~(ii) The human services center (HSC) is responsible for taking the action needed to carry out the decision of the Appeals Unit.~~
  - ~~(iii) The Appeals Unit sends a letter of decision to the client.~~
- (2) ~~Advance notice required if fraud is probable. When the suspension, termination, or reduction in benefits is necessary because of probable fraudulent acts on the part of the recipient and the actual facts have been verified, the same policies and procedures as in subparagraph (1) of this Section apply except the advance notice period is five calendar days instead of ten calendar days. Advance notice is required when the action taken reduces, closes, or suspends benefits for a reason other than those listed under (b)(3) of this Section. When advance notice is required, deadline dates shown in OKDHS Appendix B-2, Schedule I apply.~~
- (3) ~~Advance notice not required. When advance notice is not required, deadline dates shown in OKDHS Appendix B-2, Schedule II apply.~~ Advance notice of action is not required ~~if the suspension, termination, or reduction in benefit resulted from~~ when the action taken does not suspend, close, or reduce benefits, or is because of:
- (A) the death of a recipient/client or Temporary Assistance for Needy Families (TANF) payee when there is not a relative available to serve as a new payee;
  - (B) transfer from one category of assistance to another without a resulting decrease or interruption in benefits;
  - (C) benefit reduction ~~because~~ when the spouse included in the TANF benefit is being removed and certified for a State Supplemental Payment (SSP) for the aged, blind, or disabled without a resulting decrease in assistance to the family or interruption in assistance;
  - (D) approval of care in a ~~skilled nursing facility or~~ an intermediate care facility;
  - (E) certification of assistance in another state with no interruption in benefits;
  - (F) an automatic increase in benefits brought about by federal legislation, such as to all beneficiaries of Social Security, Railroad Retirement, or Veterans' benefits;
  - (G) admission of the recipient/client to a public institution where his or her needs are fully supplied;
  - (H) receipt of a clear written statement signed by the recipient/client that states he or she no longer wishes assistance or that gives information which requires termination or reduction of assistance and the recipient/client has indicated in writing that he or she understands this will cause a reduction or termination of his or her benefits;
  - (I) the recipient's/client's whereabouts being unknown and OKDHS mail directed to him or her has been returned by the post office indicating no known forwarding address. ~~The recipient's benefit must be made available to him or her if his or her whereabouts~~

~~become known during the payment period covered by the returned benefit;~~

(J) a TANF child being removed from the home as a result of a judicial determination or voluntarily placed in foster care by the legal guardian for a period in excess of 30 calendar days;

(K) a change in state or federal law that affects all households; or

(L) a reduction in SSP benefits that is necessary to comply with federal law pertaining to maintenance of effort or a state mandate.

(c) Following the issuance of a notice, the client may present information to show the action is incorrect and request benefits be reinstated at the previous benefit level until the last calendar day of the month of closure.

(1) When information shows the client remains eligible at the previous benefit level, the worker restores benefits to the previous benefit level.

(2) When information shows the client remains eligible at an increased benefit level, benefits are increased based on specific program rules.

(3) When benefits were closed or suspended and information provided shows the client remains eligible, but at a reduced benefit level, benefits are reopened using current eligibility information.

(4) When benefits were reduced and information provided shows the client is eligible, but at a reduced level than the last action taken, the worker reduces benefits further using deadline dates shown in OKDHS Appendix B-2, Schedule I.

(d) When the client requests a fair hearing at the same time he or she requests benefits be reinstated, or requests a hearing at a later date, the worker follows fair hearing procedures described at OAC 340:2-5 and explains if benefits are continued and the appeal is not decided in the client's favor, he or she is expected to repay the benefits.

(1) When the client requests a fair hearing within ten calendar days following the issuance date of the notice and requests benefits be reinstated at the same benefit level pending the outcome of the hearing, the worker reopens benefits at the same benefit level.

(2) When the client requests a fair hearing regarding the action more than ten calendar days following the issuance date of the notice, the worker does not restore benefits unless information provided shows the client remains eligible at the previous benefit level or if the hearing is decided in the client's favor.

(3) Per OAC 340:2-5, the OKDHS Appeals Unit makes a decision regarding the fair hearing and sends a letter of decision to the client.

(A) The worker is responsible for taking the action needed to carry out the decision of the OKDHS Appeals Unit.

(B) If the OKDHS Appeals Unit denies the appeal, benefits are continued through the end of the month in which the final decision on the fair hearing is reached.

*[OAR Docket #12-508; filed 5-1-12]*

## TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION

*[OAR Docket #12-458]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Administration

Part 1. General Administration

340:100-3-4 [AMENDED]

340:100-3-6 [AMENDED]

340:100-3-16 [NEW]

Part 3. Administration

340:100-3-27 through 340:100-3-27.2 [AMENDED]

340:100-3-27.3 [REVOKED]

340:100-3-27.4 through 340:100-3-27.5 [AMENDED]

340:100-3-34 [AMENDED]

340:100-3-40 [AMENDED]

Subchapter 5. Client Services

Part 3. Service Provisions

340:100-5-20 [AMENDED]

**(Reference WF 11-07)**

### **AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105); 21 O.S. § 1533.1; 43A O.S. §§103-104; 56 O.S. § 1025.1; 59 O.S. § 1928; Sections 455.104 and 455.106 of Title 42 of the Code of Federal Regulations (42 CFR §§ 455.104-106); 42 CFR § 483.440; and Section 1128 of the Social Security Act.

### **DATES:**

#### **Comment period:**

January 17, 2012 through February 16, 2012

#### **Public hearing:**

None requested

#### **Adoption:**

February 29, 2012

#### **Submitted to Governor:**

February 29, 2012

#### **Submitted to House:**

February 29, 2012

#### **Submitted to Senate:**

February 29, 2012

#### **Gubernatorial approval:**

April 16, 2012

#### **Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 26, 2012.

#### **Final adoption:**

April 26, 2012

#### **Effective:**

July 1, 2012

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **ANALYSIS:**

The proposed amendments to Chapter 100 Subchapters 3 and 5 amend the rules to: (1) prohibit Developmental Disabilities Services Division (DDSD) employees from assisting service recipient's with financial transactions or being listed on service recipient bank accounts, clarifying the use of spending programs; (2) no longer require submission of Human Rights Committee minutes to DDSD state office; (3) establish policy for the provider application process and requirements; (4) clarify case manager monitoring responsibilities and documentation requirements and quality assurance monitoring requirements for Specialized Foster Care and DDSD area surveys; (5) allow email as a means for presenting contract provider agencies with findings of administrative inquiries; (6) clarify contract performance survey and administrative inquiry practices; (7) extend the amount of time from one week to two for contract provider agencies to respond to citations issued by quality assurance with a compliance plan and schedule or provide

supplemental information for consideration; (8) establish penalties for failure to cooperate and prohibit retaliation; (9) remove the provision for financial penalties for contract non-compliance; (10) revoke person-centered evaluations as they are no longer a component of the DDS quality assurance program; (11) clarify the distribution of the quality assurance reports, and remove information pertaining to the distribution of person-centered evaluation reports as this is no longer a component of the quality assurance program; (12) disallow an extension on a financial audit when a contract provider's previous year's audit is delinquent; (13) define maltreatment and provide statutory authority, and clarify notification requirements; (14) change reporting requirements from monthly to quarterly to be consistent with changes made to other Sections, and require an official form to comply with statute; and (15) clarify the application process and eligibility for a respite voucher.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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

**SUBCHAPTER 3. ADMINISTRATION**

**PART 1. GENERAL ADMINISTRATION**

**340:100-3-4. Service recipient personal funds**

(a) **General information.** Each service recipient receiving services from Developmental Disabilities Services Division (DDSD) is ensured access to his or her personal funds.

(1) Personal funds include income from all sources, earned or unearned, and assets.

(A) Income is money received in the current month.

(B) Any income not used to meet the service recipient's needs during the current month is a resource or asset of the service recipient in the following month(s).

(2) Services do not include the provision of room and board or personal spending. Each service recipient is responsible for meeting his or her room and board and personal spending needs including, but not limited to:

(A) healthcare;

(B) medications and co-pays not provided by Medicare;

(C) Medicaid or other health insurance;

(D) legal fees;

(E) vacation costs;

(F) recreation and social expenses;

(G) educational expenses;

(H) clothing; and

(I) furniture or household items.

(3) After the service recipient's day-to-day needs for food and shelter are met, personal funds may be used for the service recipient's needs such as recreation, clothing, and other expenses. The provider agency staff and Personal Support Team (Team) work with the service recipient, ~~as needed~~, to ensure that all needs are met.

(b) **Prohibited transactions.**

(1) Provider agency and DDSD employees are prohibited from engaging in any financial transaction with a service recipient, including:

(A) giving gifts to a service recipient with a cumulative annual value more than \$100;

(B) accepting gifts from a service recipient with a cumulative annual value more than \$20;

(C) selling, purchasing, leasing, or trading any item except:

(i) as part of an established business in which fair market value is received; or

(ii) when approved in advance and in writing by the Team;

(D) borrowing personal funds or any item of value from the service recipient; and

(E) loaning funds to a service recipient, except:

(i) ~~loaning~~ small amounts, such as money for a meal or a recreational

(ii) activity, for periods of time less than 24 hours; or

(F) as part of a program authorized in advance and in writing by the Team.

(2) Except for client trust accounts managed per OAC 340:2-11-86 DDSD employees are prohibited from assisting service recipients in conducting financial transactions or being listed on a service recipient's bank account, although case managers may monitor service recipient expenditures through financial record reviews.

(c) **Living expenses.** The provider agency:

(1) may lend funds to a service recipient to cover the service recipient's living expenses in expectation that funds will be available in the future ~~that enable~~ enabling the service recipient to repay the loan; and

(2) must submit ongoing written reports to the Team regarding the status of the service recipient's financial condition ~~and the status~~ of the loan ~~or~~ and repayment.

(d) **Protection of personal funds.**

(1) Per OAC 340:100-3-1.2, each service recipient when not in conflict with a guardianship order or representative payee agreement, has the right to:

(A) manage;

(B) be taught to manage;

(C) receive assistance in managing his or her financial affairs; and

(D) access all financial records regarding his or her personal funds.

(2) When a provider agency serves as representative payee, or when staff ~~provide~~ provides assistance in managing, or have access to personal funds for service recipients receiving community residential supports or group home services:

(A) the provider agency retains, safeguards, and accounts for the service recipient's personal funds when determined necessary by the service recipient's Team and as authorized by the service recipient, applicable guardian, or when the provider agency is the representative payee; and

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- (B) ~~regular allowances or~~ spending programs may be implemented on an individual basis, provided they are requested by the service recipient, guardian, or parent of a minor service recipient and reviewed by the service recipient's Team. The specific A portion of the service recipient's funds may be designated for personal use when the exact amount of the allowancespendng program is documented in the service recipient's Individual Plan (Plan). ~~An allowanceA spending program~~ consists of a fixed amount of money regularly given to the service recipient to spend as he or she wishes.
- (3) Staff who have access to or assist the service recipient with personal funds; ensures:
- (A) the service recipient's personal funds are not co-mingled with provider agency funds;
- (B) a separate financial record is maintained for each service recipient ~~that includes~~including receipts for all expenditures that are:
- (i) more than \$5; and
- (ii) made with provider agency staff involvement;
- (C) a written accounting of the service recipient's personal funds is maintained; ~~and~~
- (D) a summary of financial transactions is available to the service recipient, guardian, DDSD case manager, and the Office of Client Advocacy (OCA) advocate, ~~if~~when involved:
- (i) monthly; and
- (ii) when the service recipient ceases receiving service from the provider agency;
- (E) upon request, copies of the written accounting and summary of financial transactions are provided to the service recipient, guardian, case manager, and OCA advocate ~~if~~when involved; ~~upon request~~;
- (F) service recipient's personal funds account is reconciled at least monthly by provider agency staff who does not have authority to disburse funds from or responsibility to deposit funds to the account;
- (G) documentation is maintained to support all transactions involving the service recipient's personal funds that are not independently controlled by the service recipient;
- (H) service recipient's income is deposited to the service recipient's personal account within seven days of receipt;
- (I) when the service recipient's income is held in an interest bearing account, the interest accrues to the service recipient;
- (J) any personal cash not in the service recipient's possession is properly protected against theft;
- (K) service recipient receives requested funds within one banking day of request;
- (L) service recipient, parent of a minor service recipient, guardian, or representative payee, as applicable, and DDSD case manager are advised of eligibility requirements when the service recipient's account accumulates \$1100; unless the ~~IP~~Plan
- includes specific provisions to maintain Medicaid eligibility;
- (M) service recipient's personal funds are not used to supplement service rates or to purchase items that are part of the services that the service recipient is currently authorized to receive;
- (N) prior to receiving services from a provider agency, a written agreement is executed between the service recipient; or guardian as applicable, and provider agency. Copies of the agreement are provided to each party and filed in the service recipient's record. The agreement includes:
- (i) responsibilities of the provider agency to the service recipient in handling the service recipient's personal funds;
- (ii) service recipient's fiscal responsibilities; and
- (iii) services for which the service recipient's personal funds must be used;
- (O) all requested financial information necessary for the maintenance of the service recipient's financial eligibility is provided in a timely manner to Oklahoma Department of Human Services and the Social Security Administration ~~in a timely manner~~;
- (P) service recipient receives choices in the selection of stores for the purchase of food, clothing, and personal items; and
- (Q) except for minor repairs, service recipient's personal funds are not used to make permanent modifications to a home not owned by the service recipient.
- (4) For service recipients not receiving community residential supports or group home services that do not meet the criteria established in paragraph (2) of this subsection; the Team discusses and documents the party responsible for maintaining and planning for continued participation in Medicaid and other benefit programs for which the service recipient is eligible.
- (5) Allegations of exploitation must be reported in accordance with OAC 340:2-3-33. When a provider agency is a service recipient's representative payee, it must fulfill its duties ~~in accordance with~~per applicable federal regulations ~~that define~~defining those duties.
- (e) **Team planning and assistance to manage personal funds.** The Team may limit, but not totally deny, a service recipient without a guardian access to or use of his or her personal funds only when a determination is made, per OAC 340:100-3-4; that the limitation is essential to prevent the service recipient from unreasonably or significantly dissipating his or her personal funds.
- (1) The Team follows rules per OAC 340:100-3-1.2.
- (2) Justification for limiting access to and use of personal funds is documented in the service recipient's Plan. The Team develops a Plan to remove the restriction and includes specific dates to review the Plan.
- (3) The Team ensures the service recipient is afforded due process prior to implementation of any financial restrictions.

(4) When determining whether to limit a service recipient's access to personal funds, the Team addresses whether the service recipient:

- (A) recognizes currency, coins, and value of such;
- (B) does not lose money regularly;
- (C) does not leave money unattended;
- (D) does not give money away;
- (E) has the ability to make change or knows when to wait for change;
- (F) shows responsible behavior regarding his or her money, such as paying bills on time, writing checks only when he or she has sufficient funds, and saving or planning for special items;
- (G) understands his or her responsibility to pay room and board expenses; and
- (H) understands budgeting so money will last all month.

(f) **Payee responsibilities.** In addition to the requirements of OAC 340:100-3-4 persons and organizations serving as representative payee for a service recipient's personal funds are responsible for obtaining a copy of the dispersing agency's regulations regarding representative payee responsibilities and adhering to the dispersing agency's requirements.

- (1) The service recipient, guardian, or representative payee is responsible for paying for room and board from the service recipient's income.
- (2) A provider agency serving as payee uses direct deposit of benefits, when available.

**340:100-3-6. Human Rights Committee**

(a) **Human Rights Committee (HRC).** Each service recipient participating in services or programs operated by or under contract with Developmental Disabilities Services Division (DDSD) is represented by a ~~Human Rights Committee (HRC).~~

(b) **HRC role and function.** The role and function of each HRC is to provide external monitoring and advocacy, separate and apart from the provision of services, ~~that~~ specifically ~~addresses~~ addressing issues of protection of individual rights, program conditions, policy and procedure review, and resolution of complaints or concerns related to the protection of individual rights. Each HRC:

- (1) reviews, at least annually, each protective intervention plan containing a restrictive or intrusive procedure, per OAC 340:100-1-2, and advises each service recipient or, if applicable, legal guardian of the perceived benefits and risks of proposed programs.
  - (A) The review includes an evaluation to determine whether proposed procedures conform to DDSD and provider agency policy.
  - (B) Service recipients or legal guardians retain the right to provide, refuse, or withdraw consent for proposed procedures, regardless of HRC recommendations, as long as this consent does not result in the implementation of a program that does not comply with DDSD policies;
- (2) ~~and reviews and approves with~~ reviews and approves with the DDSD director of psychological and behavioral supports ~~must review and approve~~ all research proposals involving service

recipients, prior to the initiation of research, per OAC 340:100-3-10;

- (3) reviews complaints by service recipients or other persons on behalf of service recipients and makes recommendations regarding resolution;
- (4) reviews allegations of abuse, neglect, or exploitation.

- (A) The provider agency notifies the HRC when an allegation of abuse, neglect, or exploitation is made.
- (B) The HRC confirms whether the agency acted appropriately in reporting the allegation, protecting the service recipient, and cooperating with investigating authorities;

- (5) reviews all incident reports involving emergency use of restrictive or intrusive procedures;
- (6) reviews and comments on provider agency policies and practices as they affect service recipients. HRC comments are provided to the governing body of the provider agency and others determined appropriate by the governing body; and
- (7) participates, at least quarterly, in activities designed to promote familiarity with service recipients, staff, and agency practices. These activities may include, but are not limited to:

- (A) home visitation;
- (B) attendance at agency functions; and
- (C) social or recreational events.

(c) **Resource center HRC.** Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and Robert M. Greer Center (Greer) HRC composition and practices conform to Title XIX requirements, per Section 483.440 of Title 42 of the Code of Federal Regulations (CFR).

(d) **Provider agency HRC.**

- (1) Each provider agency HRC must have at least four members.
  - (A) Members ~~are can~~ not be employed by an agency providing services to service recipients.
  - (B) At least one member is ~~either~~ a service recipient or a family member of a service recipient.
  - (C) One member must be a professional with expertise in areas relating to HRC duties, such as:
    - (i) positive behavior supports and educational methodologies;
    - (ii) issues involving client rights; or
    - (iii) related medical or psychiatric issues.
- (2) Service recipients served by multiple agencies funded by DDSD or Oklahoma Health Care Authority (OHCA) are represented by the HRC of the agency providing residential supports.
- (3) Each provider agency HRC develops by-laws that specify:
  - (A) persons represented by the HRC;
  - (B) time and location of routine meetings, held no less than quarterly;
  - (C) methods to ensure access by service recipients to HRC members for private communication;

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- (D) time frames for review of grievances, complaints, and protective intervention plans. Protective intervention plans are reviewed within 30 days of agency receipt;
  - (E) term of appointment for members; and
  - (F) routine rules of operation; such as:
    - (i) selection of chairperson; and
    - (ii) recording and distribution of meeting minutes.
- (e) **HRC meetings.**
- (1) HRC rules for recording and distribution of meeting minutes include, but are not limited to:
    - (A) identification of any protective intervention plan containing rights restrictions or restrictive or intrusive procedures that were reviewed, specifying the nature of the restriction or restrictive or intrusive procedure in each case;
    - (B) recommendations, if any, from the HRC for each protective intervention plan reviewed, including a copy of any checklist or review form used;
    - (C) names and titles of persons who attended;
    - (D) other key issues discussed; and
    - (E) notation, if a pattern of frequent use of restrictive or intrusive procedures or frequent injury is emerging from the HRC review of incident reports.
  - (2) Each HRC distributes copies of:
    - (A) ~~copy of~~ the form used to review the protective intervention plan, along with any other information needed to clarify the HRC recommendation, to the service recipient's DDS case manager; and
    - (B) meeting minutes to each service recipient's case manager, when issues other than a protective intervention plan are reviewed, ~~copy of meeting minutes to each service recipient's case manager~~, with names deleted of persons who are not in that case manager's caseload; and
    - (C) ~~complete copy of meeting minutes and review forms to the DDS director of psychological and behavioral supports.~~
- (f) **HRC training.** HRC members are trained, using curriculum consisting only of materials approved by the DDS director of psychological and behavioral supports and the DDS director of human resource development. The HRC may receive training from:
- (1) a qualified DDS trainer;
  - (2) Statewide Behavior Review Committee (SBRC); or
  - (3) a fully trained HRC member approved by the DDS director of psychological and behavioral supports and DDS director of human resource development.
- (g) **HRC advocacy.** The HRC may seek assistance ~~if~~ when HRC advocacy recommendations are not carried out. When HRC:
- (1) recommendations regarding a rights restriction are not implemented, HRC may request an administrative inquiry from DDS Quality Assurance (QA) Unit;
  - (2) recommendations regarding a protective intervention plan containing restrictive or intrusive procedures are not followed, HRC must refer the plan to SBRC; and

- (3) is aware of the use of a restrictive or intrusive procedure not in accordance with OAC 340:100-5-57, HRC must request an administrative inquiry from DDS QA Unit.

### **340:100-3-16. Provider enrollment**

- (a) **Eligible providers.** The SoonerCare Home and Community-Based Services (HCBS) Waiver programs are authorized per Section 1915(c) of the Social Security Act. All providers must have a current provider agreement with Oklahoma Health Care Authority (OHCA) to provide HCBS for persons with intellectual disabilities or related conditions.
- (b) **Application.** Requests for applications to provide daily living supports, agency companion, supported living, group home, habilitation training services (HTS), homemaker, and employment services are made to Developmental Disabilities Services Division (DDS) state office. Applications must include narrative describing the applicant's:
- (1) existing program, when applicable;
  - (2) philosophy of services and supports for persons with intellectual disabilities;
  - (3) proposed plan for providing HCBS requested in the application;
  - (4) quality assurance program, commitment to OKDHS quality assurance processes, and compliance with OAC 340:100-3-27, et. seq.; and
  - (5) organizational summary and operational plan including:
    - (A) anticipated number of persons to be served in the first three months, six months, and first year of operation;
    - (B) counties to be served;
    - (C) organizational chart and roster of key personnel; and
    - (D) evidence of the agency's plan for compliance with Internal Revenue Service, Worker's Compensation, Department of Labor, Occupational Safety and Health Administration, Drug-Free Workplace, and Health Insurance Portability and Accountability Act (HIPAA) requirements.
- (c) **Policies and procedures.** All applications must include internal policies that provide for:
- (1) protection of individual rights per OAC 340:100-3-1.2;
  - (2) a statement of rights and responsibilities developed and submitted by the group home provider per OAC 340:100-6-95;
  - (3) procedures for admission and discharge of service recipients;
  - (4) client confidentiality;
  - (5) reacting and planning for emergencies and disasters per OAC 340:100-3-32 including, but not limited to:
    - (A) fire;
    - (B) severe weather;
    - (C) missing persons;
    - (D) evacuations;
    - (E) a plan for continuity of services in the event of an emergency; and

- (F) provisions for practice drills per OAC 340:100-5-22.1, as applicable;
- (6) identifying and avoiding conflicts of interest and nepotism including, but not limited to:
  - (A) renting and leasing;
  - (B) staffing;
  - (C) board membership;
  - (D) contracted services;
  - (E) acquisition of real property and equipment;
  - (F) board membership and relationships with agency staff or contracts/contractors;
  - (G) auditing;
  - (H) client-staff relationships including the prohibition of services to individuals for whom agency staff are guardian, unless the ward is the spouse, mother, father, sibling, aunt, uncle, grandparent, adult child, adult grandchild, niece, nephew, or cousin of the guardian; and
  - (I) any other situation that has the potential to result in a conflict of interest;
- (7) a means to establish and collect fees for services not covered by OHCA or DDS per OAC 317:30-3-5.1;
- (8) a grievance process reviewed and approved by the Office of Client Advocacy per OAC 340:2-3-2 and OAC 340:2-3-45;
- (9) reporting of suspected maltreatment per Section 1025.1 of Title 56 of the Oklahoma Statutes;
- (10) personnel policies that comply with federal and state employment laws and OKDHS training requirements per OAC 340:100-3-38 through OAC 340:100-3-38.13;
- (11) protection of service recipient personal funds per OAC 340:100-3-4 and for those providing residential supports per OAC 340:100-5-22.1 and non-residential services per OAC 340:100-5-34;
- (12) maintenance of records per OAC 340:100-3-40;
- (13) maintenance of health and wellness per OAC 340:100-5-26; and
- (14) medication administration per OAC 340:100-5-32 and OAC 340:100-5-33.
- (d) **Financial solvency and service capacity.** All applications must include evidence supported by an operational plan demonstrating the applicant's capacity to provide services in a financially solvent manner by:
  - (1) a narrative description of experience and capacity to operate a business in a fiscally responsible manner;
  - (2) management and financial strategies ensuring SoonerCare compliance per OAC 317:30, Subchapters one and three as provided in the OHCA provider manual;
  - (3) a narrative regarding the proposed record keeping system and methods for maintaining and retaining documentation for successful completion of the annual financial audit;
  - (4) evidence of sufficient liquid assets or lines-of-credit indicating the greater of \$100,000 or three times the average monthly budgeted expenses;
  - (5) a line item budget, accompanied by a narrative providing and justifying an expense estimate for the first full-year of operations;
- (6) a written quote for proposed insurance coverage identifying the type and limitations of all policies. Insurance requirements are:
  - (A) \$250,000 professional liability minimum;
  - (B) \$100,000 general liability minimum;
  - (C) \$100,000 commercial automobile liability minimum;
  - (D) \$25,000 employee dishonesty coverage minimum; and
  - (E) upon commencement of coverage, a copy of the certificate of insurance with a 30-day cancellation notice required to be sent to DDS by the carrier showing OKDHS as the certificate holder;
- (7) a certificate of incorporation in the State of Oklahoma and the applicant's federal tax identification number; and
- (8) the most recent audited financial statement, when applicable or the most recent tax return.
- (e) **Qualified personnel.** All applications must include information regarding the qualifications of key personnel and appropriate background checks including:
  - (1) job descriptions for administrative and executive positions and the resumes of persons filling those positions when available, including three references for each;
  - (2) documentation of Oklahoma State Bureau of Investigation (OSBI) background checks and Community Services Worker Registry checks for the executive director, program coordinator, program manager, key business office staff, and any other management staff who will supervise service delivery;
  - (3) documentation that demonstrates the executive director or program director has earned a bachelor's degree from an accredited college or university and has a minimum of two years supervisory or management experience;
  - (4) board of director meeting minutes designating the individual by name who is authorized to conduct business and has signature authority on behalf of the provider agency;
  - (5) documentation that the program coordinator meets minimum qualifications per OAC 340:100-5-22.1, when residential, group home, HTS, or homemaker services are provided;
  - (6) documentation demonstrating the provider agency's program manager meets minimum qualifications per OAC 317:40-7-20, when employment services are provided; and
  - (7) an attestation that staff meet training requirements per OAC 340:100-3-38 through OAC 340:100-3-38.13 and pre-employment screening for community services workers per OAC 340:100-3-39.
- (f) **Disclosures.** Disclosure of ownership and control by an organization, institution, business, fiscal agent, or agency requesting a provider agreement is a federal requirement for any SoonerCare program. The SoonerCare provider is the disclosing entity and the person(s) making application for a provider agreement with OHCA to provide HCBS.

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(1) SoonerCare providers, other than an individual practitioner or a group of practitioners or a fiscal agent must disclose per 42 CFR § 455.104:

(A) the name and address of any person, individual or corporation, with an ownership or controlling interest in the disclosing entity. Corporate entities must include the primary business address, all business locations, and P.O. Box addresses, as applicable;

(B) date of birth and Social Security number, in the case of an individual;

(C) other tax identification number, in the case of a corporation, with an ownership or controlling interest in the disclosing entity or in any subcontractor in which the disclosing entity has a five percent or more interest; and

(D) whether the person, individual or corporation, with an ownership or controlling interest in the disclosing entity is related to another person with ownership or controlling interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person, individual or corporation, with an ownership or controlling interest in any subcontractor in which the disclosing entity has a five percent or more interest is related to another person with ownership or controlling interests in the disclosing entity as a spouse, parent, child, or sibling; and

(E) name of any other disclosing entity in which a person with an ownership or controlling interest in the disclosing entity has an ownership or controlling interest; and

(F) name, address, date of birth, and Social Security number of any managing employee of the disclosing entity.

(2) SoonerCare providers, person making application, must disclose per 42 CFR § 455.106 the identity of any person who was convicted of crimes prior to OHCA issuing or renewing a provider agreement or at any time upon written request by OHCA, who:

(A) has ownership or controlling interest in the provider or is an agent or managing employee of the provider; and

(B) was convicted of a criminal offense related to his or her involvement in any program under Medicare, SoonerCare, or the Title XIX services program since the inception of those programs.

(g) **New provider orientation.** New provider orientation is provided by designated DDS area office staff, and provider billing training is provided by OHCA.

(h) **Transfer of Ownership.** Providers provide DDS 30 days notice of intent to transfer ownership. Services cannot be provided by a new owner until the new owner has a valid provider agreement (contract) with OHCA.

(i) **Termination of provider agreements.** Provider agreements may be recommended for termination by DDS to OHCA when the:

(1) owners, officers, managers, or other persons with substantial contractual relationships were convicted of

certain crimes or received certain sanctions as specified in Section 1128 of the Social Security Act;

(2) provider fails to maintain licensure or certification as required;

(3) provider fails to correct program deficiencies in a timely manner per OAC 340:100-3-27.1;

(4) provider is unable to provide the services per the agreement; or

(5) provider becomes insolvent.

(j) **Exceptions.** Employment providers requesting a provider agreement to provide services through the Contracts with Industry program contact the programs supervisor of employment services at DDS state office. The provider submits copies of Oklahoma State Bureau of Investigation (OSBI) background checks and Community Services Worker Registry checks for assigned job coaches.

### PART 3. ADMINISTRATION

#### **340:100-3-27. Quality assurance**

(a) **Purpose.** Developmental Disabilities Services Division (DDS) quality assurance (QA) activities assess and encourage delivery of supports consistent with the preferences and needs of service recipients, Oklahoma Department of Human Services (OKDHS) rules, applicable Oklahoma Health Care Authority (OHCA) rules, ~~requirements of contracts for services let through OKDHS and OHCA contract requirements~~ for Home and Community-Based Services (HCBS), regulatory standards applicable to services, and federal and state laws.

(b) **Case manager monitoring.** DDS case managers assess services rendered to each service recipient to ensure effectiveness of services in meeting the service recipient's needs. The case manager periodically observes service provision to assess implementation of the service recipient's Individual Plan (Plan). The requirements per OAC 340:100-3-27~~(b)~~ are minimum expectations for face-to-face visits with service recipients. Additional visits may be required, at the discretion of case management, to ensure the service recipient's health and welfare.

(1) The DDS case manager conducts face-to-face visits to monitor the service recipient's health and welfare and effectiveness of services in meeting the service recipient's needs.

(A) Face-to-face visits must include observation of and talking with the service recipient regarding the service recipient's health and welfare and satisfaction with services.

(B) The case manager may:

(i) observe service provision and related documentation in any location where services are provided; and

(ii) talk with family members and providers regarding provision of services and the service recipient's health and welfare.

(C) For service recipients receiving services through an In-Home Supports Waiver (IHSW):

- (i) a face-to-face visit must be completed at least semi-annually with one visit occurring during the January through June period and one during the July through December period; and
  - (ii) at least one of the two visits must occur at the site where the majority of services are provided.
- (D) For service recipients receiving services through the Community Waiver:
- (i) a face-to-face visit must occur ~~monthly~~ during each calendar month in the home of all persons receiving residential services per OAC 340:100-5-22.1; or group home services per OAC 317:40-5-152. Case managers must certify home visits on Form 06MP070E, Access to Home Record and Verification of Monitoring Requirements, within the home record per OAC 340:100-3-40;
  - (ii) a face-to-face visit must be completed at least quarterly, per calendar year quarters and coinciding with the quarters established per OAC 340:100-5-52 for quarterly summary of progress reports, for service recipients who do not receive residential services or group home services, with at least two of these visits occurring at the site where the majority of services are provided; and
  - (iii) the case manager visits the employment or day services site at least semi-annually, with one visit occurring during the January through June period, and one during the July through December period, when services are funded through the Community Waiver, unless the Personal Support Team (Team) requests an exception approved by the DDS area manager or designee.
- (E) For service recipients receiving services through the Homeward Bound Waiver:
- (i) a face-to-face visit must occur ~~monthly~~ during each calendar month in the home. Case managers must certify home visits on Form 06MP070E within the home record per OAC 340:100-3-40; and
  - (ii) the case manager must visit the employment site at least quarterly, per calendar year quarters and coinciding with the quarters established per OAC 340:100-5-52 for quarterly summary of progress reports, unless the Team requests an exception approved by the DDS area manager or designee.
- (F) For members of the Homeward Bound class who reside in an intermediate care facility for persons with mental retardation (ICF/MR), the case manager visits monthly.
- (2) DDS case managers review ~~progress~~ and ensure implementation of the Plan.
- (A) The case manager completes ~~the~~ review ~~a~~ monthly review for service recipients receiving services through the Community Waiver or Homeward

- Bound Waiver, documenting the review in Client Contact Manager (CCM).
- (B) For service recipients receiving services through an IHSW, the case manager review occurs every six months and is documented in CCM.
- (3) When the DDS case manager believes the service recipient is at risk of harm, the case manager takes immediate steps to protect the service recipient and notifies the DDS case management supervisor and any other appropriate authorities.
- (4) If the DDS case manager determines the service recipient's needs are not effectively addressed by a provider or contractual responsibilities or policies are not met by the provider, steps in (A) through (C) are followed.
  - (A) The case manager consults with the relevant provider to secure a commitment for necessary service changes within an agreed upon time frame.
  - (B) If necessary changes are not accomplished within the specified time frame, the case management supervisor intervenes to secure commitments from the provider for necessary change.
  - (C) If the service deficiency is not resolved as a result of the intervention of the case management supervisor, a referral for administrative inquiry is initiated per OAC 340:100-3-27.1.
- (5) If, during a contract survey, administrative inquiry, specialized foster care (SFC) monitoring, or ~~person-centered evaluation~~ area survey, QA staff discovers a situation that requires correction by DDS staff, a system administrative inquiry is initiated.
  - (A) QA staff ~~e-mails~~ emails notification to DDS staff responsible to correct the situation, establishing a reasonable time frame for correction.
  - (B) If the identified staff is unable to correct the situation within the established time frame, QA staff ~~e-mail~~ emails notification of the situation to the DDS ~~staff's~~ staff supervisor, establishing a reasonable time frame for correction.
  - (C) If the ~~staff's~~ staff supervisor is unable to correct the situation within the established time frame, QA staff notifies his or her supervisor, who notifies the DDS area manager, establishing a reasonable time frame for correction.
  - (D) If the area manager is unable to correct the situation within the established time frame, QA supervisor notifies the QA ~~Unit~~ unit programs administrator, who resolves the situation with the ~~Community Services Unit~~ community services unit programs administrator.
- (c) **Specialized Foster Care Monitoring.** QA staff monitor the specialized foster care program in each area for compliance with DDS and OHCA policy. Monitoring is based on a proportionate, representative sample of individuals receiving specialized foster care supports identified for the fiscal year for each area. Monitoring includes a visit to the service recipient's SFC home.
- (ed) **Consumer Service Evaluation.** At least annually, service recipients and families receiving supports are provided the

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opportunity to complete an evaluation of services per OKDHS Publication No. 89-10, Consumer Service Evaluation.

- (1) Confidentiality is maintained unless the respondent authorizes OKDHS to reveal his or her name to those responsible for service delivery. OKDHS Publication No. 89-10 may be completed anonymously if desired.
- (2) QA staff distributes OKDHS Publication No. 89-10 to service recipients or their legal guardians at least annually.
- (3) Completed OKDHS Publication No. 89-10 is returned to the QA Unit programs administrator.
- (4) Results are forwarded to the respective DDS area office when authorized by the service recipient or legal guardian for resolution of concerns or recognition of staff as appropriate.
- (5) An analysis of responses is completed and distributed for action to DDS area offices, DDS State Office, or OKDHS, as appropriate. Data is available to interested persons upon request.

(d) **OK-AIM.** Service recipients and families receiving supports participate in formal assessments of contract providers in order to promote service enhancement consistent with expectations of service recipients.

(1) Oklahoma - Advocates Involved in Monitoring (OK-AIM) operates under the direction of Oklahomans for Quality Services Committee (OQSC).

(A) OQSC is composed of 15 persons who receive ~~DDS services~~ or who have a family member receiving DDS services. All areas of Oklahoma are represented.

(i) OQSC members may be nominated by the public at large, current OQSC members, or DDS representatives.

(ii) Appointment of OQSC members occurs as a result of joint consensus by the OQSC chair and DDS director or designee following a determination of the nominee's:

(I) commitment to promote the interests of persons with developmental disabilities; and

(II) capacity to dedicate the time necessary to fulfill his or her responsibilities.

(iii) OQSC members have the authority to elect officers based upon a simple majority vote and establish by-laws governing the conduct of business.

(B) OQSC:

(i) develops and refines procedures and the survey instrument used, based upon feedback received from service recipients and their families, providers, and other key constituents;

(ii) participates in the selection of agencies submitting proposals to conduct OK-AIM activities; and

(iii) serves as a resource for education and coordination of agencies conducting OK-AIM monitoring activities.

(2) DDS issues an invitation to bid (ITB) in accordance with state law and OKDHS rules ~~and state law~~,

soliciting proposals from qualified organizations to participate in the OK-AIM initiative. Qualified organizations include agencies that:

(A) are incorporated non-profit agencies dedicated to the representation of persons with developmental disabilities and their family members;

(B) are not involved in service delivery funded through DDS or HCBS Waivers; and

(C) meet additional requirements set forth by federal and state laws ~~and~~ as indicated in the ITB.

(3) OQSC is consulted regarding bids submitted in response to an ITB. Selection of a qualified organization to conduct OK-AIM monitoring and reporting activities occurs per state law and OKDHS rules ~~and state law~~.

(4) Agencies selected to conduct OK-AIM monitoring and reporting activities are responsible for:

(A) soliciting, screening, and training volunteers to conduct OK-AIM site visits;

(B) scheduling site visits with all providers of services referenced in the ITB within counties for which the agency has assumed responsibility;

(C) ensuring consistency of volunteer and staff activities with:

(i) procedures and protocols approved by OQSC; and

(ii) federal and state laws and OKDHS and OHCA rules ~~and federal and state laws~~;

(D) accurately recording findings of OK-AIM monitoring activities;

(E) ensuring provision of findings to provider agencies and DDS; and

(F) immediately notifying the DDS area office of any issue identified during OK-AIM monitoring activities that presents risk to the service recipient's health and welfare.

(5) DDS area managers identify OKDHS staff responsible for resolving concerns identified during OK-AIM monitoring activities and notifying agencies responsible for OK-AIM monitoring activities of how to contact such staff during work, evening, and weekend hours.

(6) OQSC, with the participation of DDS State Office, DDS area offices, and agencies conducting OK-AIM activities, identifies conditions determined to present significant risks to service recipients.

(A) Conditions determined to present imminent risk to service recipients are reported immediately to the:

(i) statutory investigatory authority;

(ii) DDS area office; and

(iii) provider agency chief executive officer (CEO) or designee.

(B) Issues determined to pose potential risk to service recipients are reported to DDS area office staff, who notify the provider agency CEO or designee, no later than the conclusion of the first working-day following observation.

- (C) OK-AIM monitors report any other significant issues to designated DDS area office staff within time frames determined appropriate by OK-AIM.
- (7) DDS staff immediately identifies DDS area office staff to assume responsibility for verification and correction of problems posing imminent or potential risk.
- (A) Time frames for resolution of validated concerns are approved by the DDS area manager based on the degree of risk involved.
- (B) All identified concerns are resolved within 30 days from initial notification to the DDS area office, unless an extension is authorized by the area manager in circumstances that pose no jeopardy to any service recipient.
- (C) Concerns presenting immediate and significant risk to service recipients are corrected immediately.
- (8) Each DDS area manager designates staff to:
- (A) track resolution of each identified concern; and
- (B) advise agencies conducting OK-AIM monitoring activities of steps taken to resolve each concern.
- (9) OK-AIM staff summarizes findings of each home visit conducted by volunteers, noting performance in the context of expectations established by OQSC, and published in the OK-AIM training manual.
- (A) Recommendations for service enhancement are presented to the relevant DDS area office for review within 30 days of a home visit.
- (B) DDS area office staff shares this information with the provider and collaborates on recommendations as well as other alternatives for achieving targeted service enhancement. Plans developed as a result are shared with OK-AIM staff during the next meeting. Provider comments or action plans are maintained with the OK-AIM report in area office files.
- (10) OK-AIM survey process is re-assessed at least annually by OQSC based upon feedback solicited from service recipients, DDS area office staff, providers, and other constituencies affected by or involved in the process.
- (ef) **Independent assessments.** An independent authority annually assesses service outcomes for a sample of service recipients receiving residential services funded or administered through DDS or HCBS Waivers.
- (1) Assessments employ standardized measures, facilitating individual, as well as congregated, data analysis over time.
- (2) Assessment protocols provide for identification and resolution of circumstances posing immediate risk to service recipients.
- (fg) **Failure to cooperate.** Provider agencies failing to cooperate with provisions or providing false information in response to any inquiry, ~~inquiries~~ per OAC 340:100-3-27 are subject to sanctions identified, including contract termination.
- (gh) **Findings of non-compliance.** Findings of significant non-compliance with human rights, ~~rules, or laws~~ laws, or rules are immediately reported to the DDS director and other relevant authorities for appropriate action, including disciplinary action of OKDHS employees, or the imposition of sanctions,

including suspension or contract termination with provider agencies, per OAC 340:100-3-27.2.

(hi) **Retaliation.** Provider agencies and OKDHS employees are prohibited from any form of retaliation against any service recipient, employee, or agency for reporting or discussing possible performance deficiencies with any authorized ~~OKDHS agent of OKDHS~~ OKDHS agent. Authorized agents are OKDHS staff whose responsibilities include administration, supervision, or oversight of DDS services, including all DDS staff and Office of Client Advocacy staff.

(ij) **QA functions.** Additional components of the DDS QA program are found in OAC 340:100-3-27.1 through OAC 340:100-3-27.5.

**340:100-3-27.1. Contract performance surveys and administrative inquiries**

Agencies providing services under contract with the Oklahoma Department of Human Services (OKDHS), or through a Home and Community-Based Waiver (HCBW) participate in performance surveys assessing compliance with ~~expectations defined in the agency's contract with OKDHS or with and~~ Oklahoma Health Care Authority (OHCA) ~~to HCBW services, or in OKDHS or OHCA contracts and rules.~~

- (1) Performance surveys are conducted:
- (A) with providers serving five or fewer service recipients when deemed necessary by the administrator of Developmental Disabilities Services Division (DDS) Quality Assurance (QA); and
- (B) during each state fiscal year with providers of residential, vocational, or non-medical in-home supports serving six or more service recipients.
- (2) OKDHS conducts interim administrative inquiries that evaluate the validity of allegations of non-compliance with provisions of the provider contract(s).
- (A) Administrative inquiries are authorized by the administrator of DDS ~~Quality Assurance~~ QA in response to complaints filed by any interested party that represent potentially serious breaches of service assurances, contract requirements, or OKDHS rules. The administrator of DDS ~~Quality Assurance~~ QA or designee is authorized to conduct a screening to determine the potential validity of the complaint.
- (B) Administrative inquiries are limited in scope to the responsibilities described in the provider's contract(s) with, or rules of, OKDHS or OHCA including, but not limited to, human rights assurances, service provision, and fiscal accountability.
- (C) Allegations of abuse and neglect are immediately referred to statutorily identified lead agencies for investigation. OKDHS acts on the findings or recommendations of agencies with statutory responsibility to ensure provider compliance with provisions of law.
- (D) Administrative inquiries are conducted by staff assigned to DDS ~~Quality Assurance~~ QA although other resources of OKDHS, such as Office of Inspector General, may be requested to assist in the investigation of complaints.

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(E) OKDHS is not required to provide advance notice of an administrative inquiry.

(F) Notifications to providers of findings and dispositions follow procedures established for performance surveys in subparagraph (L) of paragraph (3) of this subsection, except that:

(i) written findings of administrative inquiries may instead be presented to an agency through mail or email and an exit conference may be conducted by telephone; and

(ii) the DDSO director or designee retains the authority to initiate an emergency disposition as specified by subsection (f) of OAC 340:100-3-27.2.

(3) Providers of direct services to six or more service recipients listed in paragraph (1) of this subsection participate in performance surveys assessing success in implementing contractual standards.

~~(A)~~ Prior to the fiscal year beginning, a proportionate, representative sample of service recipients for each Waiver is identified.

~~(A)~~ The administrator of DDSO Quality AssuranceQA or designee may provide written notice to provider agencies of scheduled performance surveys. DDSO advises the agency in writing of:

(i) demographic information and documents ~~which~~ that must be provided to DDSO within two weeks of the postmark on the notice; and

(ii) documents ~~which are to~~ that must be available on the dates of the performance survey.

~~(B)~~ Provider agencies may request a change of the schedule of the performance survey by contacting the administrator of DDSO Quality AssuranceQA or designee. Authorization of a change in schedule occurs at the discretion of the administrator of Quality AssuranceQA.

~~(C)~~ DDSO Quality AssuranceQA staff conducting performance surveys assess the delivery of services and realization of outcomes for a sample of people served by each provider agency. The sample is representative of service needs of the population served and the array of supports provided by the agency through contract with OKDHS. The sample includes those service recipients identified in the representative sample and at least one service recipient receiving each discrete service provided through the agency's contract with OKDHS or OHCA. The size of the sample is adjusted based upon the number of service recipientrecipients served by the agency under contractual agreement with OKDHS or OHCA and the number of surveyors assigned to the survey.

~~(i)~~ At least four service recipients are included in the sample of agencies serving 15 or fewer service recipients under contract with OKDHS or OHCA.

~~(ii)~~ At least eight service recipients are included in the sample of agencies serving between 16 and 100 people under contract with OKDHS

~~or OHCA.~~ The sample will be 10 per cent of the agency population or four service recipients for each surveyor assigned, whichever is greater.

~~(iii)~~ At least 12 service recipients are included in the sample of agencies serving over 100 people under contract with OKDHS or OHCA.

~~(iv)~~ The size of performance survey samples may be increased at the discretion of performance survey team members.

~~(D)~~ Performance surveys and administrative inquiries are conducted by staff of the DDSO Quality Assurance Unit whoQA staff that have completed a minimum of 150 hours of training specific to the application and interpretation of OKDHS and OHCA contract standards and rules. Findings of performance survey team members ~~who~~ that have not completed 150 hours of required training are not considered, unless observations are confirmed by staff who have met this training requirement.

~~(E)~~ A private work area at the agency site is made available for surveyors during the course of the survey. If space is unavailable, the provider makes available copies of documents available that may be taken for review by the performance survey team for review at another site.

~~(F)~~ Performance survey team staff meet with the chief executive officer (CEO) or designee of a provider agency upon arrival to:

(i) discuss the survey schedule;

(ii) identify the balance of the survey sample;

(iii) determine locations where services are provided; and

(iv) make tentative arrangements for an exit conference.

~~(G)~~ Agency staff and agency records are made available to the team as necessary to assess agency performance with provisions of rules and their contract(s) with OKDHS or OHCA.

~~(H)~~ Performance survey teams observe and meet with service recipients served and staff involved in each type of service provided by the agency through contract(s) with OKDHS, or with OHCA for the HCBW services.

(i) Interviews and observations are conducted in a manner minimizing disruption of service activities.

(ii) Observations and interviews occur during varied hours of service delivery.

~~(I)~~ Performance survey team personnel evaluate information secured from observations, interviews, and record reviews in the context of relevant contract standards and rules.

~~(J)~~ Performance survey teams immediately report to appropriate authorities, conditions or actions of agency staff that are possibly abusive or negligent or ~~which~~ that otherwise pose immediate jeopardy to the health or safety of service recipients.

~~(K)~~ Performance survey team staff provide a written summary of findings to the CEO or designee of the provider agency on the final day of the survey. The summary of findings is presented at least two hours prior to the scheduled exit conference. The CEO or designee of the provider agency may waive the two-hour period between presentation of the summary and the exit conference or the exit conference itself.

~~(L)~~ The provider agency may structure the exit conference in a manner determined most beneficial to the agency.

(i) The agency may invite staff, service recipients, family members, and other citizens to participate.

(ii) Performance survey team personnel provide an explanation of findings and standards, as requested by the agency.

(iii) Performance survey team personnel provide an explanation of the procedures described in this Section that are available to the agency regarding any disputed findings.

(iv) During the exit conference, the agency may submit evidence contesting the citation of standards. Performance survey team members review presented evidence and, for each contested standard, may:

- (I) reverse the entire citation;
- (II) reverse a portion of the citation; or
- (III) affirm the citation.

(v) Within ~~one week~~ two weeks of the exit conference, the agency sends to the administrator of DDS ~~Quality Assurance~~ QA a written response that identifies a date ~~by which~~ the agency will comply with the cited requirement.

(I) Any projected resolution date beyond two months from the exit conference is accompanied by a justification.

(II) Approval of extended resolution dates occurs only upon the presentation of evidence that extensive change in agency management systems or extensive expenditures is essential to resolution of the problem.

(III) The agency presents plans and time frames to implement incremental changes necessary to achieve contract conformance when an interval of more than two months is requested.

(vi) The agency may send supplemental information to the administrator of ~~Quality Assurance~~ QA contesting the findings of the performance survey team within ~~one week~~ two weeks of the exit conference. An appeal does not relieve the agency from the responsibility to achieve resolution of contract deficiencies within two months from the date of the exit conference, if the request for reversal is not supported through procedures described in paragraph (5) of this subsection.

(4) The findings of performance surveys and administrative inquiries, as well as any appeals, are reviewed by the administrator of DDS ~~Quality Assurance~~ QA or designee.

(5) The ~~QA~~ administrator of ~~Quality Assurance~~ or designee issues, within 30 days of the report detailing findings, a preliminary determination regarding:

- (A) any standard citation appeal by the agency;
- (B) acceptance or revision of resolution dates proposed by the provider to achieve conformance with the provisions of the contract(s) or rules; and
- (C) when necessary, specific corrective action(s) is undertaken by the agency, including that:

(i) the agency reimburse OKDHS or OHCA for unsubstantiated or unauthorized claims;

(ii) the agency reimburse service recipients for the balance of funds managed by the agency contrary to the expectations of OAC 340:100-3-4; and

(iii) service provision is immediately suspended or modified when it is determined there is imminent risk to the health or safety of service recipients.

(6) Performance survey teams conduct focused re-surveys to assess resolution of identified contract deficiencies.

(A) Focused re-surveys including a new random sample are conducted at any time following the established resolution date.

(B) Focused re-surveys require no advance notice.

(C) Focused re-surveys may, at the discretion of the performance survey team, be expanded to include any new performance issue identified.

(D) Focused re-surveys evaluate whether the provider has corrected identified deficiencies by the approved resolution date. The written report provided to the provider includes any new performance issues identified as well as the:

(i) resolution of conditions resulting in the citation of a standard; and

(ii) ~~implementation of actions likely to resolve the citation of a standard over a period of time; and~~ continued existence of a deficiency.

(E) Following a focused re-survey the provider is informed of the results.

(i) The provider may submit evidence contesting a citation.

(ii) New citations found during the focused re-survey are added to the report of the original survey for consideration by the Performance Review Committee.

(7) **Failure to cooperate.** Provider agencies failing to cooperate with provisions or providing false information in response to any inquiry per OAC 340:100-3-27.1 are subject to sanctions identified, including contract termination.

(8) **Retaliation.** Provider agencies and OKDHS employees are prohibited from any form of retaliation

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against any service recipient, employee, or agency for reporting or discussing possible performance deficiencies with any OKDHS authorized agent. Authorized agents are OKDHS staff whose responsibilities include administration, supervision, or oversight of DDS services, including all DDS and Office of Client Advocacy staff.

### 340:100-3-27.2. Performance Review Committee (PRC), sanctions, and emergency determinations

(a) Findings of performance surveys, administrative inquiries, or focused re-surveys are reviewed by the Performance Review Committee (PRC) when the:

- (1) provider submits an appeal of any decision of the Quality Assurance (QA) administrator of Quality Assurance or designee within 14 days from mailing of the preliminary determination;
- (2) provider fails to correct all identified deficiencies by the approved resolution date or if new deficiencies are identified ~~in accordance with~~ per subparagraph (6)(E) of OAC 340:100-3-27.1; or
- (3) QA administrator of Quality Assurance or designee determines that sanctions may be required as a result of gross or perpetual violation of the contract.

(b) The PRC consists of representatives of major units of the division appointed by the Developmental Disabilities Services Division (DDSD) director, except the QA administrator of Quality Assurance does not serve as a voting member.

(c) The PRC meets monthly to review and issue a determination on referrals. Available determinations include:

- (1) acceptance, denial, or modification of an appeal;
- (2) a determination that sanctions are not warranted;
- (3) invocation of one or more sanctions including:
  - (A) vendor hold, ~~which that~~ precludes the admission to the agency of any person whose services are to be funded by DDS or Waiver services;
  - (B) suspension of funding pending resolution of conditions violating terms of the contract;
  - (C) ~~a daily penalty calculated at the rate of .0002 (2/10,000) times the agency's combined annual payments for DDS state funded services and Home and Community Based Waiver (HCBW) services funded through the Oklahoma Health Care Authority (OHCA) for the previous state fiscal year, to a maximum of \$500 per day, pending resolution of conditions violating terms of the contract with the Department of Human Services (DHS).~~

~~(i) The daily penalty is imposed when it is found that the agency has not resolved all previously cited deficiencies by the approved resolution date(s), unless the PRC determines, based on evidence submitted by the agency within one week of a focused re-survey, that actions essential to compliance were beyond the control of the agency.~~

~~(ii) The daily penalty is suspended on the day the agency provides notice to the DDS Quality Assurance state office staff that all identified deficiencies have been resolved. A focused re-survey is conducted on the earliest possible date. The~~

~~penalty is terminated as of the date of provider notice if all previously identified deficiencies are resolved. The penalty is reinstated, as of the date of the initial notice by the provider, if it is found that all previously identified deficiencies are not resolved.~~

~~(iii) Proceeds from any daily penalties are used by DHS to fund one time or emergency supports for persons on the DDS waiting list;~~

~~(DC) disallowance of claims for services by staff whose:~~

- (i) training has not been completed ~~in accordance with~~ per OAC 340:100-3-38; or
- (ii) pre-employment screening does not comply with OAC 340:100-3-39;

~~(ED) termination of contract with DHS Oklahoma Department of Human Services (OKDHS);~~

~~(FE) recommendation for termination of contract with the Oklahoma Health Care Authority (OHCA); and~~

~~(GF) the requirement that the provider employ sufficient program coordination staff to provide one program coordinator for ~~each~~ every ten individuals receiving residential supports as defined in OAC 340:100-5-22.1.~~

~~(i) The program coordination staff ratio may be invoked when a violation(s) of program coordination requirements in OAC 340:100-5-22.1 remains uncorrected 60 days following the provider's receipt of a written report of the findings.~~

~~(ii) The provider maintains the 1:4015 program coordinator ratio for one year, unless the requirement is extended by the PRC based on subsequent deficiencies.~~

~~(iii) The provider must maintain the 1:4015 program coordinator ratio for each caseload that includes a person receiving residential supports.~~

(d) Agencies are notified in writing of the determinations made by the PRC. The president of the agency's board of directors is provided a copy by mail when a sanction, as described at subsection (c) of this Section, is authorized.

(e) The DDS director retains the authority to supersede the decisions of the QA administrator of Quality Assurance or the PRC.

(f) The DDS director or designee may issue an emergency determination, independent of review by the PRC or written input by a provider agency when evidence is presented indicating risk of immediate and substantial jeopardy to the health or safety of a person receiving supports.

(1) The DDS director or designee may use any DHS OKDHS resource considered appropriate to further investigate such circumstance, but is not required to do so.

(2) Emergency determinations:

- (A) include the scope of options defined in subsection (c) of this Section, waiving any stated time frame for implementation; and
- (B) are not subject to appeal.

**340:100-3-27.3. Person-centered evaluations (PCE)**

**[REVOKED]**

Person-centered evaluations (PCE) evaluate and promote the realization of valued outcomes in an individual's life. These outcomes include safety, protection of personal resources, service provision consistent with individual preferences and essential needs, inclusion, and the development of friendships. In addition, PCEs assess and support the efficient use of public resources.

- (1) A sample of persons receiving services through the Community Waiver is selected by the administrator of Quality Assurance or designee. The identities of individuals in the sample remain confidential until the PCE is initiated.
- (2) Three days prior to a PCE the case manager and residential and vocational services provider(s) are notified of the name of the person(s) and the protocols for the PCE.
- (3) Quality Assurance staff visit with the individual selected in the sample and his or her roommate(s), when applicable, as soon as possible following the initiation of the PCE. The reason and process for the PCE are explained, and the individual is assured that his or her opinions are included in the findings.
- (4) The parent(s), legal guardian(s), and advocate(s) of the selected individual and his or her roommate(s) are contacted unless the adult, non-adjudicated individual requests otherwise. The reason and process for the PCE are described. The family's or advocate's opinions and experiences with services are solicited, and any concerns are investigated during the PCE.
- (5) Unless such visits are deemed inadvisable by the administrator of Quality Assurance, site visits, which are typically unannounced, are made to each individual's home and, when appropriate, work site.
  - (A) The family of an individual receiving services may, without reprisal, decline a PCE of supports provided in their home.
  - (B) The Quality Assurance staff are sensitive to and minimize potential intrusions.
  - (C) Service sites, other than the individual's home and work, are visited as determined necessary by Quality Assurance staff.
  - (D) The individual is interviewed and observed in order to determine personal life preferences and goals.
  - (E) Support staff are interviewed and observed during site visits to determine whether their actions are consistent with the individual's needs and preferences.
- (6) The claims records of all providers of state funded or Home and Community Based Waiver (HCBW) services are reviewed during the PCE to determine the consistency of claims with service authorization and delivery.
- (7) The financial records of the individual(s) are reviewed when the provider assists in the management of the individual's personal resources.

- (8) Persons providing supports are interviewed and, when determined appropriate, observed to determine their role in service delivery. Claims for services are reviewed to determine consistency with need, authorization, and supporting documentation.
- (9) Interviews and observations cover the full scope, effectiveness, and quality of service delivery over an extended period of time.
- (10) Personnel and training records for staff providing supports are reviewed.
- (11) A written report is completed to record findings of the PCE.
  - (A) The PCE report describes issues, findings, and resolution agreements relevant to the outcomes described in the Developmental Disabilities Services Division (DDSD) guiding principles, OAC 340:100-1-3.1.
    - (i) The issues and findings are discussed with Personal Support Team (Team) members during the course of the PCE, and a resolution agreement is reached prior to its conclusion.
    - (ii) Issues requiring action are described along with the person responsible for the correction and resolution date.
    - (iii) The Quality Assurance staff provide follow-up as soon as possible following the resolution date to ensure that interventions have occurred as promised.
    - (iv) An administrative inquiry is initiated when resolution agreements are not implemented according to established time schedules.
  - (B) The director of DDSD or designee may identify additional policy or contract compliance issues for data collection during PCEs.
    - (i) During the course of the PCE, Quality Assurance staff collect information relevant to these compliance issues and record the outcomes as data points in the PCE report.
    - (ii) The data points are recorded on the Quality Assurance database for analysis at least annually.
  - (C) When a roommate(s) resides in the home of the individual selected in the sample, a PCE screening is completed.
    - (i) The roommate(s) is screened for:
      - (I) health concerns;
      - (II) issues related to challenging behavior;
      - (III) restrictive interventions;
      - (IV) due process; and
      - (V) the safeguarding of their personal funds.
    - (ii) Quality Assurance staff provide follow-up for issues identified for correction on the PCE screening.
    - (iii) An administrative inquiry is initiated when issues identified on the PCE screening are not corrected within the established time schedule.

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## 340:100-3-27.4. Developmental Disabilities Services Division (DDSD) Quality Assurance reports

Reports describing the findings of all service assessments generated by Quality Assurance (QA) discovery activities are distributed as described in this subsection.

(1) Reports of performance surveys and administrative inquiries are provided to:

- (A) ~~the Developmental Disabilities Services Division (DDSD) deputy director;~~
- (B) ~~the administrator of the provider agency surveyed; and~~
- (C) ~~other appropriate DDSD staff.~~ the administrator of the provider agency surveyed, are stored electronically, and made accessible to:
  - (A) Developmental Disabilities Services Division (DDSD) staff;
  - (B) Oklahoma Health Care Authority;
  - (C) Office of Inspector General; and
  - (D) appropriate Office of Client Advocacy staff.

(2) Performance survey reports with personal identifying information removed are available to interested citizens upon request ~~with personal identifying information removed.~~

(3) Reports of administrative inquiries are not released.

(4) ~~Person centered evaluation (PCE) reports are distributed in accordance with this paragraph.~~

(A) ~~The initial PCE report and any follow up reports are provided to:~~

- (i) ~~each person involved in the PCE and his or her legal guardian;~~
- (ii) ~~the family or advocate of each person, as appropriate;~~
- (iii) ~~the case manager, by email, who is responsible for distributing the report to Personal Support Team (Team) members as appropriate;~~
- (iv) ~~the program coordination staff of agencies referenced in the report;~~
- (v) ~~director of DDSD;~~
- (vi) ~~deputy director of DDSD;~~
- (vii) ~~administrator of DDSD Quality Assurance;~~
- (viii) ~~administrator of DDSD Community Services;~~
- (ix) ~~appropriate DDSD area manager; and~~
- (x) ~~case management supervisor.~~

(B) ~~A copy of the PCE Screening is provided to:~~

- (i) ~~the program coordination staff of the agency referenced in the PCE report; and~~
- (ii) ~~the administrator of DDSD Quality Assurance.~~

(54) Unless otherwise authorized by the individual or the legal guardian, Oklahoma - Advocates Involved in Monitoring (OK-AIM) reports and case manager reports are available only to:

- (A) the referenced individual(s) served;
- (B) the individual's legal guardian;
- (C) agencies providing supports;

- (D) the relevant DDSD area manager;
- (E) the ~~administrator of DDSD Quality Assurance administrator;~~ and
- (F) other relevant DDSD personnel.

## 340:100-3-27.5. Provider agency quality assurance and fiscal controls

(a) Each agency providing services funded through Oklahoma Department of Human Services (OKDHS) or Oklahoma Health Care Authority (OHCA), through Home and Community-Based Services (HCBS) Waivers, to six or more service recipients implements an internal quality assurance system. The system identifies and corrects obstacles to agency compliance with rules governing its services or effectively addressing the needs and preferences of service recipients. Implementation is assessed on the basis of outcomes for service recipients and services.

(b) Provider agencies must have adequate fiscal controls, including internal management controls, systems to ensure accuracy and authorization of claims, and mechanisms to detect and resolve a threat to solvency.

(1) A provider agency is a corporation, partnership, association, or individual proprietorship that contracts with OKDHS or OHCA, through HCBS Waivers, to provide residential, employment, or in-home paraprofessional supports to service recipients.

(2) Each provider agency receiving \$50,000 or more per fiscal year for the delivery of supports funded through OKDHS or HCBS Waivers ~~will be~~ is required to conduct an independent financial audit. When a financial audit is required:

(A) the audit is performed by a certified public accountant:

- (i) with a valid and current permit to practice public accountancy in Oklahoma; and
- (ii) approved by the Oklahoma Accountancy Board to perform audits in accordance with Government Auditing Standards;

(B) OKDHS reserves the right to approve the selection of the auditor or examine the work papers of the auditor; and

(C) the provider agency submits two copies of the audited financial statements, management letter, and plan to address all concerns noted by the auditor to OKDHS Office of Inspector General (OIG).

(i) The audited financial statements are submitted within four months after the end of the provider agency's fiscal year.

(ii) An extension of up to ~~two~~ four months may be authorized by DDSD or OIG, following the provider agency's submission of a request and explanation for delay.

(iii) No extension is granted to an agency that has not submitted the previous year's audit.

(iv) Failure to submit the audited financial statements may result in sanctions per OAC 340:100-3-27.2.

- (3) Audited financial statements are examined by DDS and OIG staff. Problems noted in either the findings or substance of the audit may result in:
  - (A) acceptance of audited financial statements;
  - (B) correspondence with the provider agency or auditor to clarify and resolve issues in or with the audited financial statements;
  - (C) an administrative inquiry per OAC 340:100-3-27.1; or
  - (D) sanctions per OAC 340:100-3-27.2.

**340:100-3-34. Incident reporting**

(a) **Reporting requirement.** Contract provider staff and Developmental Disabilities Services Division (DDS) staff must report ~~injuries and behavioral or health related incidents involving critical and non-critical incidents involving the health and welfare of~~ any person receiving DDS services, excluding Family Support Assistance Payment Program recipients per OAC 340:100-13.

- (b) **Critical incidents.** Critical incidents include:
- (1) suspected ~~abuse, neglect, or exploitation of a service recipient~~ maltreatment including abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation, or sexual exploitation of a vulnerable adult per Section 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103) or abuse, neglect, sexual abuse, or sexual exploitation of children per 10A O.S. § 1-1-105;
  - (2) threatened or attempted suicide by a service recipient;
  - (3) death of a service recipient;
  - (4) an unplanned hospital admission of a service recipient;
  - (5) a medication event resulting in emergency medical treatment for a service recipient;
  - (6) law enforcement involvement in a situation concerning a service recipient;
  - (7) property loss of more than \$500 involving a service recipient;
  - (8) a service recipient who is missing; and
  - (9) ~~an unusual or significant incident involving a service recipient that may attract media attention; and~~
  - (10) a highly restrictive procedure used on a service recipient, such as:

- (A) p.r.n. medication for behavioral control; ~~and~~ or
- (B) physical hold.

- (c) **Non-critical incidents.** Non-critical incidents include:
- (1) an injury ~~or an unplanned health-related event involving~~ a service recipient;
  - (2) ~~an unplanned health related event involving a service recipient;~~
  - (3) physical aggression by a service recipient;
  - (4) fire setting by a service recipient;
  - (5) deliberate harm to an animal by a service recipient;
  - (6) property loss of less than \$500 involving a service recipient;
  - (7) a vehicle accident involving a service recipient;
  - (8) the suspension, termination, or removal of a service recipient's program, including employment; and

- (9) a medication event involving a service recipient, including:
  - (A) dose at wrong time;
  - (B) missed dose;
  - (C) wrong dose;
  - (D) wrong medicine;
  - (E) wrong route;
  - (F) incorrect medicine label or instructions;
  - (G) ~~refused medication~~ medication refused by the service recipient;
  - (H) incorrect medication documentation; or
  - (I) any other significant occurrence involving medication.

(d) **Incident notification requirements.** ~~When an incident occurs, contract provider staff notifies:~~

(1) For Waiver funded service recipients, contract provider staff:

(A) report incidents electronically via the DDS Provider Reporting System for all critical and non-critical incidents;

(B) notify the DDS case manager;

- (i) immediately, when there is a critical incident per OAC 340:100-3-34(b). If the incident occurs outside regular working hours, the DDS on-call staff case manager is notified immediately the next working day; and
- (ii) within 72 hours for non-critical incidents.

(A) ~~When contract provider staff notifies emergency on-call staff, the DDS case manager must be notified within one working day of the incident.~~

(B) ~~Contract provider staff submits Form 06MP046E, Incident Report, to the DDS case manager and DDS State Office within 72 hours after the incident;~~

(2) ~~the DDS case manager by Form 06MP046E within 72 hours of the occurrence of a non-critical incident per OAC 340:100-3-34(e);~~

(C) notify the service recipient's family or guardian, in accordance with provider policies;

(D) notify other persons or entities whose notification is as required by law or regulation, including:

(i) notifications per OAC 340:100-3-35, when a service recipient dies per OAC 340:100-3-35; and

(ii) ~~immediately notifying~~ investigative authorities in the event immediately in cases of suspected abuse, neglect, or exploitation-maltreatment, including:

(i) Office of Client Advocacy per OAC 340:2-3-33;

(ii) Adult Protective Services per Section 10-104 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-104); or

(iii) Child Protective Services per 10A O.S. § 7103 1-1-105; and

(5) ~~those persons per OAC 340:100-5-57.1 when reporting use of restrictive and intrusive behavior interventions.~~

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(2) For critical incidents involving state funded service recipients, contract provider staff submits Form 06MP046E, Incident Report, to DDS State Office within 72 hours of the incident. For non-critical incidents, contract provider staff maintains a copy of Form 06MP046E per OAC 340:100-3-40.

### 340:100-3-40. Community records

(a) **Purpose.** OAC 340:100-3-40 sets forth requirements for:

- (1) maintenance of records by contract providers;
- (2) transfer of documents to a history file ~~of documents in a for service recipient's record~~ recipient records maintained by the contract provider; and
- (3) transfer of information when a service recipient changes contract providers.

(b) **General requirements.** Records maintained by the contract provider are indexed, orderly, well-maintained, readily accessible, and current. Records must contain adequate documentation of services rendered.

(1) All service recipient records are available for review by the service recipient, his or her legal guardian, and staff and authorized agents of Oklahoma Department of Human Services. Copies of records are available upon request ~~to~~ by such persons.

(2) The service recipient record is maintained with:

- (A) an index;
- (B) identification of the service recipient's name on the record and on each page;
- (C) section tabs clearly marked; and
- (D) documents secured in the record.

(3) All entries in the record:

- (A) are made ~~in accordance with~~ per OAC 317:30-3-15;
- (B) are made in chronological order;
- (C) are legible;
- (D) include date and time of each entry, with legible identification of the person making the entry; and
- (E) include, if the entry is health-related:
  - (i) description of concern; and
  - (ii) action taken.

(4) The provider ensures compliance with OAC 340:2-8-1 through OAC 340:2-8-13 and OAC 340:100-3-2 pertaining to protection, use, and release of personal information. The provider holds confidential all personal information regarding service recipients, including names, addresses, photographs, records of evaluation, and all other records. Information is not disclosed, directly or indirectly, unless consent is obtained in writing.

(c) **Home record for service recipients receiving community residential supports or group home services.** A record of services is maintained by the contract provider in the home for each service recipient receiving community residential supports, per OAC 340:100-5-22.1, or group home services, per OAC 340:100-6.

(1) Documents contained in each home record include:

(A) items that are not removed from the record, including guardianship documents and other legal documents;

(B) copy of current Individual Plan (Plan) packet;

(C) health-related documents, including, but not limited to:

(i) Form 06HM039E, Continuous Medical Record, per OAC 340:100-3-40.1;

(ii) Form 06HM005E, Referral Form for Examination ~~and/or~~ Treatment, physician orders, discharge summaries, and emergency room reports;

(iii) Form 06HM006E, Health Status and Medication Review;

(iv) special instructions or Health Care Plan;

(v) individually identified data forms relevant to service recipient's current health status;

(vi) Dyskinesia Identification System: Condensed User Scale (DISCUS) or Abnormal Involuntary Movement Scale (AIMS), if required, per OAC 340:100-5-29;

(vii) current immunization record;

(viii) medication administration records from previous months;

(ix) most recent lab, x-ray, and consultation reports, and pharmacological evaluation, if applicable; and

(x) miscellaneous health-related consultations and correspondence;

(D) miscellaneous documents relating to the service recipient, including, but not limited to:

(i) observation notes;

(ii) Form 06CB035E, Site Visit Report, completed by all professional contract providers and program coordination staff;

(iii) implementation strategies; and

(iv) applicable data collection sheets; ~~and~~

(E) ~~monthly~~ quarterly residential reports on progress; and

(F) ~~a form~~ Form 06MP070E, Access to Home Record and Verification of Monitoring Requirement, certifying that all authorized persons accessing the service recipient information contained within the home record ~~have been~~ were informed and understand the penalties for misuse of confidential and protected information ~~within the home record. The form must cite the criminal penalties related to identity theft found in~~ per Section 1533.1 of Title 21 of the Oklahoma Statutes.

(2) In unusual circumstances a service recipient's home record, or specified types of documents from the record, may be maintained at a location other than the service recipient's home, if requested by the Team and approved in writing by the ~~DDS~~ Developmental Disabilities Services Division area manager.

(d) **Retention.** Each contract provider retains a record for each service recipient receiving services from the provider.

- (1) Transfer of all documents more than three months old from the provider agency record to a history file occurs yearly, unless otherwise specified per OAC 340:10-3-40.
- (2) The provider agency retains original records for a period of six years or until any pending litigation involving the service recipient is completed, whichever occurs last.
- (e) **Transfers between agencies.** When a service recipient changes provider agencies, the agency provides the new agency with a copy of the current home record and any health documents requested by the Team.
- (f) **Other provider records.** The provider must maintain service records that substantiate the provision of services, eligibility of service recipients, and outcome of services.
  - (1) Records are maintained for a period of six years after ~~OKDHS~~the Oklahoma Department of Human Services has made final payment and all pending matters are closed.
  - (2) The provider maintains copies of all claims, substantiating documents, and records regarding agency fiscal status within corporate offices in Oklahoma.

**SUBCHAPTER 5. CLIENT SERVICES**

**PART 3. SERVICE PROVISIONS**

**340:100-5-20. Respite Voucher Program**

- (a) **Applicability.** The rules in this Section apply to the respite voucher program operated by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD). When funding resources are sufficient, DDSD may use funds for the provision of respite vouchers. For the purpose of this Section, respite is defined as temporary relief for caregivers and families who are caring for a ~~family member~~person with a developmental ~~disabilities~~disability or developmental delay.
- (b) **Eligibility.**
  - (1) Respite vouchers may be issued for caregivers of persons who have developmental disabilities; and do not:
    - (A) ~~do not~~ receive services through a Home and Community-Based Services (HCBS) Waiver; ~~and~~
    - (B) ~~do not~~ receive the Family Support Assistance Payment;
    - (C) receive respite services funded through any other program or service;
    - (D) live in an assisted living facility;
    - (E) live independently;
    - (F) receive Advantage Waiver services;
    - (G) receive a foster care payment or are in OKDHS custody;
    - (H) receive state funded services such as:
      - (i) Sheltered Workshop;
      - (ii) Community Integrated Employment; or
      - (iii) Adult Day;
    - (I) reside in a drug or alcohol treatment facility; or
    - (J) receive OKDHS Child Care Subsidy.
  - (2) The voucher applicant is the caregiver and must:
    - (A) be an Oklahoma resident;

- (B) reside with and provide full-time care full time for an eligible person with a developmental disability, or developmental delay with an assessment or evaluation date within 12 months of the date of application, demonstrated by any of the following(i) through (v) of this paragraph:
  - (i) doctor's statement or diagnosis;
  - (ii) SoonerStart developmental evaluation documenting scores; indicating:
    - (I) a 50% delay in one domain; or
    - (II) a 25% delay in two or more domains;
  - (iii) school test scores;
  - (iv) psychological evaluations; or
  - (v) statement from a licensed therapist indicating a condition related to a developmental delay or developmental disability; and
- (C) have an adjusted gross income of \$60,000 or less.
- (c) **Respite voucher application.**
  - (1) Applications for respite vouchers are available through ~~the Oklahoma Area-wide Services and Information System (OASIS)~~DDSD area offices.
  - (2) ~~Completed applications are submitted to OASIS.~~ A completed application must include a copy of the most recent federal income tax return. When an applicant receives Supplemental Security Income, Temporary Assistance for Needy Families, or SoonerCare, the federal income tax return is not required.
  - (3) ~~Completed applications are sent by OASIS within seven working days to the DDSD respite programs manager for review and approval or denial within 30 days of receipt of the application.~~
  - (4) Incomplete applications are returned to the applicant for correction.
  - (5) ~~The DDSD State Office considers respite~~Respite voucher applications are considered in chronological order of receipt, of completed application. DDSD provides a written determination to the applicant within 30 days.
- (d) **Issuance of respite voucher.** Respite voucher applications are valid for the state fiscal year (July-June). When an application for a respite voucher is approved, a respite voucher is issued to the caregiver applicant-
  - (1) ~~A respite voucher is approved~~ for use from the date of issuance and is valid for 90 days ~~from the date issued.~~
  - (2) ~~A caregiver may request up to four, \$400 vouchers per year, not to exceed \$1600, based on available funding.~~
- (e) **Caregiver responsibilities.** Caregivers are responsible for:
  - (1) interviewing and selecting the respite provider;
  - (2) setting an hourly rate;
  - (3) training the provider;
  - (4) ensuring proper payment for services; and
  - (5) tracking the number of respite hours used and total amount claimed against the voucher.
- (f) **Submitting voucher for payment.** The caregiver and the respite care provider complete and sign the respite voucher and submit it to OKDHS Finance Division for payment.

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(g) **Fair hearing.** Any person who has been denied a voucher; except for denials based on insufficient funding, may request a hearing per OAC 340:2-5.

[OAR Docket #12-458; filed 4-26-12]

## TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #12-456]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 5. Teacher Preparation Program Accreditation

712:10-5-1 [AMENDED]

712:10-5-3 [AMENDED]

712:10-5-4 [AMENDED]

### **AUTHORITY:**

Oklahoma Commission for Teacher Preparation

70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act

### **DATES:**

#### **Comment Period:**

November 15, 2011 through December 15, 2011

#### **Public Hearing:**

December 15, 2011

#### **Adoption:**

February 9, 2012

#### **Submitted to Governor:**

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#### **Submitted to House:**

February 13, 2012

#### **Submitted to Senate:**

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#### **Gubernatorial approval:**

March 7, 2012

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on April 10, 2012

#### **Final adoption:**

April 10, 2012

#### **Effective:**

July 1, 2012

#### **SUPERSEDED RULES:**

n/a

#### **INCORPORATIONS BY REFERENCE:**

n/a

#### **ANALYSIS:**

The proposed Teacher Preparation Program Accreditation revisions would align program review and unit accreditation decisions and terminology with those of the National Council for Accreditation of Teacher Education (NCATE) and reflect changes in annual reporting requirements as a result of legislation.

#### **CONTACT PERSON:**

Linda Reid, Executive Director, 3545 NW 58<sup>th</sup> Street, Suite 200, Oklahoma City, Ok 73112-4725, 405-525-2612

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

## SUBCHAPTER 5. TEACHER PREPARATION PROGRAM ACCREDITATION

### **712:10-5-1. Teacher Preparation Program Accreditation And Review Process**

(a) Oklahoma teacher education institutions function under an 'accreditation program' system which requires the evaluation of teacher education units and programs on a periodic basis.

(b) Beginning July 1, 1997 institutions which have no accredited teacher education program and which desire to initiate a certificate program shall follow the format outlined herein based on Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (see 712:10-5-3). Institutional plans are defined as plans developed and prepared utilizing input from education stakeholders (teacher preparation faculty, arts and science faculty, teacher candidates, teachers, administrators, business and community leaders, and parents) which follow the general guidelines and standards for pre-service teacher preparation programs outlined in sections 712:10-5-3. On July 1, 1997 the Oklahoma Commission for Teacher Preparation, hereafter referred to as the Commission, shall assume responsibility for accrediting all teacher education programs in Oklahoma's public and private institutions of higher education.

(c) The program accreditation system shall be a multifaceted system based on:

- (1) A competency-based teacher preparation program built around the Standards for Oklahoma Accredited Teacher Education Programs and State Department of Education Competencies, herein after referred to as SDE;
- (2) Institution plans as outlined in the Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan Format;
- (3) On-site accreditation review team visits to the campuses of the institutions of higher education;
- (4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;
- (5) Analysis of student satisfaction data;
- (6) Analysis of student/teacher candidate portfolios.

(d) Beginning January 1, 1997 all institutions of higher education with teacher education programs must submit an initial institutional plan outlining how the institution will respond to those standards identified in the Oklahoma Standards for Accredited Teacher Education Programs and Initial Institution Plan (See 712:10-5-3, and OS 70 sections 6-199 through 6-202.)

(1) All initial plans will be reviewed by the Program Accreditation Committee, hereafter referred to as the PAC and recommendations for accreditation for seven years, accreditation for two years with a focused visit, accreditation for two years with a full visit, defer decision or denial of accreditation will be forwarded to the Commission within sixty days of submission.

(2) All PAC members and a minimum of ten prospective members will receive performance training on how

to evaluate the initial plans. Only those members demonstrating proficiency in evaluation will be allowed to evaluate the plans.

(3) The performance-based training will be conducted by the National Council for Accreditation of Teacher Education, hereinafter referred to as NCATE and/or their designee.

(4) Any Commission member or Commission appointee who is involved in any evaluation and/or accreditation decision related to any teacher education unit and/or program must complete the performance-based training related to the review and accreditation of teacher education units and/or programs prior to voting and/or participating on any accreditation decisions.

(5) Prior to being accredited each institution must meet the NCATE preconditions for accreditation and all requirements of the OCTP, and/or receive the approval of the OSRHE when applicable, and provide required documentation for each precondition.

(A) The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age, or handicap (consistent with Section 702 of Title VII of the Civil Rights Act of 1964, which deals with exemptions for religious corporations, with respect to employment of individuals with specific religious convictions).

(B) A copy of the institution's official action pledging compliance with nondiscriminatory law and practice.

(e) Beginning July 1, 1997 the Commission will become a performance-based partner with the Oklahoma State Regents for Higher Education (State Regents) and NCATE. All teacher education programs shall be expected to meet all NCATE unit and program standards, SDE competencies, as well as all additional standards established by the Oklahoma Commission for Teacher Preparation.

(1) **Application form.** The application form containing the required information will be completed by the director of teacher education at the institution seeking Commission accreditation for the teacher education certificate programs.

(2) **Institutional plan.** The institutional plan shall be utilized by the Commission for program accreditation, State Regents program review, and NCATE accreditation. An institutional plan addressing the standards as outlined in the Oklahoma Commission for Teacher Preparation Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan and criteria established in these rules and as stipulated in OS 70 sections 6-180 through 202 will be sent to the Commission office along with the application form —according to the established timeline.

(3) **Records to be kept on file at the institution.** The following items and records shall be kept on file at the institution with the director/dean of teacher education.

(A) Copy of the institution plan;

(B) Copy of annual report to the Commission;

(C) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and

(D) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.

(E) Copies of program review reports.

(F) Candidate CEOE scores.

(4) **Timelines for evaluation process.**

(A) The Oklahoma Commission for Teacher Preparation personnel will establish an accreditation visit schedule in collaboration with the State Regents, NCATE and the institution dean/director of teacher education.

(B) Upon approval by the governing board of the institution, two copies of the institution report and supporting materials including the college catalog shall be sent to the Commission office 75 days prior to the accreditation visit. Upon receiving the names and addresses of the visiting accreditation review team, the institution shall send copies of all documentation to the members of the visiting accreditation review team.

(C) The visiting committee selection process shall be completed a minimum sixty (60) days prior to the accreditation visit.

(D) The on-site accreditation evaluation will be conducted over a three to five day period.

(E) After finalizing the team draft report which results from the accreditation visit, and within fourteen days of the accreditation visit, the team chair shall send the draft report to team members and Commission professional personnel for editing.

(F) Within twenty-one days of the visit the team members and the Commission office shall return their comments and recommendations on the report to the team chair. The chair makes corrections to the report, as appropriate, and sends a copy to the unit head at the institution for factual corrections.

(G) Within twenty-eight days of the visit but not less than five days of the receipt of the report, the unit head sends factual corrections in writing to the team chair. The chair makes changes at his/her discretion, finalizes the report and sends one copy to the Commission office. The report shall be in the format determined by the Commission.

(H) The Commission staff will copy the report with a cover that includes the name of the institution, its location, and the date of the visit.

(I) Utilizing the procedures outlined in 712:10-5-1(e)(8) the Commission will make a final decision regarding the accreditation of the institution's certificate program(s). That decision will be based on the findings and recommendations of the Commission Program Accreditation Committee and any additional information which may be presented by the institution under review.

(J) All certification program reviews must be submitted to NCATE or to the Commission no later than

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12 months prior to the first accreditation visit and according to the established NCATE/OCTP timeline prior to a continuing accreditation visit.

(5) **Selection of accreditation review team.** Selection of the accreditation review team will be coordinated by the Commission staff as soon as possible after the visitation dates are set. All accreditation review team members shall be determined within sixty (60) days prior to the accreditation review team visit. Selection of the accreditation review team shall be based on the following:

(A) All team members must have been trained by NCATE staff and/or their designee in the application of NCATE standards and on the process for evaluating programs for the Commission.

(B) Accreditation team for first accreditation. The membership of a first accreditation review team shall be as follows:

(i) Three to six representatives from the NCATE Board of Examiners (for NCATE accredited institutions).

(ii) State representatives appointed by the Commission including:

(I) One pre-K-12 classroom teacher;

(II) One representative from higher education who is a member of a teacher education unit. For accreditation of private institutions the representative shall be from a private institution; for public institutions this representative shall be from a public institution;

(III) One representative from the Commission;

(IV) One additional at-large member;

(iii) For any institution requesting accreditation of a career technology program(s) an additional accreditation review team member may be recommended by the State Director of Career and Technology Education.

(iv) Special Circumstances:

(I) For accreditation review teams requiring fewer members the Executive Director of the Commission shall collaborate with the Program Accreditation Committee, the director of teacher education at the institution being accredited, and NCATE and Commission staff to determine the team composition.

(v) The Commission will determine observers from representatives of the Oklahoma State Regents for Higher Education, State Department of Education, State Department for Career and Technology Education, professional organizations, and the community-at-large.

(I) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist, but shall not be required to write any sections of the team

report. They shall not be a voting member of the team.

(II) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(III) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(C) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:

(i) NCATE representatives as determined by NCATE (for NCATE accredited institutions);

(ii) State representatives which will number one less than the NCATE representatives;

(iii) The Executive Director for the Commission for Teacher Preparation or his/her designee shall collaborate with the director of teacher education at the institution being reviewed, NCATE, and with the PAC and Commission staff to determine the state committee representation;

(iv) The Commission will determine observers from representatives of the Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education shall nominate a team member for any institution requesting accreditation of career and technology program(s);

(v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(D) Accreditation teams for non-NCATE accredited institutions shall be composed of state representatives.

(E) The Executive Director for the Commission for Teacher Preparation or his/her designee shall collaborate with the director of teacher education at the institution requesting state accreditation, NCATE, the State Regents, PAC and Commission staff to determine the team representation.

(6) **Logistics of the accreditation visit.**

(A) Each institution shall arrange through the Commission for a pre-visit with the chair of the accreditation review team. The pre-visit should be

conducted a minimum of sixty (60) days prior to the team visit. The team chair must have received the institutional report prior to the pre-visit.

(B) If it is to be a joint NCATE and Commission visit, the state chair, the NCATE chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.

(C) For state accreditation only, the state chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.

(D) A visitation schedule will be prepared and distributed approximately four weeks prior to the scheduled visit. The schedule will be developed cooperatively by the director of teacher education and the Commission staff in cooperation with the team chair(s).

(E) The following stakeholders may be interviewed during the accreditation visit:

- (i) Key faculty from the teacher education and the arts and sciences units;
- (ii) Administrators from the university teacher education and the arts and sciences units;
- (iii) Other individuals identified by the institution;
- (iv) Students (both in organized group settings and in informal settings such as in hallways, student lounges, student union, etc.);
- (v) Field supervisors and cooperating teachers of student teaching and internships;
- (vi) Practitioners from area schools including, but not limited to, principals, school personnel directors, and teachers; and
- (vii) Recent graduates.

(F) The individuals to be interviewed should be representative of the student body being served, and consideration shall be made relative to ethnicity, gender, age and individuals with disabilities.

(G) The visitation schedule shall include:

- (i) Dates of the accreditation visit;
- (ii) Name, location, telephone number of lodging where reservations have been made for committee members;
- (iii) Location of visiting team headquarters on the campus of the institution being evaluated;
- (iv) Meeting time and place for team organizational meeting;
- (v) Meeting time and place for formal team interviews with constituencies listed in 712:10-5-1(e)(6)(E);
- (vi) Meeting time and place for team to complete writing assignments;
- (vii) Meeting time and place for team to present the exit report; and

(viii) Fax, telephone, and e-mail addresses of members of the unit.

(H) The completed accreditation review team report will be presented to the PAC, NCATE (as applicable), and the Commission.

(I) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit.

(7) **Preparation of the team report.** The accreditation review team work will culminate in preparation of a report outlining the findings of the team. Individual writing assignments will be completed prior to the conclusion of the visit. The report will reflect the team consensus on the review.

(A) The accreditation review team report is to be based on the following:

- (i) Validating and supporting documents, through interviews with students, faculty members, administrators, and school personnel;
- (ii) Validating the institutional report by visiting facilities and reviewing documents; and
- (iii) Specific guidelines and competencies for accredited teacher education programs.

(B) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include findings for each standard and state requirement including areas for improvement.

(C) The completed reports will be due to the NCATE and Commission office ~~30~~<sup>30</sup> days after the accreditation review team on-site visit; and

(D) The recommendation of the accreditation review team regarding the program will be made to the PAC and the Oklahoma Commission for Teacher Preparation within 90 days after having received the rejoinder [see 712:10-5-1(e)(8)(B)(iv)] and the response to the rejoinder from the team chairs. For NCATE accredited institutions, final accreditation decisions will be made after the NCATE Unit Accreditation Board has forwarded its accreditation decision to the Commission.

(8) **Recommendation process.**

(A) An electronic copy of the final draft of the accreditation review team report will be forwarded to the Commission personnel and to each of the accreditation review team members who will be given the opportunity to suggest corrections in their respective assignment areas. Additionally, the director of teacher education will be given the opportunity to offer input regarding corrections in factual information.

(B) The head of the unit, in consultation with the chief executive officer of the institution, is required to acknowledge receipt of the report and is given the opportunity to prepare a rejoinder to the accreditation review team report. The unit can file the rejoinder and supplemental materials pertinent to the facts and

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conclusions found in the report of the accreditation review team.

(i) The institutional rejoinder to the accreditation review team report is a vital part of the evidence that the PAC considers as it makes its determination regarding first and continuing accreditation. The PAC considers the first/continuing accreditation report, accreditation review team report and the institutional rejoinder as it prepares its recommendations for the Program Accreditation Committee and subsequently to the full Commission. The PAC may affirm the accreditation review team citations in areas for improvement or modify them based on evidence provided in the institutional rejoinder or to bring consistency to its decisions across institutions.

(ii) The purpose of the rejoinder is to clarify information presented in the accreditation review team report and to correct any factual errors in the report. If the judgments of the accreditation review team are being disputed by the unit, the rejoinder must indicate the grounds for such a stance and the available documentation to support it. This information should be summarized, cited, and included in an appendix as appropriate. The rejoinder should be concise, to the point, and complete.

(iii) The following conditions must be adhered to as the institutional rejoinder is prepared by the unit:

(I) All evidence must describe what existed at the time of the accreditation visit. Changes made by the unit after the visit cannot be considered by the PAC in its deliberations. Changes after the visit should be reported to the Commission for Teacher Preparation as part of the unit's annual report;

(II) All evidence must relate directly to NCATE standards, state requirements, and all procedures that applied at the time of the accreditation visit;

(III) The rejoinder must be factual in nature. All inaccurate information in the accreditation report should be corrected and appropriate documentation submitted with the rejoinder; and

(IV) When the unit does not respond, in writing, to the unmet standards and areas for improvement in the accreditation report, the PAC assumes that the unit concurs with the accreditation review team citation and decision.

(iv) The institutional rejoinder should contain the following:

(I) Letter from the unit head to the Commission Executive Director acknowledging the receipt of the accreditation report;

(II) Responses to the areas for improvement. If there is evidence that an area for

improvement does not exist, the appropriate documentation should be appended;

(III) Perceptions of procedural concerns, if any, regarding the accreditation review team review or process that might have prejudiced the accreditation review team judgments; and

(IV) Appendices that contain information to support any requests for reconsideration of the accreditation review team judgments. If the data were included in the institutional report and not given adequate consideration by the accreditation review team, the appropriate pages should be cited/reproduced; if the reference exceeds three pages in the institutional report, the page numbers should be cited and not duplicated.

(v) The institutional rejoinder must be submitted to the Oklahoma Commission for Teacher Preparation within 30 days of the receipt of the accreditation review team report. When accreditation review team reports are sent to an institution during semester breaks, additional time to prepare the rejoinder will be considered. Additional time beyond the date indicated in the transmittal letter must be approved by the Commission Executive Director.

(C) Final action on the reports and institutional accreditation will proceed according to Section 712:10-5-1(e).

(D) Final action by the Commission may include the following actions:

(i) First and Continuing Accreditation for seven years.

(I) First Accreditation or Continuing Accreditation for seven years is granted to the education unit and program(s) if the Commission finds that standards have been adequately addressed to merit accreditation. This accreditation decision indicates that the unit meets each of the six NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the unit may describe progress made in addressing the areas for improvement cited in NCATE's action letter in preparation for its next visit. In its annual report the institution will be expected to address progress on the areas for improvement cited in the Commission accreditation report. This progress will be reviewed, annually, by the PAC. First accreditation is retroactive to the semester in which the accreditation visit occurred.

(ii) Accreditation for two years with a focused visit.

(I) This accreditation decision indicates that the unit has not met one or more of the standards. When the PAC renders this decision, the

unit has or maintains its accredited status; but must satisfy provisions by meeting previously unmet standard(s) within an established time period.

(II) If Accreditation for two years with a focused visit is granted, the PAC will require a focused visit on the unmet standard(s) within two years of the semester of the accreditation decision. After a focused visit, the PAC will (1) grant accreditation or (2) revoke accreditation.

(III) If accreditation is granted, the next on-site visit is scheduled for seven years following the semester in which the accreditation visit preceding the focused visit occurred.

(iii) Accreditation for two years with a full visit.

(I) This accreditation decision indicates that the unit has not met one or more of the NCATE standards, and serious problems exist across standards. When the PAC renders this decision, the unit has or maintains its accredited status, but must satisfy conditions by meeting the previously unmet standard(s) within an established time period.

(II) If accreditation for two years with a full visit is granted, the PAC will require a full visit on the unmet standard(s) within two years of the accreditation decision. After a full visit, the PAC will (1) continue accreditation or (2) revoke accreditation.

(III) If accreditation is granted, the next on-site visit is scheduled for seven years following the semester in which the continuing accreditation visit occurred.

(iv) Defer Decision

~~(I) When at least one standard is not met, the problems are centered in the unmet standard, and documentation could show that the standard is met, the institution will be required to submit said documentation to the UAB or PAC/Commission as applicable. The UAB or PAC/Commission will make this decision if the BOE team recommended that any standard(s) was met for which the UAB or PAC/Commission did not accept the team's recommendation.~~

~~(II) The UAB or PAC/Commission will make this decision if the BOE team recommended that all standards were met and the UAB or PAC/Commission did not accept the team's recommendation. A supplemental rejoinder related to the new unmet standard(s) may be submitted for review by the UAB or PAC/Commission. The supplemental rejoinder must be based on evidence available at the time of the visit. The institution will be required to submit said documentation to the UAB or PAC/Commission as applicable.~~

(III) For NCATE/State institutions, the PAC/Commission will defer decision until the

next NCATE UAB meeting. For State only institutions, the PAC/Commission will defer decision for no more than sixty (60) days.

(IV) If the standard(s) continues to be unmet after the supplemental rejoinder, accreditation will be granted for 18 months with either a focused or full visit.

(v) Denial of accreditation (First).

(I) Denial of accreditation is rendered when the PAC finds that the professional education unit and/or programs have severe and/or numerous areas for improvement that limits its capacity to offer quality programs.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the denial of program accreditation of the unit and programs.

(III) Institutions that are denied accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is denied.

(vi) Revocation of accreditation (Continuing).

(I) Revocation of accreditation terminates current accreditation after a two-year visit if the PAC/Commission finds that critical areas for improvement are not corrected. Accreditation will be terminated at the end of the semester in which the PAC/Commission revokes accreditation.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the revocation of accreditation of the unit and programs.

(III) Institutions that lose their accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

(IV) An on-site interim accreditation visit may be requested by the Appeals Board, hereinafter referred to as AB, acting on behalf of the Commission Administrative Committee. This visit would result from the committee's determination that compelling reasons exist to authorize reexamination of the accreditation of an institution's professional education unit and/or programs. If the AB determines that a complaint received by the committee needs to be investigated, the committee will authorize an interim accreditation review team visit to the campus. The interim accreditation review team will consist of one member from the first or continuing accreditation review team and the remainder of the members will be appointed by the PAC following the guidelines outlined in 712-10-5(e)(5).

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(V) The interim accreditation review team will prepare a report for the PAC. At the next PAC meeting following such a visit, the PAC will recommend the institution's accreditation status to the Commission.

(VI) The Commission may revoke accreditation if the unit and/or program(s) (a) no longer meets the Standards for Oklahoma Accredited Teacher Education Programs, (b) fails to submit annual reports and other documents required for accreditation; (c) misrepresents its accreditation status to the public; (d) fails to meet timelines of conditional or probationary accreditation or (e) fails over a three-year period to meet and maintain teacher candidate performance standards on the competency-based assessments as established by the Commission

(VII) All accreditation decisions shall be reported annually in the Commission annual report to the Education Oversight Board and all entities as outlined in OS 70 section 6-186.

(VIII) In the event that accreditation is denied or revoked, an institution may reapply for first accreditation following a three-year waiting period. Before a first visit may occur, a minimum of three years must have lapsed since accreditation was denied. Reapplication shall occur based on the Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (See 712:10-5-3). All procedures for first accreditation will be followed during the reapplication process.

### (9) Appeals Board.

(A) For NCATE accredited units the AB shall consider the recommendations of the NCATE appeals board for unit accreditation;

(B) For appeals related to program(s) and non-NCATE accredited institutions the following procedures shall be followed.

(C) Membership of Commission Appeals Board shall be:

(i) Commission chair. The Commission Chair shall be the Chair of the Appeals Board;

(ii) Chair of Program Accreditation Committee;

(iii) Program subject matter and/or standards expert(s). If the appeal is related to a specific program, the program expert shall be in the area(s) being appealed;

(iv) One PK-12 school classroom teacher;

(v) One member from the NCATE Board of Examiners (when applicable);

(vi) One teacher educator; and

(vii) One representative from the arts and sciences faculty or from school administration.

(D) The appeals board shall serve an initial term of two years, with the exception of the Commission

Chair, Chair of the Program Accreditation Committee, and the program expert(s). The program subject matter expert(s) shall be appointed by the Commission Chair and serve on the AB only when an appeal is related to a program(s) appeal.

### (10) Conditions for appeals.

(A) Any institution that is the object of an adverse decision, as determined by one of the Commission teacher education program review committees and/or unit accrediting committees, may appeal that decision to the Commission Appeals Board.

(B) An adverse decision is defined as the denial or revocation of program(s) or unit accreditation.

(C) An institution may also appeal, in writing, accreditation for two years with a focused visit, accreditation for two years with a full visit, and defer decision accreditation decisions. A adverse decision may be appealed only on the following grounds:

(i) Stated procedures were not followed;

(ii) Evidence favorable to the institution was provided to the accreditation review team but was not considered;

(iii) Evidence was presented to the appropriate board in the form of a rejoinder or stipulation response but was not considered;

(iv) If a college or university believes that one or more of these conditions was a factor in its accreditation, the only available means of redress is through the appeals process; or

(v) There was a lack of the full number of team members due to last minute emergencies; however, that factor alone is not sufficient to uphold an appeal.

(I) The institution must convincingly demonstrate that this fact made a difference in the accreditation decision.

(II) The institution shall prove actual prejudice to it and that the prejudice changed the accreditation decision.

(III) The fact that the institution did not recommend canceling the visit would be evidence that it, at least before the visit, believed that the assembled team would be sufficient to conduct a fair and complete visit.

(D) The findings and recommendations of the AB are received by the full Commission at its first meeting following the meeting of the AB.

(E) Subsequent actions shall be based on grounds upheld by the full Commission and may include, but are not limited to:

(i) Assigning another accreditation review team to revisit an institution;

(ii) Reinstating accreditation or

(iii) Upholding the initial recommendation for denial or revocation of accreditation.

(F) The status of the appellant at the time of the visit remains unchanged until the appeals process has been exhausted.

(11) **Process for appeal.** The following provisions govern the appellate process:

(A) Within 15 days of receiving notice of the adverse decision, an institution electing to appeal an adverse decision of the Commission must present the Commission Executive Director and the board or committee which issued the adverse decision written notification of its intention to appeal.

(B) No later than 30 days from the date that it submits its notification, the institution must submit a brief to the Executive Director which sets forth the specifics of its appeal and includes full documentation.

(C) The Commission Chair shall convene the AB within 30 days after an appeal brief has been filed. The AB will hear and act on the appeal within this time frame.

(D) The appellant shall have the right to present a 30-minute oral argument on its brief. The appellant shall also have the right to be represented by counsel during the appeal, but may not call witnesses or introduce new evidence on its own behalf.

(E) If the decision appealed is accreditation for two years with a focus visit, accreditation for two years with a full visit or defer decision the appellant's right to appeal is limited to the submission of written documentation.

(F) In the case of an accreditation decision review, the AB has the right to seek clarification of the accreditation review team report from the state team chair, and clarification of the PAC's deliberations from the chair of the PAC.

(G) In the case of an accreditation decision review, all evidence presented in the appellant's brief and considered by the AB must be confined to conditions existing at the time of the accreditation review team visit as cited in the final report, or in the case of a petition for stipulation removal, to conditions existing at the time the petition for stipulation removal was submitted.

(12) **Cost of review.**

(A) If the appeal leads to an affirmation of the Commission's original decision, the appellant will be liable for the expenses of the AB, the second accreditation review team visit, and all expenses related to the review. All expenses will be reimbursed according to state travel reimbursement guidelines.

(B) If the AB finds in favor of the institution, the Commission will be liable for expenses of the AB and second accreditation review team. All expenses will be reimbursed according to state travel reimbursement guidelines.

(C) **Access to Documents.** In cases of accreditation decision review, team chairs, and the PAC chair serving as witnesses to hearings of the AB will be provided copies of pertinent action letters and reports. Appellant petitions of appeals are provided to all witnesses.

(13) **Continuing accreditation procedures.** Seven-year continuing accreditation shall follow the same basic format as the NCATE Continuing Accreditation procedures. The accreditation review team will review such things as faculty qualifications and loads, financial support of the unit, follow-up procedures, clinical and field experiences, the residency program, faculty development procedures, and annual candidate assessment data.

(14) **Distribution of findings.**

(A) The accreditation review team chair shall assure delivery of the final draft of its report to the Commission office.

(B) The Commission will coordinate with NCATE (for NCATE accredited institutions) for distribution of reports to other team members.

(C) After the institution has received the reports, it has 30 days to submit a rejoinder to the Commission according to procedures outlined in 712:10-5-1(e)(8)(B).

(D) When the entire process has been completed the Commission will distribute the findings to all interested stakeholders, including the State Department of Education and the Regents for Higher Education.

**712:10-5-2. Structure of Accreditation Committees**

(a) A Program Accreditation Committee (PAC) of the Oklahoma Commission for Teacher Preparation carries out the responsibilities for overseeing the accreditation or continuing accreditation of institution teacher education programs. Committee members shall be selected by the Oklahoma Commission for Teacher Preparation and approved by Commission membership to serve on such a committee. Except for the Commission Executive Director and program(s) subject matter experts, the initial term of membership shall be two years.

(1) Members shall have completed training related to state and NCATE accreditation and any other training deemed appropriate by the Commission.

(2) Membership shall be comprised of:

(A) A minimum of three Commission members who are not members of either an Accreditation Team or the Appeals Board;

(i) The Commission chair shall appoint PAC Chair(s) from the Commission members appointed to the PAC.

(B) Two pre-K-12 classroom teachers;

(C) The PAC chair(s) shall serve on the Commission Administrative Committee.

(D) Two teacher educators whose institutions will not be reviewed during the two-year term of appointment;

(E) One PK-12 public school administrator nominated by the State Superintendent of Public Instruction;

(F) One superintendent from an area-vocational school shall be nominated by the State Director of Career and Technology Education;

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- (G) Two arts and science faculty; one from a four year institution and one from a community college shall be nominated by the Chancellor for Higher Education; and
- (H) The Commission Director of Program Accreditation shall serve in an advisory capacity.
- (3) A minimum of two PAC members may be reappointed to additional terms to allow for continuity.
- (4) Discretion and ethical judgment shall be used in making recommendations.
- (5) Meeting dates shall be established in compliance with the following criteria:
  - (A) The PAC shall schedule a minimum of four meeting dates per academic year
  - (B) Other meetings shall be held as needed.
  - (C) Institutions with proposed units and programs for evaluation shall be notified of meeting dates four weeks in advance. Representatives from the institution(s) are encouraged to attend the meetings.
- (6) Responsibilities and authority of the PAC shall be:
  - (A) Recognizing the status of all programs at each institution annually.
  - (B) Reviewing the Accreditation Team Report, reviewing the NCATE Unit Accreditation Board recommendations and recommending program accreditation status to the Commission;
  - (C) Following all procedures outlined in 712:10-5-1(e);
  - (D) Recommending to the Commission changes in administrative rules, regulations, policies and procedures;
  - (E) Ensuring training for all accreditation review team members and PAC members;
  - (F) Carrying-out a systematic review and development of the standards by which programs are approved;
  - (G) Monitoring the performance of accreditation review team members; and
  - (H) Recommending training needs for accreditation review team members, institution faculty members, and PAC members.
- (b) The Program Review Advisory Board (PRAB) shall provide consultation related to program reviews. The PRAB shall make final reviews on all program reports and make recommendations on program status for all non-NCATE institutions and for program areas not associated with an NCATE-recognized learned society. Program reviews will take place in conjunction with the college's/university's accreditation cycle, occurring according to the established NCATE/or OCTP timeline as applicable.
  - (1) Members of the Program Review Advisory Board (PRAB) shall be approved by the Program Accreditation Committee.
  - (2) The Program Review Advisory Board (PRAB) members shall serve an initial term of two years.
  - (3) Two or more of the Program Review Advisory Board (PRAB) members may be reappointed to additional terms to allow for continuity.

- (4) Members shall have completed training on the program review process.
- (5) Discretion and ethical judgment shall be used in making recommendations.
- (6) The Program Review Advisory Board (PRAB) shall be comprised of trained reviewers in specific subject areas from the following groups:
  - (A) Practicing PK-12 classroom teachers
  - (B) Practicing PK-12 administrators
  - (C) Higher education faculty members
- (c) The Commission Director of Program Accreditation or designee shall chair the Program Review Advisory Board (PRAB) committee.

### 712:10-5-3. Specific State Standards For Program Accreditation

- (a) The following standards apply to both undergraduate and graduate programs. The governance and administration of the total teacher education program standard is based on the premise that there must be a recognizable and functioning governance entity within the institution's administrative structure which has responsibility for designing, approving and continuously evaluating and developing teacher education programs. This governing unit may be a council, committee, department, school, college, or any other recognizable entity, which includes the administration of teacher education as one of its functions.
  - (1) The governing unit membership and responsibilities include the following:
    - (A) Membership on the teacher education governing unit shall be defined by written policy to include:
      - (i) A majority of the members who have a minimum of three years teaching experience in public schools;
      - (ii) A majority of the members in the governance unit who are currently teacher education faculty members;
      - (iii) Some faculty members who shall represent the arts and sciences;
      - (iv) A designated director of teacher education defined as the institution's official representative for teacher education. The authority and responsibilities of this individual shall be clearly defined in written policies; and
      - (v) A clearly defined process whereby faculty members and administrators become members and the terms of office.
    - (B) The responsibilities of the teacher education governing unit shall be defined by written policy to include:
      - (i) Responsibilities of the officers of the unit;
      - (ii) Responsibilities of the unit's standing committees; and
      - (iii) Responsibilities in the following areas as they are related to teacher education:
        - (I) Admission/retention in teacher education;

- (II) Field experience and student teaching (admission and placement);
- (III) Development of courses and program curricula; and program review, evaluation and planning.
- (C) Program review, evaluation and revision responsibilities include:
  - (i) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all teacher education programs within each accreditation period;
  - (ii) Periodic program reviews and revisions shall be based on, but not limited to, stated goals and objectives; and
  - (iii) The process for conducting program review, evaluation, and revision shall include, but not be limited to, participation by the following:
    - (I) Teacher education faculty and arts and science faculty;
    - (II) Graduates of the programs;
    - (III) Students currently in the program;
    - (IV) Teachers and administrators from the public schools;
    - (V) Parents of PK-12 students and business and community leaders who are actively involved in assisting PK-12 schools.
- (D) Documentation related to the budget-making process and level of financial support shall include the following:
  - (i) A clearly defined budget-making process for all teacher education programs; and
  - (ii) An analysis showing that the institution's financial support for programs in teacher education are maintained at a level appropriate for a professional preparation program.
- (b) Teacher education faculty standards are to be consistent with accreditation standards.
- (c) Candidate-related standards are to be consistent with accreditation standards.
- (d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.
  - (1) The conceptual framework must include the following structural elements: The mission of the institution and the teacher preparation program;
    - (A) The program's philosophy, purposes, professional commitments and dispositions;
    - (B) A knowledge base that provides the foundation for the framework;
    - (C) Performance expectations for candidates that align with professional, state and institutional standards; and
    - (D) A system by which candidate performance is regularly assessed.
  - (2) A description of the conceptual framework shall be submitted along with the institution's preconditions report by any institution seeking first accreditation.
    - (3) A description of the conceptual framework shall be included in all institutional reports submitted prior to first and continuing accreditation visits.
- (e) The following guidelines are to be used to collect and maintain data on each institution's teacher preparation program:
  - (1) The institution shall establish a process which seeks information and program input from teacher preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within the teacher education program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.
  - (2) The institution shall establish procedures to inform the public regarding the teacher education program and to solicit and receive public input.
  - (3) The institutional plan shall be accessible to any interested party under the Oklahoma Open Records Act.
  - (4) The submitted institutional plan must be approved by the institution's governing board.
  - (5) Annual reviews and reports indicating program changes ~~resulting from the evaluations~~.
- (f) The following policies, procedures and guidelines are used to direct the content and candidates' experiences of each institution's teacher preparation program.
  - (1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.
  - (2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.
  - (3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.
  - (4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full Subject Matter Competencies for Teacher Licensure and Certification.
  - (5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.
  - (6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.
  - (7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the NCATE professional learned societies' standards and State Department of Education Full Subject Matter Competencies for early childhood, elementary and special education.

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- (8) Teacher candidate coursework includes the study of substance abuse symptoms identification and prevention; mental illness symptoms identification and mental health issues; classroom management skills; and classroom safety and discipline issues.
- (9) Teacher candidates must have a minimum of 45 hours of diverse field experiences prior to their student teaching experience.
- (10) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunities for certification and employment. At a minimum, teacher candidates are provided information on the latest supply and demand information concerning teacher employment, state salary structure, and teaching shortage areas.
- (11) Substantive collaboration and classroom interaction with students accompanies theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.
- (12) Instruction integrates pedagogical competencies or skills with experiences in the school setting.
- (13) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.
- (14) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the NCATE national (professional) learned societies' standards.
- (15) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion of the residency program adhering to all rules and regulations established by the Oklahoma State Department of Education.
- (16) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.
- (g) The following guidelines are to be used to facilitate the professional development of faculty:
- (1) Teacher education faculty continue their professional development during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members' ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.
- (h) The following policies are to be used to evaluate individual program areas at each institution:
- (1) The institution shall submit program reviews for each required program area based upon the guidelines and accreditation schedule of the Commission.
- (2) Following the completion of each program evaluation, the institution will receive written notification of each program's status. Recognition decisions will include the following categories: recognized, recognized with conditions, recognized with probation, further development required, and not recognized.
- (3) If the program is recognized, it will retain its status through the semester and year of the institution's next accreditation visit. To retain recognition, another program report must be submitted before that review.
- (4) If the program is recognized with conditions, a report addressing the conditions to recognition must be submitted within 18 months of the date of the status report. The report must address the conditions specified by the reviewers. Once acceptable data has been submitted, the condition(s) will be removed. If the program does not submit acceptable information within the designated timeframe, the decision reverts to "not recognized."
- (5) If the program decision is recognized with probation or further development required, a revised report addressing the issues identified by the reviewers must be submitted within 12 months, or the unit may submit a new program report for recognition within 12 months. If the revised report adequately addresses the concerns cited by reviewers, the program decision will be changed to "recognized" or "recognized with conditions." If the program is unsuccessful after two attempts, the program status will be changed to "not recognized."
- (6) A program can receive a decision of "not recognized" only after two submissions are unsuccessful in reaching either "recognized" or "recognized with conditions." If the program is not recognized, a revised report addressing unmet standards may be submitted within 12 months of the date of the recognition report. [This report will be sent to the original team if possible.] The unit may elect to submit a new program report for recognition within 12 months. [This report will be sent to a new team of reviewers].
- (7) Programs which are required to submit through NCATE and receive an initial decision of "recognized with probation" or "further development required" may apply to OCTP for state recognition and thus recommend teacher candidates for certification under the following conditions:
- (A) The program must have an aggregated pass rate of all candidates on the Oklahoma Subject Area Test (OSAT) of 80% or more over a three-year period. An application for program recognition must be submitted to OCTP containing basic program information as well as current recognition status and future submission deadlines; however an additional review will not be required.
- (B) Institutions must submit a revised program report according to applicable NCATE/SPA or OCTP guidelines as appropriate addressing concerns cited in the review. If the revised report is not recognized, the unit must submit additional revised reports according

to guidelines. The unit must exhaust all available NCATE options for revision.

(C) Programs which do not meet the required 80% pass rate on the OSAT may apply to OCTP for state recognition only after the unit has exhausted all available NCATE options for revision. The application for state recognition must address concerns cited by reviewers in the final report.

(D) Programs receiving state recognition under these conditions will maintain recognition until the submission period prior to the unit's next scheduled accreditation visit, at which time the unit will be expected to submit a program review to NCATE or OCTP, as appropriate.

(8) Units may receive conditional approval for new programs. These programs must undergo reviews as outlined in the New Certification Program Procedures for Established Units guidelines before receiving full recognition. Recognition will be retained through the semester and year of the unit's next accreditation visit.

(9) Programs that do not comply with the procedures detailed in items (h)3-7 will no longer be eligible to recommend candidates for licensure and certification.

(10) An institution with a non-compliant program may apply to the PAC for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards.

**712:10-5-4. Standards for Oklahoma Teacher Education Programs**

(a) The following standards as defined by the National Council for Accreditation of Teacher Education shall apply to undergraduate and graduate programs.

(1) Standard One: Candidate Knowledge, Skills and Dispositions.

(A) Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

(B) Elements for Standard One include content, pedagogical and professional knowledge; dispositions for all candidates; and student learning for all candidates.

(2) Standard Two: Assessment System and Unit Evaluation.

(A) The unit has an assessment system that collects and analyzes data on the qualifications of applicants, the performance of candidates and graduates, and unit operations to evaluate and improve the unit and its programs.

(B) Elements of Standard Two include data collection, analysis, and evaluation; and use of data for program improvement.

(3) Standard Three: Field Experiences and Clinical Practice.

(A) The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

(B) Elements of Standard Three include collaboration between the unit and school partner; design, implementation, and evaluation of field experiences and clinical practice; and candidates' demonstrations of the knowledge, skills and dispositions necessary for student learning.

(4) Standard Four: Diversity.

(A) The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

(B) Elements of Standard Four include design, implementation, and evaluation of candidate experiences relevant to diversity.

(5) Standard Five: Faculty Qualifications, Performance, and Development.

(A) Faculty are qualified and model best professional practices in scholarship, service and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

(B) Elements of Standard Five include hiring of qualified faculty, modeling of best professional practices, ongoing evaluation and professional development and collaboration.

(6) Standard Six: Unit Governance and Resources.

(A) The unit has the leadership, authority, budget, personnel, facilities, and resources, including information technology resources, for the preparation of candidates to meet professional, state and institutional standards.

(B) Elements of Standard Six include evidence of leadership within the unit and across the institution, the unit budget, personnel and other resources.

(b) **Teacher candidate portfolios.**

(1) Institutions shall require all initial and advanced certification program(s) students to develop a portfolio following the guidelines outlined in this section.

(2) A portfolio is a documented profile of an individual's accomplishments, learning, and strengths related to the competencies, state and national standards, and outcomes established by the Commission, State Regents, SDE and institution.

(3) The portfolio, for purposes related to institutional accreditation is a unit of measure which presents evidence that the institution is providing initial, on-going, and focused opportunities and avenues which lead to student

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achievement of competencies, state and national standards and outcomes determined by the Commission, Regents, SDE and institution.

(4) Institutions will provide for review during each regularly scheduled accreditation visit:

(A) The unit's portfolio handbook containing a written philosophy related to portfolio development and assessment which is consistent with the institution's and unit's mission and conceptual framework, as well as written policies, criteria, and institutional rubric(s) related to the assessment of the portfolio as a whole or individual artifacts contained in the portfolios for all individuals enrolled in initial and advanced programs.

(B) Two representative candidate portfolios for each program offered. OCTP will randomly select one candidate portfolio in each program area and the second will be selected by the unit. Portfolios should represent candidates at the final transition point.

(C) In addition, annual reports must include any revision in the institution's portfolio process.

(5) Institution's pre-service and/or advanced portfolio process.

(A) The teacher education unit and programs shall:

(i) Require the portfolio development process to begin with enrollment into the professional education course work;

(ii) Have a written portfolio handbook(s) containing a written philosophy related to portfolio development and assessment which is consistent with the institutions and unit's mission and conceptual framework(s);

(iii) Have written policies, criteria, and institutional rubrics related to the portfolio assessment(s) of individual(s) enrolled in initial and advanced certification programs.

(c) **Annual report.** Each Oklahoma teacher preparation unit shall submit an annual report to the Oklahoma Commission for Teacher Preparation. This report will satisfy the requirements for the Commission for Teacher Preparation, State Regents for Higher Education, State Department of Education, and NCATE/AACTE. The following information will be included in the report:

(1) Changes that occurred in implementation of the standards outlined in the Institution Plan as a result of local and statewide evaluations/assessments, public hearings or other reasons;

(2) Progress made in addressing the areas for improvement, if any, identified by the most recent on-site visit by the on-site accreditation review team;

(3) Quantitative data related to the unit's programs as required in the AACTE/NCATE Annual Report. These data shall reflect information pertaining to supply and demand for teacher candidates;

(4) Program changes being implemented for OCTP and NCATE continued accreditation;

(5) Report on resources devoted to technology;

(6) Report on professional development activities of faculty;

(7) Report on the number of hours each faculty member taught or were in direct contact with students in public schools;

(8) Report on the number of graduate students admitted conditionally and the success rates.

(9) Report on the results of the assessment of teaching skills in the area of reading instruction as administered to candidates in elementary, early childhood education, and special education.

(10) Report on the participation in the alternative placement programs offered by the institution.

(11) Report on the procedures used to inform the public regarding the institution's teacher education program and the manner through which public input is solicited and received.

~~(12)~~ Annually, the OCTP shall provide feedback to any institution if their annual report indicates that progress is not being made in addressing areas for improvement.

~~(13)~~ Complete copies of the annual reports for public institutions will be distributed to OSRHE and summary data for all institutions will be distributed to constituents based on reporting requirements outlined in 70 O.S., Section 6-186.

~~(14)~~ OCTP will produce a report describing the accreditation status of each institution. This report will devote a section to each institution separately and include a summary of NCATE and OCTP review findings.

[OAR Docket #12-456; filed 4-26-12]

### TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-575]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

715:1-1-2 [AMENDED]

715:1-1-3 [AMENDED]

715:1-1-4 [AMENDED]

715:1-1-6 [REVOKED]

715:1-1-9 [REVOKED]

#### AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees

#### DATES:

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**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

715:1-1-2 and 715:1-1-3 are being amended to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-106.

715:1-1-4 is being amended to remove obsolete information.

715:1-1-6 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-111.

715:1-1-9 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-106.1.

**CONTACT PERSON:**

Becky Wilson, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4745

**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 AUGUST 1, 2012:**

**715:1-1-2. Board of Trustees**

~~(a)~~ The general administration and responsibility for the proper operation of the Teachers' Retirement System of Oklahoma, and effectively implementing the retirement statutes, are vested in the Board of Trustees. The statutory authority for the Board of Trustees is Title 70, Oklahoma Statutes, Section 17-106 [70 O.S. 17-106]. ~~The board is comprised of 13 trustees, appointed as follows:~~

- ~~(1) The State Superintendent of Public Instruction, ex officio.~~
- ~~(2) The Director of State Finance, ex officio.~~
- ~~(3) The Director of the Oklahoma Department of Career and Technology Education, ex officio, or his or her designee.~~
- ~~(4) A representative of a school of higher education in Oklahoma, appointed by the Governor and approved by the Senate.~~
- ~~(5) A member of the System of the nonclassified optional personnel status, appointed by the Governor and approved by the Senate.~~
- ~~(6) An active classroom teacher, appointed by the President Pro Tempore of the Senate.~~
- ~~(7) A retired member of the System, appointed by the President Pro Tempore of the Senate.~~
- ~~(8) An active classroom teacher, appointed by the Speaker of the House of Representatives.~~
- ~~(9) A retired classroom teacher, appointed by the Speaker of the House of Representatives.~~
- ~~(10) Four members appointed by the Governor.~~

(b) Persons appointed to the Board of Trustees pursuant to (a) above, shall:

~~(1) Have demonstrated professional experience in investment or funds management, public funds management, public or private pension fund management or retirement system management, or~~

~~(2) Have demonstrated experience in the banking profession and professional experience in investment or funds management, or~~

~~(3) Be licensed to practice law in Oklahoma and have demonstrated professional experience in commercial matters, or~~

~~(4) Be licensed by the Oklahoma State Board of Public Accountancy to practice in Oklahoma as a public accountant or as a certified public accountant.~~

~~(c) The Governor, in making appointments that conform to the above requirements, shall give due consideration to balancing the appointments among the listed criteria.~~

**715:1-1-3. Medical Board**

The statutory authority for the Medical Board is Title 70, Oklahoma Statutes, Section 17-106 [70 O.S. 17-106]. ~~A Medical Board of three physicians, licensed by the State of Oklahoma, approved by the Board of Trustees, is charged with the responsibility of certifying members for retirement under the disability retirement provisions.~~

**715:1-1-4. Administrative office**

The Teachers' Retirement System has office space located in the Oliver Hodge Education Building, 2500 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address for correspondence is TRS, P. O. Box 53524, Oklahoma City, OK 73152. The main telephone number is (405) 521-2387. The toll-free telephone number for calls originating outside the Oklahoma City local calling area is 1-877-738-6365. ~~The Teachers' Retirement System's website is www.trs.state.ok.us.~~ Members are encouraged to visit the Retirement Office, or make written inquiries regarding any matter pertaining to their retirement accounts.

**715:1-1-6. Bonds (protective) [REVOKED]**

~~(a) Under supervision of the Board, the administration of the System is carried out by the Executive Director and the office staff. The State Treasurer, who is the custodian of the Teacher's Retirement funds, is under a \$50,000 bond to the Board of Trustees. A \$25,000 bond is required of the Executive Director.~~

~~(b) All persons employed by TRS, except the Secretary Treasurer, shall be bonded by a blanket bond in an amount not in excess of \$20,000. The position of Secretary Treasurer shall be covered by an individual bond in the amount of \$25,000. The amount of the bonds of the Executive Director and the State Treasurer is set by the Teacher's Retirement law.~~

~~(c) A cash and securities bond provides coverage on securities, \$10,000 inside the premises and \$30,000 outside the premises, and cash, \$500 inside the premises and \$1,000 outside the premises. A depositor's forgery bond in the amount of \$10,000 protects TRS and its members against forgery on checks.~~

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## 715:1-1-9. Investment of funds [REVOKED]

The Board of Trustees shall be the trustees of the several funds created by the Teachers' Retirement Act and shall have full power to invest and reinvest such funds subject to the provisions of 70 O.S. 17-106, other pertinent laws of the State of Oklahoma, and the investment policies that may be adopted by the Board of Trustees. In making investments, the Board shall exercise the judgment and care in the circumstances then prevailing that men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable safety of their capital. This shall not be construed to authorize the Trustees to buy or sell property and investments from or to themselves personally, or to commingle Trust Funds with their individual funds. (See OAC 715:10-21-1)

[OAR Docket #12-575; filed 5-8-12]

## TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #12-576]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Membership Provisions  
715:10-1-2 [AMENDED]  
715:10-1-3 [AMENDED]  
715:10-1-4 [AMENDED]  
715:10-1-5 [AMENDED]  
715:10-1-6 [AMENDED]  
715:10-1-7 [AMENDED]  
Subchapter 3. Service Eligibility  
715:10-3-1 [AMENDED]  
715:10-3-2 [AMENDED]  
715:10-3-3 [AMENDED]  
715:10-3-4 [AMENDED]  
715:10-3-5 [AMENDED]  
Subchapter 5. Establishing Other Service Credits  
715:10-5-4 [REVOKED]  
715:10-5-7.3 [AMENDED]  
715:10-5-9 [AMENDED]  
715:10-5-11 [REVOKED]  
715:10-5-28 [AMENDED]  
715:10-5-33 [REVOKED]  
Subchapter 7. Membership Vesting and Termination  
715:10-7-6 [AMENDED]  
Subchapter 9. Survivor Benefits  
715:10-9-2 [REVOKED]  
715:10-9-3 [AMENDED]  
715:10-9-4 [REVOKED]  
715:10-9-5 [AMENDED]  
715:10-9-6 [REVOKED]  
Subchapter 11. Withdrawal From Membership and Refund of Deposits  
715:10-11-1 [AMENDED]  
715:10-11-2 [AMENDED]  
Subchapter 13. Contributions for Membership Service  
715:10-13-1 [REVOKED]  
715:10-13-4.1 [REVOKED]  
715:10-13-9 [REVOKED]  
715:10-13-13 [AMENDED]  
Subchapter 15. Service Retirement  
715:10-15-1 [AMENDED]

715:10-15-2 [AMENDED]  
715:10-15-7 [AMENDED]  
715:10-15-7.1 [REVOKED]  
715:10-15-10.2 [AMENDED]  
715:10-15-10.3 [AMENDED]  
715:10-15-13 [REVOKED]  
Subchapter 17. Post-Retirement Employment  
715:10-17-2 [AMENDED]  
715:10-17-6 [AMENDED]  
Subchapter 25. Qualified Domestic Order  
715:10-25-1 [REVOKED]  
715:10-25-2 [REVOKED]  
715:10-25-3 [REVOKED]  
715:10-25-4 [REVOKED]  
715:10-25-5 [REVOKED]  
715:10-25-6 [REVOKED]

### AUTHORITY:

70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees

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n/a

#### ANALYSIS:

715:10-1-2 and 715:10-1-3 are being amended to remove language that is duplicative to Oklahoma State Statute O.S. 70, Section 17-103 and to clarify membership provisions.

715:10-1-4, 715:10-1-5, 715:10-1-6 and 715:10-1-7 are being amended to clarify membership provisions. Additionally, Teachers Retirement no longer requires Form 1-A for membership.

715:10-3-1, 715:10-3-2, 715:10-3-3, 715:10-3-4 and 715:10-3-5 are being amended to provide clarification and consistency after the implementation of changes in 715:10-1-2 through 715:10-1-7. Specifically, with the requirement that Classified personnel must be members of the System regardless of the number of hours worked, this change will allow all such members to receive retirement service credit in line with the fraction of full time service that is worked. This will also treat all members of the System consistently in that service credit will be based on the fraction of full time service for similar positions. The current rule grants a year of retirement service credit for those working as little as 30 hours a week. Similarly, members who work for 120 days currently receive a year of service credit. With this change, a member who works 120 days, when a full time employee in a similar position would work 180 days, would receive 0.67 years of retirement service credit. Also, a member who works 30 hours per week, when a full time employee in a similar position would work 40 hours per week, would receive 0.75 years of retirement service credit. This change in service credit calculation and accrual will apply to all service earned after July 1, 2013.

715:10-5-4 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-116.8.

715:10-5-7.3 is being amended to remove language that is duplicative to Oklahoma State Statute O.S. 47, Sec. 2-314.

715:10-5-9 is being amended to remove inconsistencies in the rule.

715:10-5-11 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-113.

715:10-5-28 is being amended to provide clarification and consistency after the implementation of changes in 715:10-3-1 through 715:10-3-5.

715:10-5-33 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 6-104.1.

715:10-7-6 is being amended to provide clarification and consistency after the implementation of changes in 715:10-1-2 through 715:10-1-7.

715:10-9-2 is being revoked to remove language that is duplicative in Oklahoma State Statute O.S. 70, Sec. 17-105(11).

715:10-9-3 is being amended to clarify the requirements of the rule.

715:10-9-4 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-105(12).

715:10-9-5 is being amended to incorporate statutory changes under House Bill 2004, enacted in the 2011 Legislative Session.

715:10-9-6 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-105(13).

715:10-11-1 and 715:10-11-2 are being amended to remove inconsistencies in the rules.

715:10-13-1 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-116.2.

715:10-13-4.1 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-116.2A.

715:10-13-9 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-120.

715:10-13-13 is being amended to clarify the requirement of the rule.

715:10-15-1 and 715:10-15-2 are being amended to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-105.

715:10-15-7 is being amended to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-116.2.

715:10-15-7.1 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-116.2.

715:10-15-10.2 is being amended to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-105.2.

715:10-15-10.3 is being amended to remove inconsistencies in the rule.

715:10-15-13 is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-105(12).

715:10-17-2 and 715:10-17-6 are being amended to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-116.10.

Subchapter 25 (715:10-25-1, 715:10-25-2, 715:10-25-3, 715:10-25-4, 715:10-25-5, 715:10-25-6) is being revoked to remove language that is duplicative to Oklahoma State Statute O.S. 70, Sec. 17-109.

**CONTACT PERSON:**

Becky Wilson, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4745

**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 AUGUST 1, 2012:**

**SUBCHAPTER 1. MEMBERSHIP PROVISIONS**

**715:10-1-2. TRS membership eligibility**

TRS membership eligibility shall be governed by Title 70, Oklahoma Statutes, Section 17-103 [70 O.S. 17-103] and OAC 715:10-1-3, OAC 715:10-1-4 and OAC 715:10-1-5. Except as provided in the Alternate Retirement Plan for Comprehensive Universities Act (70 O.S. § 17-201, et seq.), all "regular" employees of the public schools operated by and for the State of Oklahoma are eligible to become members of the Teachers' Retirement System, subject to the restrictions in paragraphs 1 through 3 of this section.

(1) Regular employee means an employee working twenty (20) hours or more per week, who has assigned

duties and responsibilities, and who is treated by all standard conventions as an employee of the school; and, who receives compensation commensurate with the responsibilities of the position. Temporary, seasonal, supplemental and other employees employed on a limited or short term basis are not regular employees, and are thus ineligible.

(2) Regular employees receive payment for service by a school or state warrant, recorded on a warrant register with standard payroll deductions and receive benefits generally provided to other "regular" employees.

(3) The minimum requirement of twenty (20) hours per week shall be determined by the actual time the employee is required to be present at the place of employment.

**715:10-1-3. Mandatory TRS membership**

Except as provided in the Alternate Retirement Plan for Comprehensive Universities Act, the following all classified employees are required by 70 O.S. 17-103 to be members of the Teachers' Retirement System as a condition of employment.

(1) "Classified" employees employed by public, state-supported educational institutions in Oklahoma for twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions.

(2) An administrative or supervisory employee of the State Department of Education, or other state agency whose function is primarily devoted to public education and who works twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions.

(3) A county superintendent of schools. (This paragraph will become obsolete January 1, 1993, when provisions of H.B. 1017 abolish the office of county superintendent). [Source: Amended at 22 Ok Reg 2255, eff 6-25-05]

**715:10-1-4. Optional TRS membership**

The following employees are eligible to be members of the Teachers' Retirement System at their option:

(1) "Classified" employees regularly employed in the public, state-supported educational institutions of Oklahoma at any time during the five year (5 year) period from July 1, 1938 to June 30, 1943.

(2) "Non-classified" employees employed by the public, state-supported educational institutions in Oklahoma for twenty (20) hours or more per week at a rate of compensation comparable to other persons employed in similar positions; and receive payment for service by a school or state warrant, recorded on a warrant register with standard payroll deductions, and receive benefits generally provided to regular employees.

(3) "Classified" employees regularly employed in the public, state-supported educational institutions who have reached age fifty five (55) at the time of employment.

(4) "Classified" employees regularly employed by a comprehensive university, as defined in 70 O.S. § 17-101,

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~~who have reached age forty five (45) at the time of employment, providing the employee is not currently a member of the Teachers' Retirement System.~~

~~(5) An employee on official sabbatical leave receiving at least one half pay from the employing school or institution. Contributions for such employment shall be at a rate commensurate with the salary earned as a regular full-time employee in the last preceding school year. "Official sabbatical" means paid leave granted by the governing board of the employing school or institution. The member must elect to participate and make contributions to TRS at the time of the sabbatical. Sabbatical leave cannot be purchased by the member at a later date.~~

~~(26) Any member absent from the teaching service who is eligible to continue membership under special provisions of 70 O.S. 17-116.2, provided that such employee continues to be employed by a governmental agency.~~

~~(37) A visiting professor from another state or nation.~~

~~(48) Classified and Non-Classified members employed after retirement. (See OAC 715:10-17-13).~~

~~(59) Full-time, non-classified optional personnel who previously have opted out of TRS under OAC 715:10-11-2 may revoke their election and return to TRS participation. Providing, however, that such member is not eligible to redeposit the account withdrawn under OAC 715:10-11-2 or purchase credit for service performed after termination of membership and re-instatement of membership.~~

### 715:10-1-5. Ineligible for TRS membership

The following employees are ineligible to be members of the Teachers' Retirement System. (Note: Ineligible employment cannot be combined with eligible employment.)

(1) ~~An~~ non-classified employee working less than 20 hours per week.

(2) A substitute, irregular, seasonal, graduate assistant, fellowship recipient, adjunct supplemental or temporary employee. (Note: Certain substitute and adjunct employment may qualify for service credit. See OAC 715:10-5-2 and OAC 715:10-5-34).

~~(3) "Non-classified" employees who withdrew from membership in the Teachers' Retirement System after July 1, 1990, under provisions of OAC 715:10-11-2.~~

(34) Persons employed as a consultant or persons contracting with a public school to transport students, to provide food service, or to provide any other services, who are not "regular" employees of the school. (NOTE: School bus drivers or food service personnel who are regular employees of the school are eligible for membership, subject to the requirements of OAC 715:10-1-2, 10-1-4, 10-1-5.)

(45) An employee whose primary function at a school or institution is that of a student. If both the following conditions apply, a person employed in an Oklahoma public school, college or university shall be considered to be a student employee.

(A) The employment is conditional upon the employee's being enrolled as a student at the same institution; and

(B) The employee has no other employment during the same payroll period which is eligible for membership in TRS.

~~(6) A regular employee who earns less than \$2,000 per year.~~

~~(57) Any persons whose employment compensation comes from federal or other funds and is not administered by an Oklahoma public education employer. (Note: If the employee is not paid by the school on a state warrant, the employee is not considered to be an employee of the school or the State of Oklahoma. Regular employees whose salaries are paid in part or in whole by federal or other funds are eligible for membership if they were hired by the school and paid by the school.)~~

~~(68) Any person employed by the public schools of Oklahoma after July 1, 1991, who is covered by another federal, state, county or local public retirement plan which will provide benefits on the employment service covered by the Teachers' Retirement System.~~

~~(79) Employees of employers that are not governmental employers within the definition of Internal Revenue Code Section 414 and 70 O.S. 17-116.2J.~~

~~(840) Any person employed by the University of Oklahoma or Oklahoma State University or the entities of either comprehensive university who elects to participate in an alternative retirement plan provided by the comprehensive university as provided by the Alternate Retirement Plan for Comprehensive Universities Act.~~

### 715:10-1-6. Date of Membership

Date of membership is the date the initial contribution is made to TRS under the current membership account. ~~(TRS Form 1-A must be completed and on file with TRS and membership approved by the Board of Trustees.)~~ Any former member of TRS who has previously withdrawn contributions and who redeposits said withdrawn contributions as permitted by law shall have his or her initial date of membership reinstated. Any person who transfers service from the Oklahoma Public Employees Retirement System in accordance with 70 O.S., Section 17-116.2(L), shall be eligible to use his or her initial entry date into the Oklahoma Public Employees Retirement System as his or her date of membership in TRS. If a current member purchases non-contributory service for those years of qualified employment prior to the current date of membership, the official date of membership will remain the date the member's current membership account was opened. If a member purchases adjunct service that was performed prior to current date of membership, such purchased service shall be considered contributing service for purposes of vesting and membership date.

### 715:10-1-7. Membership in education associations

Any member absent from employment in the public schools of Oklahoma because of election or appointment as a local, state or national education association officer prior to January 1, 2011, shall be allowed to retain membership in TRS by making the contribution required of such member by

Title 70 Okla. Stat. Section 17-116.2 and any other applicable statute. For purposes of this section the following shall apply:

(1) An education association is defined as an organization of educators established for the sole purpose of promoting the advancement of educational goals in Oklahoma or at the national level. A local or state association must be duly organized under the laws of the state of Oklahoma with a charter or articles of incorporation filed with the appropriate state agency and must comply with all applicable laws of the state of Oklahoma. A national association must be duly registered or chartered for the purpose of furthering educational goals at the national level.

(2) An "officer in an association" is a current member of TRS who is elected or appointed to an employment position within the association commensurate with a position in the public schools of Oklahoma defined as "classified" personnel by 70 O.S. 17-101. The officer must receive compensation for services rendered commensurate with compensation received for similar services in the public schools of Oklahoma.

(3) A member must notify TRS in writing on the form provided by TRS, the member's intent to elect to continue membership in TRS within thirty (30) days of becoming employed by an eligible association. In making this election the member shall agree to make payment in accordance with 70 O.S. 17-116.2 for the period of employment that qualifies for continued membership and to comply with all statutes and rules of TRS in maintaining membership.

(4) The maximum years of creditable service a member may receive for one such absence shall not exceed twelve (12) continuous years. A member may again qualify for creditable service in an educational association provided that the member returns to employment in the public schools of Oklahoma for a minimum of the same number of years received as credit in the former education association.

(5) On the recommendation of the Executive Director, the Board of Trustees may deny eligibility to any local state or national association, when it is judged not to conform with the intent of 70 O.S. 17-116.2 or when it is determined that the association was not established for the sole purpose of promoting the advancement of education.

(6) Effective July 1, 1994, a member may elect to continue membership as provided in paragraph (3) above only if the member has ten (10) years of contributory Oklahoma service prior to July 1, 1994.

**SUBCHAPTER 3. SERVICE ELIGIBILITY**

**715:10-3-1. Requirements for creditable service**

All members of Teachers' Retirement System must be employed a specified amount of time as related to their educational employment position, and earn a minimum salary, before creditable service will be awarded. ~~Membership service credit shall be granted only when employment is performed on at least~~

~~a half time basis.~~ No service performed as a unpaid volunteer shall be counted as service credit. For service performed on or after July 1, 2013, creditable service will be awarded based upon the information provided by each employer certifying full-time equivalent for each position, subject to approval by TRS. No member shall receive one (1) year of service credit for less than 960 hours of employment. (This does not mean that a member working 960 hours is automatically entitled to receive one (1) year of creditable service.) No more than one (1) year of creditable service shall be awarded for all service in any one (1) school year. For service performed on or after July 1, 2013, fractional service will be awarded for less than full-time employment performed during the contract year. (Note: Please refer to Client Handbook for explanation of creditable service qualifications. The Client Handbook, which is periodically modified, can be found at [www.ok.gov/TRS](http://www.ok.gov/TRS)).

**715:10-3-2. Requirements for fulltime service**

(a) For service performed prior to July 1, 2013, a~~A~~ member employed at least six (6) hours per day (30 hours per week) shall be considered a full-time employee.

(1) A full-time employee may receive one (1) year of creditable service after completing six (6) months or more of employment in a school year.

(2) No member shall receive one (1) year of service credit for less than 720 hours of employment. (This does not mean that a member working 720 hours is automatically entitled to one (1) year of creditable service.)

(b) For service performed on or after July 1, 2013, creditable service will be awarded as outlined in 715:10-3-1.

**715:10-3-3. Requirements for half-time service**

(a) For service performed prior to July 1, 2013, a~~A~~ member employed at least four (4) but less than six (6) hours per day (at least 20 but less than 30 hours per week) shall be considered a half-time employee.

(1) A half-time employee may receive one-half (1/2) year of creditable service after completing six (6) months or more of employment in a school year.

(2) No member shall receive one-half (1/2) year of service credit for less than 480 hours of employment. (This does not mean that a member working 480 hours is automatically entitled to one-half (1/2) year of creditable service.)

(3) A member who is employed one-half (1/2) the standard workload of other persons employed in similar positions shall not receive more than one-half (1/2) year of service credit even if total hours worked exceed 720 hours.

(4) Members who joined TRS prior to July 1, 1991, may receive one-half (1/2) credit for a minimum of three (3) hours per day (540 hours per school year) as long as they remain employed in the same or similar position for the same employing school. Any break in employment shall end this special provision and the member will be required to qualify for full-time or half-time credit as provided for in Subchapters 1 and 3 of this chapter.

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(b) For service performed on or after July 1, 2013, creditable service will be awarded as outlined in 715:10-3-1.

### 715:10-3-4. Combining fractional years of service

(a) For service performed prior to July 1, 2013, fractions Fractions of school terms performed as an active contributing member of TRS of at least one (1) school month, in different school years, may be combined to make a total of six (6) months for one (1) year of creditable service. It is not permissible to divide service rendered in one (1) year into fractional parts and combine these fractions with service rendered in two (2) or more years in order to gain additional years of service. All fractional service must be combined together before days of unused sick leave are applied to fractional service to obtain service credit. No more than one (1) year of credit will be given

for all employment in any one (1) school year. However, if the member has one hundred twenty (120) or more days of unused sick leave and has ninety (90) or more days of combined work experience at the end of the school year when the member retires, TRS will grant one (1) year of service credit for the 120 days of unused sick leave and round the 90 days of work experience to count as one (1) year of service.

(b) For service performed on or after July 1, 2013, fractional service credit will be added together and the resulting sum value shall be included in the retirement formula calculations.

### 715:10-3-5. Minimum compensation requirements

In addition to the above, the following chart outlines the minimum salary levels which constitute membership service credit for the time periods indicated:

Period	Minimum Time Worked	Required Annual Salary	Allowable Credit	
			Monthly	Annually
07/01/43-06/30/61	9 months	\$900	--	1 year
07/01/61-06/30/64	10 months	Less than \$1,000 \$1,000	Not Eligible --	1 year
07/01/64-06/30/84		Less than \$1,000	Not Eligible	
		\$1,000-\$1,500	1-1/2 months	1/4 year
		\$1,501-\$1,750	3 months	1/2 year
		\$1,751-\$1,999	4-1/2 months	3/4 year
		\$2,000 and over	6 months	1 year
07/01/84-Present		Less than \$2,000	Not Eligible	
		\$2,000-\$3,000	1-1/2 months	1/4 year
		\$3,001-\$3,500	3 months	1/2 year
		\$3,501-\$3,999	4-1/2 months	3/4 year
		\$4,000 and over	6 months	1 year

07-01-13 - Present

All fractional service eligible

## SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

### 715:10-5-4. Cost to purchase Oklahoma service [REVOKED]

~~The purchase price for each year of Oklahoma service, unless otherwise specified, shall be based on the actuarial cost of the incremental projected benefits being purchased.~~

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions adopted by the Board of Trustees to be utilized in the actuarial valuation report for the Fiscal Year beginning each July 1. New actuarial assumptions approved by the Board subsequent to January 1, 1991, shall be incorporated into such tables with an effective date of the next January 1st.

(2) The actuarial value shall be based upon the member's age, full-time equivalent salary and contribution level at the time of purchase (or the annual salary of the previous year, if greater), together with the earliest age for retirement with maximum benefits and actuarially assumed salary at time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be determined as the age at last birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 40% male and 60% female population, based on the actuarial assumptions in paragraph (1) of this section.

(5) The actuarial cost shall not be less than the contributions required of the member at a rate commensurate with the salary earned as a regular full-time employee the last preceding school year prior to the purchase. Individuals employed on a less than full-time basis shall have their salary adjusted upward, in a prorata manner, to the amount that would be earned if employed full-time.

(6) Payment may be made in a lump sum for all eligible years of service or in installments equal to establishing one (1) year of creditable service.

(7) A billing statement will be issued at the request of the member. The due date of payment shall be the date prior to the member's next birthday or June 30th, whichever occurs first.

(8) A member may request payment of past service credits billed in accordance with provisions of 70 O.S., Section 17-116.8, as amended, to be amortized in monthly installments of not more than sixty (60) months. A payment schedule may be established allowing the member to make monthly payments directly to Teachers' Retirement or through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to Teachers' Retirement. Payments remitted by an employer for its employees must be kept separate from the employer's regular retirement contributions and tax-sheltered annuity deposits. Effective January 1, 2002, installment payments made through employer payroll deductions qualify for special tax treatment. (See OAC 715:10-5-35.)

(9) The installment payment schedule provided for in this section must be in equal monthly increments of twelve-month periods not to exceed sixty (60) months. The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in termination

of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in paragraph (11) of this section.

(10) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. The current interest rate is eight percent (8%).

(11) If the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or his beneficiary will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated in whole years for only the principal amount paid. Any payment balance that is not used in crediting whole years will be refunded to the member.

(12) Credit will not be awarded for partial years of service unless the member's employment record is such that one-half (1/2) year of credit is included in the original service to be purchased.

(13) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in paragraph (11) of this section. All payments must be completed one (1) month prior to the effective retirement date of the member.

**715:10-5-7.3. Service credit transfers for TRS members who are CLEET-certified employees of the University of Oklahoma and Oklahoma State University**

The statutory authority for this service credit transfer is outlined in Title 47, Oklahoma Statutes, Section 2-314 [47 O.S. 2-314].

(a) A Teachers' Retirement System member employed by the University of Oklahoma and/or Oklahoma State University as a CLEET-certified police officer may make an irrevocable written election to transfer his or her membership to the Oklahoma Law Enforcement Retirement System if the school's governing board elects to participate in the Oklahoma Law Enforcement Retirement System.

(1) The member must have been employed by the school as a CLEET-certified police officer before the school's governing board elected to participate in the Oklahoma Law Enforcement Retirement System.

(2) The member's election to transfer must be made within three (3) months following the employing school's governing board's election to participate in the Oklahoma Law Enforcement Retirement System.

(3) The transferring member shall cease accruing service credit in the Teachers' Retirement System on the date of his or her irrevocable written election to participate in the Oklahoma Law Enforcement Retirement System.

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~~(b) The Teachers' Retirement System shall transfer to the Oklahoma Law Enforcement Retirement System all of the transferring member's TRS records, as well as employee and employer contributions prior to the first day of the month following the Teachers' Retirement System's receipt of the member's election to transfer.~~

~~(c) The member must pay the difference in the cost of the service credits transferred by the teachers' Retirement System and the cost of such service credits in the Oklahoma Law Enforcement Retirement System~~

~~(d) For members electing to transfer to the Oklahoma Law Enforcement Retirement System, all TRS service credits not transferred shall be canceled.~~

### **715:10-5-9. Re-establishing withdrawn service**

After returning to employment in the public schools of Oklahoma a member may redeposit a withdrawn account to re-establish service previously withdrawn from the system. For purposes of this section the following shall apply:

(1) A "classified" and "non-classified" member (except as noted in paragraphs 2 and 3 of this section) who has returned to public education employment and has established one full year (twelve calendar months) of creditable Oklahoma service, is eligible to redeposit withdrawn contributions. A redeposit of withdrawn contributions must include all applicable interest, which shall be computed at a simple interest rate of ten percent (10%) per annum from the date of the withdrawal to the date repayment is made.

~~(2) Nonclassified members who voluntarily withdrew from membership in TRS, subsequent to July 1, 1990, without terminating employment in the public schools of Oklahoma, are not eligible to return to membership unless they become employed in a classified position that requires membership as a condition of employment (See OAC 715:10-1-3).~~

~~(23) Non-classified members who voluntarily withdrew from membership in TRS, between July 1, 1984 and June 30, 1990, without terminating employment in the public schools of Oklahoma, are not eligible to redeposit or purchase past service for any period of employment between the date of the membership period covered by the withdrawn account and the date of return to membership in TRS.~~

~~(34) Non-classified members who voluntarily cease monthly contributions to TRS while continuing to be employed in an eligible position shall be considered to have withdrawn from membership.—for the purpose of paragraphs 2 and 3 of this section.~~

~~(45) Requests for redeposits should be made to the Teachers' Retirement System in writing. The request must include the name in which the service was rendered, the Social Security number and the number of years withdrawn.~~

~~(56) Documentation of this service is on file in the Teachers' Retirement System office and will be verified by the staff. Service that cannot be documented by researching microfilm records of the member's prior service account or the monthly remittance reports from the~~

employing school must be purchased under the rule for establishing service prior to membership.

~~(67) Repayments of withdrawn accounts may be made by active contributing members of TRS in a single lump sum, which includes the withdrawn contributions and all applicable interest, or in installment payments. Such installment payments may be paid in 12-month increments, but shall be completed within 60 months. Installment payments shall include interest based upon actuarial assumptions adopted by the TRS Board of Trustees. Such installment payments shall be completed before the member's effective retirement date. No proration is allowed for partial payments. If payments terminate prior to completion of the installment agreement, the amount paid by the member shall be refunded without interest.~~

~~(78) Redepositing of withdrawn accounts must be completed, and payment made to TRS, within sixty (60) days of termination of employment in the public schools of Oklahoma, but one (1) month prior to the effective date of a member's official retirement date.~~

~~(89) No person may make a redeposit to a member's account after the death of the member.~~

### **715:10-5-11. Military service limited to maximum of five years [REVOKED]**

~~Credit for military service is limited to a maximum of five (5) years. This includes service both before and after July 1, 1943. No credit may be given for any year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Oklahoma. The member must have two (2) years of creditable Oklahoma service after the years of military service credit for each year to be purchased. Out of state service credit cannot be counted as employment in obtaining military service credit.~~

### **715:10-5-28. Sick leave service credit**

~~A member who has unused sick leave days at retirement may receive up to one (1) additional year of service credit. The additional service credit for sick leave days shall be equal to the number of unused sick leave days divided by one hundred twenty (120) days. Such service shall be added to other service credit earned while employed by the public schools of Oklahoma.—one hundred twenty (120) days of accumulated unused sick leave days at retirement shall receive one (1) year of additional credit toward retirement. A member who has less than one hundred twenty (120) days of unused sick leave at retirement may add such days to days employed by the public schools of Oklahoma in obtaining an additional year of credit toward retirement. It is the responsibility of the member to obtain verification of sick leave from the employing school prior to the member's official retirement date. No adjustment in retirement benefits shall be made for sick leave documented after the member's retirement date. Sick leave cannot be combined with out-of-state, military service or any non-public Oklahoma school employment to obtain additional credit toward retirement. Service credit obtained by unused~~

sick leave may be used in qualifying for retirement benefits under the "Combination of 80," and "Combination of 90," rule, and "Rule of 90/Minimum 60." For any member who joined TRS prior to July 1, 1995, the year of credit received for sick leave shall be treated as service earned prior to July 1, 1995. Unused sick leave may not be used to vest an account or to meet the minimum requirement of five (5) years of employment in the public schools of Oklahoma to qualify for retirement benefits. Sick leave accumulated while employed by any employer other than a public school as defined by 70 O.S. 17-101 shall not be counted for purposes of obtaining additional retirement credit under this rule.

**715:10-5-33. Credit for Family Leave [REVOKED]**

(a) A full time teacher who takes ninety (90) or fewer days of leave without pay to care for his or her child during the first year of the child's life shall receive retirement service credit for the days taken as leave without pay if:

- (1) the employing district certifies to the Teachers' Retirement System that the employee's leave without pay was taken with the proper approval of the employing district's Board of Education; and
- (2) the Teachers' Retirement System receives payment for the actuarial cost of the service credit for the days taken as leave without pay;

(b) The teacher shall notify his or her employer and the Teachers' Retirement System in writing within thirty (30) days from the date he or she returns to work that he or she will pay the actuarial cost of the service credit for the days taken as leave without pay.

(c) The teacher shall have up to twelve (12) months from the date he or she returns to work to pay the actuarial cost for the days taken as leave without pay.

**SUBCHAPTER 7. MEMBERSHIP VESTING AND TERMINATION**

**715:10-7-6. Termination of a non-eligible person**

A member who is employed by a public education entity, in a position which is not eligible for membership, does not meet the hours per day minimum, and/or salary requirements, must terminate membership. All contributions remitted for a non-eligible person will be refunded with no interest. If an eligible member's employment is changed to a status that no longer qualifies for membership in TRS, the member's account will be terminated in the same manner as if the member has withdrawn from employment in the public schools of Oklahoma.

**SUBCHAPTER 9. SURVIVOR BENEFITS**

**715:10-9-2. Death benefit when death occurs before retirement [REVOKED]**

(a) A death benefit of \$18,000 shall be paid by TRS to the designated beneficiary upon the death of an in service member. If there is no designated beneficiary, or if the designated beneficiary predeceases the member, the member's estate shall receive the death benefit. [See OAC 715:10-9-7, if the member and beneficiary were divorced before death].

(b) "In service" membership shall include:

- (1) Employees in an active member status within the Oklahoma public education system at the time of death.
- (2) Members who have been, or would have been, re-hired, automatically or otherwise, for the next school year when death occurs during the summer break.
- (3) Members on sick leave, for up to one (1) full year, who would be returned to employment by the employer upon satisfactory recovery.

(c) "In service" membership shall not include:

- (1) Employees who are not eligible for membership in TRS.
- (2) Any member in an in active employment status, except as noted above in paragraph (b).
- (3) Any member who resigned as an employee of the public schools of Oklahoma.

**715:10-9-3. Monthly annuity in lieu of death benefit**

The designated beneficiary of an active contributing member, who qualified for service retirement, may elect to receive in lieu of the return of contributions and the \$18,000 death benefit outlined above the retirement benefit to which the deceased member would have been entitled at the time of death under the Option 2 retirement plan. To qualify for this option, the designated beneficiary must have been named as the primary beneficiary at the time of the member's death (see OAC 715:10-15-1 and 10-15-2). This option is only available when the member has designated one individual as the designated beneficiary, and the beneficiary is the member's spouse or someone who is not more than 10 years younger than the member. [See OAC 715:10-9-7, if the member and beneficiary were divorced before death].

**715:10-9-4. Death Benefit when death occurs after retirement [REVOKED]**

Upon the death of a retired member who contributed to the Retirement System, TRS shall pay a \$5,000 death benefit to the retiree's designated beneficiary. If the retired member had designated more than one primary beneficiary, the death benefit shall be paid in equal shares to each primary beneficiary. If there is no beneficiary the retiree's estate shall receive this death benefit, unless waived pursuant to OAC 715:10-9-6. This benefit is paid in addition to any payment provided for by the retirement option elected by the member at the time of retirement. (Note: The \$5,000 death benefit does not apply to persons receiving payments under the "Special \$150 Per Month Plan".) [See OAC 715:10-9-7, if the member and beneficiary were divorced before death].

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## 715:10-9-5. Payments to beneficiaries of deceased members

Death benefit payments will be made by TRS to the beneficiary(s) of each deceased member as expeditiously as possible. The following documents must be provided to TRS before payment can be made.

- (1) The designated beneficiary(s) must provide a certified copy of the death certificate and complete a Claimant's Affidavit Form.
- (2) When no designated beneficiary has been named or the designated beneficiary(s) predeceases the member, and no waiver is sought, permitted or allowed pursuant to OAC 715:10-9-6, the executor/administrator of the member's estate must provide a certified copy of the death certificate, complete Claimant's Affidavit Form, and provide Letters of Testamentary or other documentation of court appointment.
- (3) Payments to minor children named as beneficiaries shall be made in accordance with applicable Oklahoma statutes. However, all such payments shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and any regulations under that section. [See OAC 715:10-9-7, if the member and beneficiary were divorced before death].
- (4) The beneficiary(ies) of the \$5,000 or \$18,000 death benefit may sign an Irrevocable Assignment of Death Benefit and Qualified Disclaimer to directly transfer all or a portion of the death benefit to a licensed funeral director or facility.

## 715:10-9-6. Probate Waivers [REVOKED]

~~(a) In the event a member dies, leaving no living beneficiary or having designated his estate as beneficiary, the System shall require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. However, this requirement may be waived by the System for any benefits or unpaid contributions in the amount of \$5,000.00 or less, upon presentation of:~~

- ~~(1) the member's valid Last Will and Testament~~
- ~~(2) an Affidavit of Heirship naming all heirs to the member's estate which must state:
  - ~~(A) that the value of the deceased member's entire estate is subject to probate, and that the estate wherever located, less liens and encumbrances, does not exceed Five Thousand Dollars (\$5,000), including the payment of benefits or unpaid contributions from the System;~~
  - ~~(B) a description of the personal property claimed (including the death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate; and~~
  - ~~(C) a claim by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System.~~~~
- ~~(3) a Hold Harmless Agreement signed by all heirs;~~

- ~~(4) a Corroborating Affidavit from someone other than an heir who is familiar with the deceased member; and~~
- ~~(5) proof of payment of expenses of last sickness, death and burial, including all medical, hospital and funeral expenses.~~

~~(b) The Executive Director of the Teachers' Retirement System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. If there is any question as to the validity of any document herein required, the judicial appointment requirement shall not be waived.~~

~~(c) After paying any death benefits or unpaid contributions to any claiming heirs as provided by this section, the Teachers' Retirement System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System is not required to inquire into the truth of any matter specified in this section or into the payment of any estate tax liability.~~

## SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS

### 715:10-11-1. Withdrawal from membership by an eligible person

Any member who terminates employment in the public schools of Oklahoma may voluntarily withdraw from membership in the Teachers' Retirement System under the following conditions:

- (1) The Teachers' Retirement System law provides that members who leave Oklahoma public education employment are eligible to withdraw the contributions made to their TRS account four (4) months after termination. A former employee may submit application for the proceeds of the account after the last day physically worked. Withdrawal payment can be made no earlier than four (4) months after the last public school employment. There are no exceptions to this waiting period. Withdrawal forms may be obtained by contacting the TRS office. Last day of employment shall be defined as:
  - (A) For teachers - the actual last teaching day in the classroom;
  - (B) For other personnel - the actual last day on the job.
- (2) ~~Application for Withdrawal must be received by Teachers' Retirement System no later than the first day of the fourth month of the required waiting period in order to be approved by the Board of Trustees that same month.~~ Written verification from the school's payroll department of a member's termination of employment and/or non-resumption of teaching contract must be on file before processing the Application for Withdrawal.
- (3) ~~All contributions and interest due must be approved by the Board before payment to the withdrawing member. Payment will be mailed on the 20th day of the fourth month of the required waiting period unless the 20th falls~~

on a legal holiday or a weekend. Payment will then be mailed on the closest business day.

(34) The years of membership shall be calculated as follows:

(A) For withdrawal purposes - from the date of the first contribution of the current membership to the date of withdrawal, except that member accounts closed in compliance with OAC 715:10-7-3 will be from the date of the first contribution to the date the account is closed.

(B) For payment of interest purposes - from the date of the first contribution of the current membership to the June 30 preceding the date of withdrawal, except that member accounts closed in compliance with OAC 715:10-7-3 will be from the date of the first contribution to the date the account is closed.

(45) Interest rate on withdrawals shall be paid as follows:

(A) July 1, 1968 through June 30, 1977 - four and one-half percent (4 1/2%), compounded annually.

(B) July 1, 1977 through June 30, 1981 -seven percent (7%), compounded annually.

(C) As of July 1, 1981 to present - eight percent (8%), compounded annually.

(56) Interest payment on withdrawals shall be paid as follows:

(A) If termination occurs within sixteen (16) years from the date membership began, fifty (50) percent of the total accrued interest shall be paid.

(B) With at least sixteen (16) but less than twenty-one (21) years of membership, sixty (60) percent of the total accrued interest shall be paid.

(C) With at least twenty-one (21) but less than twenty-six (26) years of membership, seventy-five (75) percent of the total accrued interest shall be paid.

(D) With at least twenty-six (26) years of membership, ninety (90) percent of the total accrued interest shall be paid.

(67) The Board of Trustees has ruled that a person whose membership has not terminated due to five (5) years of absence from Oklahoma public education employment, but who has applied to withdraw all accumulated contributions, shall not have membership terminated until the withdrawal check has been accepted and cashed.

(78) Effective July 1, 1990, no member is eligible to withdraw contributions made on a pre-tax basis, unless the employee has terminated employment in the public schools for a period of four months.

**715:10-11-2. Withdrawal of optional membership while still employed**

A non-classified optional member may voluntarily terminate TRS membership while continuing employment in the public schools of Oklahoma, if:

(1) Proper application is made to TRS. Withdrawal may be made no earlier than two (2) months after date of application and no earlier than the receipt by TRS of the final deposit to the member's account.

(2) The financial officer of the employing school certifies the member's election to stop contributions and the effective date of the member's last contributions and the date payment will be remitted to TRS.

(3) Any member who withdraws under the conditions listed here may rejoin the Teachers' Retirement System, under the provision of OAC 715:10-1-4(8). A member who terminates membership under this section cannot redeposit contributions withdrawn under this section at a later date, even if the individual returns to membership in TRS. The member will also forfeit any right to purchase service performed from the date of termination of membership under this section and prior to the re-entry date, and will forfeit any unused sick leave accumulated from the date of termination of membership under this section and prior to the re-entry date.

(4) A member's contributions cannot be terminated, by either the member or the employer, without termination of TRS membership. Any member who ceases contributions while still employed in an optional position shall be deemed to have become an ineligible member of TRS, and will have forfeited all rights to retirement benefits provided by TRS.

(5) An employer may prevent its employees from withdrawing, under this rule, if the employer has a negotiated labor agreement, or formalized IRS plan, prohibiting such terminations and withdrawals.

(6) After-tax contributions can be refunded to an optional member prior to separation from service. Pre-tax contributions cannot be refunded until the member terminates employment or turns 62. Following termination of employment, TRS should be contacted for the proper form to be completed for return of pre-tax contributions. Upon completion of the verification form by the school and the mandatory four-month waiting period, payment of the balance of the account will be made at the same time as regular withdrawals.

**SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE**

**715:10-13-1. Regular annual compensation requirements [REVOKED]**

~~Each member of the Teachers' Retirement System is required to make contributions to the Retirement Fund. Monthly contributions are a set percent of "regular annual compensation". Regular annual compensation is defined as wages plus fringe benefits, excluding the flexible benefit allowance provided by Section 26-105 of Title 70 of the Oklahoma Statutes, and shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70 of the Oklahoma Statutes. Wages and fringe benefits for retirement purposes are defined as normal periodic payment for service the right to which accrues on a regular basis in proportion to the service performed. Such periodic payments shall include staff development or other periodic payments to qualifying members. Fringe benefits shall include employer paid group health and~~

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disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the United States Internal Revenue Code. Excluded from regular annual compensation are: employer contributions to a deferred compensation plan that is not provided to all qualified members of the employer, expense reimbursement payments; office, vehicle, housing or other maintenance allowances; the flexible benefit allowance provided pursuant to Section 26-105 of Title 70 of the Oklahoma Statutes; payment for unused vacation and sick leave; any payment made for reason of termination or retirement; maintenance or other non-monetary compensation; payment received as an independent contractor or consultant; or any benefit payments not made pursuant to a valid employment agreement. Contributions can only be remitted on actual wages and fringe benefits. No individual can contribute on unearned or non-existent compensation. Under no circumstances can members pay retirement contributions on more than they actually earn.

### 715:10-13-4.1. Maximum compensation level election for the 1995-96 school year [REVOKED]

(a) A member employed by an entity or institution within the Oklahoma State System of Higher Education between July 1, 1995, and June 30, 1996, was eligible to elect before January 1, 1997, to make an additional contribution on regular annual compensation in excess of his or her maximum compensation level for the 1995-96 school year.

(b) The member must have made the election in writing on a form prescribed by the Board of Trustees, and the form must have been filed with the Teachers' Retirement System on or before December 31, 1996.

(c) Members electing to pay on regular annual compensation in excess of the maximum compensation level for the 1995-96 school year must pay the difference between the member's regular annual compensation up to the member's maximum compensation level for the 1996-97 school year;

(d) The 1995-96 maximum compensation level for members employed by a comprehensive university was \$32,500, for those members electing to contribute on \$25,000 on or before June 30, 1995; \$49,000 for those members electing to contribute on regular annual compensation in excess of \$25,000 on or before June 30, 1995; and \$49,000 for those members who first joined the Teachers' Retirement System after June 30, 1996, or whose regular annual compensation did not exceed \$25,000 prior to June 30, 1995.

(e) The 1995-96 maximum compensation level for a member employed by an entity or institution within the Oklahoma State System of Higher Education other than a comprehensive university was his or her regular annual compensation.

(f) A member who made the election allowed by this rule must pay six percent (6%) of regular annual compensation up to his or her 1995-96 maximum compensation level, plus two and one-half percent (2.5%) of regular annual compensation up to his or her 1995-96 maximum compensation level as employer contributions, less the amount already paid by the member and his or her employer during the 1995-96 school year;

however, the employer may pay all or any part of the payment required of the member.

(g) The payment may be made any time prior to the date the member files the written application for retirement with TRS.

(h) The member shall be charged interest compounded annually at the rate of ten percent (10%) from the date such contributions would have been paid until the payment is made to TRS.

(i) The member shall not receive credit for the election until the balance of contributions plus interest is paid in full.

### 715:10-13-9. Monthly remittance report of contributions [REVOKED]

A remittance report shall be prepared and filed with the Executive Director of the Teachers' Retirement System by the superintendent of schools or the financial secretary of a school, on the form supplied by the Teachers' Retirement System each month for each payroll period occurring during that month. This remittance report shall be submitted as an electronic file as specified by the Executive Director.

(1) School officials preparing the claims shall prepare an alphabetical list of all members comprising the report, the amount of contributions both taxed and non-taxed (paid by the employer on a before-tax basis) for each employee and the total monthly compensation amount. Monthly compensation shall be the total compensation (including benefits) for the pay period and shall not in any case be less than 1/12th of the maximum compensation option elected by the member. The report must include a listing of all persons who are employed by the school and the amount of employer contributions remitted for each employee.

(2) Schools shall send the TRS Form 32, Summary of Payroll Remittance, along with warrants covering the total amount to be remitted for each month. All employee contributions, employer contributions, retired member contributions and matching funds for the pay period shall be remitted at the same time.

(3) TRS Form 1-A Personal Data shall be required for each new member of the Teachers' Retirement System. This form must be mailed to TRS prior to or with the first remittance report containing the name of a new employee/member.

(4) Payments for prior school years may not be included on current year reports. These payments must be handled as a back payment including any interest which may be due. Contact Teachers' Retirement System for proper billing of these amounts.

(5) The employer of each member shall submit the required school reports and corresponding funds within ten (10) days of the last day of each calendar month. Any required reports and corresponding funds not submitted to the Retirement System after thirty (30) days from the end of the payroll month shall be subject to a monthly late charge of one and one-half percent (1 1/2%) of the unpaid balance to be paid by the employer to the Retirement System compounding monthly for each month payment is overdue.

(6) Reports for the summer months of June, July and August must be made on three individual TRS Form 32 reports; however, they can all be sent to TRS at the same time. Reports for July and August of the preceding school year must be prepared and filed as separate reports from reports filed for the new year beginning July 1. Contributions due for one fiscal or school year shall not be commingled on the same remittance report with contributions for the next fiscal or school year.

(7) The Executive Director of TRS may, at any time, require additional items to be included on the monthly remittance report or require additional reports when in the Executive Director's judgment such information is necessary for the efficient operation of the System or to comply with state statutes.

(8) Receipts shall be issued by the Teachers' Retirement System to the remitting agency making the remittance.

**715:10-13-13. Contributions while receiving payments from Workers' Compensation**

Any member who is an active contributing member and receives temporary total disability benefits during the period of absence from a public school due to a work-related injury or illness and qualifies for payment pursuant to the Workers' Compensation Act shall receive credit for said period of absence subject to the following requirements:

- (1) the member was employed by the public school immediately prior to and during the period of absence,
- (2) the member must notify the System in writing not later than four (4) months after the member's return to his or her job duties with the public school, or termination of the temporary total disability benefits, whichever is earlier, of the member's desire to receive service credit for the period of absence,
- (3) the public school employer must certify to the System in writing the dates during which temporary total disability benefit payments were paid to the member, and
- (4) the member and the public school employer shall each pay the respective contributions required for the period of absence without interest within sixty (60) days of billing by the System, or with interest at a rate consistent with the actuarial assumed earnings rate adopted by the Board of Trustees (currently 8% per annum), compounded annually if paid after said sixty (60) days. Employee and employer contributions will be based on the member's regular annual compensation the member would have earned had the injury or illness not occurred.

(5) All balances due must be paid in full at least 30 days prior to retirement or termination of employment.

**SUBCHAPTER 15. SERVICE RETIREMENT**

**715:10-15-1. Eligibility for service retirement**

Service retirement requirements shall be administered as outlined in Title 70, Oklahoma Statutes, Section 17-105 [70 O.S. 17-105].

Members are eligible for service retirement benefits when they have:

- (1) withdrawn from employment in the public education institutions of Oklahoma;
- (2) obtained a minimum of five (5) years of creditable service in the public schools of Oklahoma;
- (3) satisfied the age and service requirements of Title 70, Okla. Stat., Section 17-105, as defined in OAC 715:10-15-2; and,
- (4) made application as provided in OAC 715:10-15-3.

**715:10-15-2. Age, service requirements for regular retirement**

Service retirement requirements shall be administered as outlined in Title 70, Oklahoma Statutes, Section 17-105 [70 O.S. 17-105].

A member is eligible for service retirement benefits when the following requirements of age and service are met. Any member who joins TRS after July 1, 1991, shall be required to have five (5) full years of membership as a contributing member of the System. For members who join after July 1, 1991, Oklahoma service purchased after membership will not be counted for "vesting" purposes.

- (1) For any member who joined TRS prior to July 1, 1992, full retirement benefits will be paid to members who:
  - (A) Have reached age 62, or
  - (B) Whose age as of their last birthday and number of years of creditable service total 80.
- (2) For any member who joined TRS after June 30, 1992, full retirement benefits shall be paid to the member who:
  - (A) Has reached age 62, or
  - (B) Whose age as of his or her last birthday and number of years of creditable service total 90.
- (3) Reduced retirement benefits will be paid to members who:
  - (A) Are between ages 55 to 61 and have at least five (5) years of Oklahoma creditable service, but do not have 80 or 90 "points"; the reductions shall be as shown below:
    - (i) 55—61.89%
    - (ii) 56—65.95%
    - (iii) 57—70.38%
    - (iv) 58—75.23%
    - (v) 59—80.00%
    - (vi) 60—86.66%
    - (vii) 61—93.33%
    - (viii) 62—100.00%
  - (B) Have thirty (30) or more years of creditable service, regardless of age, but do not have 80 or 90 "points." (TRS will provide reduction percentages upon request to any member desiring reduced benefit

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calculations who is under age 50 with 30 years of service.)

### 715:10-15-7. Standard retirement formula

The standard retirement formula will be applied as directed in Title 70, Oklahoma Statutes, Section 17-116.2 [70 O.S. 17-116.2].

~~The standard retirement formula used to determine the maximum monthly retirement benefit is Final Average Salary, times two percent (2%), times Years of Creditable Service, divided by 12. For purposes of this section:~~

- ~~(1) Final average salary for members who joined TRS prior to July 1, 1992, is the average of the three (3) highest years on which contributions were made. Final average salary for members who joined TRS after June 30, 1992, is the average of the five (5) highest consecutive years on which contributions were made.~~
- ~~(2) If the final average salary is under \$40,000, it will apply to all creditable service years. If the final average salary exceeds \$40,000, the member will have a two tier retirement calculation. All years prior to July 1, 1995, will be calculated at \$40,000 and all years after July 1, 1995, will be on actual final average salary, except for members employed by an entity or institution within the Oklahoma State System of Higher Education as of June 30, 1995, as provided in OAC 715:10-15-7.1.~~
- ~~(3) Salary for any school year shall not exceed the statutory maximum limit for contributions for that particular school year.~~
- ~~(4) A member who elected to contribute only on compensation up to \$25,000 shall have the average salary limited to no more than \$25,000 for years of service performed prior to July 1, 1995 (see OAC 715:10-13-4).~~
- ~~(5) A member who elected to contribute on compensation up to \$40,000, but has not paid all contributions and any applicable interest for any year after June 30, 1987, shall have the average salary limited to no more than \$25,000 for years of service performed prior to July 1, 1995.~~
- ~~(6) A member who elected to limit contributions on salary up to \$7,800 between 1974 and 1979, shall have all years of service prior to July 1, 1979, calculated on an average salary not to exceed \$7,800, unless the waiver is revoked in accordance with OAC 715:10-5-8. Years of service after July 1, 1979, shall be calculated using an average salary determined in the same manner as all other members.~~
- ~~(7) The years used in determining average salary must be Oklahoma service credits and shall not exceed the actual compensation received during the school or fiscal year when such service was performed.~~
- ~~(8) Creditable service shall be the total years of creditable service, including Oklahoma, military, out of state or other years provided by Board rules and statutes.~~

### 715:10-15-7.1. Retirement formula for members employed by a comprehensive university [REVOKED]

~~(a) For a member employed on or after July 1, 1995, two percent (2%) multiplied by the member's final average salary on which contributions were made times the years of creditable service performed on or after July 1, 1995.~~

~~(b) For a member employed on or before July 1, 1995, as follows:~~

- ~~(1) For service prior to July 1, 1995, in the same manner as described in OAC 715:10-15-7; plus~~
  - ~~(2) Two percent (2%) multiplied by the average of the member's maximum compensation level for those years between July 1, 1995 and June 30, 2007, in which the member's regular annual compensation meets the maximum compensation level in effect for the member, times the years of creditable service earned during this period in which the member's regular annual compensation meets the maximum compensation level in effect for the member; plus~~
  - ~~(3) Two percent (2%) of the member's final average salary multiplied by the years of creditable service earned for those years between July 1, 1995 and June 30, 2007, that did not meet the member's maximum compensation level in effect for this period, plus~~
  - ~~(4) Two percent (2%) of the member's final average salary multiplied by the years of creditable service earned by the member for service performed after June 30, 2007; plus~~
  - ~~(5) Two percent (2%) of the member's final average salary upon which contributions were made, multiplied by the member's years of creditable service performed for an employer other than an entity or institution within The Oklahoma State System of Higher Education on or after July 1, 1995.~~
- ~~(c) The member's maximum compensation level for the years between July 1, 1995 and June 30, 2007, shall be determined by the contribution election made by the member prior to July 1, 1995.~~
- ~~(d) The term "average of the member's maximum compensation level" means an average of the annual salary on which contributions were made for the years between July 1, 1995 and June 30, 2007.~~
- ~~(e) In the event there is an insufficient number of years for the time period between July 1, 1995 and June 30, 2007, to reach the high three (3) or high five (5) consecutive years as defined in 70 O.S. § 17-101, the member's maximum compensation level shall be determined by an average of the salary on which contributions were made. In no case shall the member's average maximum compensation level exceed the average salary that would be calculated for any other TRS member for the same period of service with the same contribution level.~~

### 715:10-15-10.2. Partial lump-sum payments

The requirements for partial lump-sum payments shall be administered as directed in Title 70, Oklahoma Statutes, Section 17-105.2 [70 O.S. 17-105.2].

Any member of the Teachers' Retirement System with 30 or more years of service credit may elect to receive a partial lump sum payment in exchange for a reduced annuity. The application for a partial lump sum payment will be added to the retiring member's final contract for retirement on a form prescribed by the Board of Trustees. A beneficiary of a deceased active member is not eligible to select a partial lump sum payment.

(1) A member may elect to receive a partial lump sum payment in an amount equal to the unreduced retirement benefit (Maximum Retirement Allowance) which would have been paid over a period of 12, 24 or 36 months, had the lump sum option not been selected. Once the payout amount is selected, a reduced Maximum Retirement Allowance is then calculated using factors based upon the member's age at retirement and the payout option (12, 24, or 36 months) selected. This reduced Maximum Retirement Allowance then serves as the basis upon which other optional payment alternatives will be calculated pursuant to 70 O.S. § 17-105 and OAC 715:10-15-10.

(2) The partial lump sum payment shall be paid in a single check separate from the regular monthly retirement benefit within thirty (30) days of the retiring member's first monthly benefit payment. The partial lump sum payment cannot be returned to the Retirement System once it has been received by the member.

(3) The partial lump sum payment shall be subject to federal income tax in accordance with Internal Revenue Code or applicable Internal Revenue Service regulations. In accordance with IRS regulations, the member may elect to roll over the partial lump sum payment into an eligible individual retirement account (IRA) or other eligible retirement plan, including the Oklahoma Teachers' Retirement System's 403b Tax Sheltered Annuity Plan.

(4) The total amount of the partial lump sum payment shall be deducted from the member's account balance consisting of the employee contributions plus interest posted to the member's account prior to July 1, 1968, for the purpose of determining unused contributions remaining in the account.

(5) The partial lump sum payment will be based on the service credit and average compensation, including projected compensation, at the time of retirement, but may be issued before final compensation and contributions are received and posted to the member's account. TRS reserves the right to correct any overpayment or underpayment discovered after final compensation and contribution postings have been received. Should the member have been overpaid, TRS will collect such overpayment from the member, based on an actuarial adjustment to the member's monthly benefit. Should the member have been underpaid, TRS will actuarially adjust future monthly benefit payments to compensate the member for the amount of the underpayment.

(6) A retiree, having received a partial lump sum payment, who is reemployed and returns to membership contributing status pursuant to OAC 715:10-17-13, shall have his or her subsequent retirement benefit calculated taking

into consideration that a partial lump sum payment has been received.

(7) Should the retiring member die after the effective date of retirement, but before the partial lump sum payment is made, the payment will be made to the beneficiary(ies) designated by the retiring member on the final contract for retirement, unless the member filed a separate beneficiary form specifically designating a third party as the beneficiary of the partial lump sum payment.

(8) If the retiring member is married at the time of retirement, the member's spouse must sign the member's partial lump sum application form acknowledging the retiring member's intent to receive a partial lump sum payment.

**715:10-15-10.3. Partial Lump-sum Option Factors**

The following factors have been developed by consulting actuaries and adopted by the Board of Trustees to be used in the calculation of the partial lump-sum payment selected by a member of the Teachers' Retirement System. The Board of Trustees may adopt new tables at any time upon recommendation of the consulting actuaries, when in the opinion of the Board the experience of the System may justify the need for such change. Adoption of new tables will be prospective and shall not affect any partial lump-sum payment selected and paid prior to the adoption of new factors. *(Note: Please refer to Client Handbook for a list of the factors. The Client Handbook, which is periodically modified, can be found at [www.ok.gov/TRS](http://www.ok.gov/TRS).)*

Age	Factor for 12x PLSO	Factor for 24x PLSO	Factor for 36x PLSO
(1)	(2)	(3)	(4)
45	91.59%	83.18%	74.77%
46	91.54%	83.08%	74.63%
47	91.49%	82.98%	74.47%
48	91.43%	82.86%	74.30%
49	91.37%	82.74%	74.11%
50	91.31%	82.61%	73.92%
51	91.24%	82.48%	73.71%
52	91.16%	82.33%	73.49%
53	91.08%	82.17%	73.25%
54	91.00%	82.00%	73.00%
55	90.91%	81.82%	72.73%
56	90.81%	81.62%	72.43%
57	90.71%	81.41%	72.12%
58	90.59%	81.19%	71.78%
59	90.47%	80.94%	71.41%

60	90.34%	80.68%	71.02%
61	90.20%	80.39%	70.59%
62	90.04%	80.08%	70.12%
63	89.87%	79.75%	69.62%
64	89.69%	79.39%	69.08%
65	89.50%	78.99%	68.49%
66	89.29%	78.57%	67.86%
67	89.06%	78.11%	67.17%
68	88.81%	77.62%	66.43%
69	88.54%	77.08%	65.62%
70	88.25%	76.51%	64.76%
71	87.94%	75.89%	63.83%
72	87.61%	75.22%	62.83%
73	87.25%	74.50%	61.75%
74	86.86%	73.72%	60.58%
75	86.44%	72.89%	59.33%
76	86.00%	71.99%	57.99%
77	85.51%	71.02%	56.54%
78	84.99%	69.99%	54.98%
79	84.44%	68.88%	53.32%
80	83.85%	67.69%	51.54%
81	83.21%	66.43%	49.64%
82	82.54%	65.08%	47.62%
83	81.82%	63.64%	45.46%
84	81.05%	62.10%	43.15%

**715:10-15-13. Survivor benefits when death occurs after retirement [REVOKED]**

Upon the death of a retired member who contributed to the Retirement System, TRS shall pay a \$5,000 death benefit to the retiree's designated beneficiary. If there is no beneficiary the retiree's estate shall receive the death benefit. The benefit is paid in addition to any payment provided for by the retirement option elected by the member at the time of retirement. (Note: The \$5,000 death benefit does not apply to persons receiving payments under the "Special \$150 Per Month Plan"). In the event the total retirement payments made to a retired member and the retired member's joint annuitant, if any, are less than the member's accumulated contributions as credited at the time of retirement, the difference shall be paid to the member's designated beneficiary, or if no designated beneficiary survives, to the member's estate or to the member's nearest surviving next of kin as determined by Oklahoma statutes.

**SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT**

**715:10-17-2. Break between employment and retirement**

The requirements for post-retirement employment shall be administered as directed in Title 70, Oklahoma Statutes, Section 17-116.10 [70 O.S. 17-116.10].

~~A retired member is not eligible to be employed by the public schools of Oklahoma, in any capacity, for sixty (60) calendar days between the retiree's last day of pre-retirement public education employment and any post-employment. (Note: The last day of pre-retirement employment means the last day the employee is required to be physically present on the job to complete the terms of the employment contract or agreement.) Employment under any condition during this time or payment at a later time for services performed during this time period will cause the forfeiture of all retirement benefits received during the period.~~

**715:10-17-6. Earnings limits**

The limitations on post-retirement earnings shall be administered as directed in Title 70, Oklahoma Statutes, Section 17-116.10 [70 O.S. 17-116.10].

~~(a) Effective July 1, 2003, the annual earnings limit from employment in the public schools of Oklahoma for a retired member under age 62 may not exceed one half (1/2) of the member's final average salary used in computing retirement benefits or \$15,000, whichever is less.~~

~~(b) Effective July 1 2003, the annual earnings limit from employment in the public schools of Oklahoma for a retired member age 62 or older may not exceed one half (1/2) of the member's average salary used in computing retirement benefits or \$30,000, whichever is less.~~

~~(c) Notwithstanding the provisions of subsections (a) and (b) of this section, effective July 1, 2008, any retired member who has been retired for thirty six (36) months or more may receive annualized earnings from employment in the public schools of Oklahoma with no reduction in retirement benefits.~~

~~(d) For purposes of this rule the following shall apply:~~

~~(1) Earnings shall mean "regular annual compensation" as defined in OAC 715:10-13-1 and 70 O.S. § 17-116.2(D). Earnings shall include any payment by a public school for services rendered by a retired member who is employed for any purpose whatsoever. Supplemental retirement payments paid by a former public school employer in accordance with 70 O.S. 17-105(9) or other applicable state statutes or payments to an independent contractor or consultant, pursuant to a lawful contract which complies with the requirements of 70 O.S. § 6-101.2(B), will not be counted as earnings.~~

~~(2) Earnings in excess of the maximum limit will result in a loss of future retirement benefits of one dollar (\$1) for each one dollar (\$1) earned over the maximum.~~

(3) The earnings limits will, in all cases, be applied on a calendar year basis from January 1 through December 31.

(4) The earnings limit for the calendar year in which a member retires shall be one twelfth (1/12th) of the annual limit multiplied by the number of months the member is eligible to work and receive payments from the public schools of Oklahoma.

(5) The earnings limit for the calendar year in which a member reaches age 62 shall be prorated in equal monthly increments with the month in which the member's birth date occurs counted at the higher earnings level.

(6) The earnings limit for the calendar year in which a member reaches his or her thirty sixth (36th) month of retirement shall be prorated in equal monthly increments.

(7) For purposes of this section, for a retired member whose average salary exceeds \$40,000, "average salary" means the weighted or aggregated average used to compute monthly benefits for all the member's years of credited service.

(A) the name and last known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order,

(B) the amount or percentage of the member's benefits to be paid by Teachers' Retirement to the alternate payee,

(C) the number of payments or period to which such order applies,

(D) the characterization of the benefit as to marital property rights, and whether the benefit ceases upon the death or remarriage of the alternate payee, and  
(E) each plan to which such order applies.

(2) The order meets the requirements of this section only if such order:

(A) does not require Teachers' Retirement to provide any type or form of benefit, or any option not otherwise provided under the state law as related to the Retirement System,

(B) does not require Teachers' Retirement to provide increased benefits,

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the Retirement System as a valid order prior to the effective date of this subchapter, and

(D) does not require payment of benefits to an alternate payee prior to the actual retirement date of the related member or prior to the date the member elects to receive a lump sum distribution of his or her retirement account.

**SUBCHAPTER 25. QUALIFIED DOMESTIC ORDER [REVOKED]**

**715:10-25-1. Definition [REVOKED]**

The term "qualified domestic order" means an order issued by a district court of the State of Oklahoma pursuant to the domestic relations laws of this state which relates to the provision of marital property rights to a spouse or former spouse of a member and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive a portion of the benefits payable with respect to a member of the Teachers' Retirement System.

**715:10-25-2. Filing a qualified domestic order [REVOKED]**

A member of Teachers' Retirement, his or her legal representative, a member's former spouse, or his or her legal representative may file a qualified domestic order with the Teachers' Retirement System. In not less than thirty (30) days of such filing, Teachers' Retirement will acknowledge receipt and notify all parties listed in the order that the order has been accepted or that clarification of the order must be provided to Teachers' Retirement. All qualified domestic orders filed with the Teachers' Retirement System of Oklahoma must be in accordance with Oklahoma Statutes and must conform to the provisions of 70 O.S., Section 17-109, as amended. TRS Form 110.46 OTRS Qualified Domestic Order is available upon request and its use is recommended.

**715:10-25-3. Contents of qualified domestic order [REVOKED]**

For a qualified domestic order to be accepted and binding on the Teachers' Retirement System the order meet the following requirements:

(1) The order must clearly specify the following:

**715:10-25-4. Payment to alternate payee [REVOKED]**

Payments to an alternate payee will be made in a like manner and at the same time payment is made to the member. Payment will be either a lump sum distribution of the contributions and interest due the member upon termination of service or death, or monthly benefit payments under the retirement options available to the member at the time he or she applies for retirement benefits. The alternate payee shall not be allowed to choose a method of payment that is different from the method chosen by the member. The alternate payee may not receive payment of any kind prior to the member making application and becoming eligible for payment of benefits. Federal and Oklahoma state income taxes will be withheld from the payment to an alternate payee in accordance with applicable federal and state statutes.

**715:10-25-5. Termination of a qualified domestic order [REVOKED]**

A qualified domestic order will terminate when Teachers' Retirement has fully met the provisions of the order. The obligation of the Teachers' Retirement System to pay an alternate payee pursuant to a qualified domestic order shall cease upon the death of the related member. In the event a qualified domestic order requires the benefits payable to an alternate payee

## Permanent Final Adoptions

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~~to terminate upon the remarriage of the alternate payee, the Retirement System shall terminate said benefit only upon the receipt of a certified copy of a marriage license, or a copy of a certified order issued by the court that originally issued said qualified domestic order declaring the remarriage of said alternate payee. The order may be cancelled or modified by the court that originally issued the order.~~

~~Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001, et seq., as amended from time to time, or rules and regulations promulgated thereunder, and court cases interpreting said act.~~

*[OAR Docket #12-576; filed 5-8-12]*

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**715:10-25-6. Teachers' Retirement not subject to ERISA [REVOKED]**

~~For purposes of this subchapter the Teachers' Retirement System of Oklahoma is not subject to the provisions of the~~

# 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

**1:2012-10.**

### EXECUTIVE ORDER 2012-10

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. Tornadoes, severe storms, straight line winds, and flooding beginning April 28, 2012, and that are continuing, have caused extensive damage to public and private properties with the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.
2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, straight line winds, and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The counties included in this declaration are:

Alfalfa, Craig, Grant, Kay, Mayes, Nowata, Oklahoma, Osage, Ottawa, Pawnee, Pottawatomie and Washington.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on April 28, 2012, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the

purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

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

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

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 1<sup>st</sup> day of May 2012.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:

Michelle R. Day

Assistant Secretary of State

*[OAR Docket #12-550; filed 5-2-12]*

**1:2012-11.**

### EXECUTIVE ORDER 2012-11

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to 25 O.S. § 90.19, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Tuesday, May 15, 2012, to honor Staff Sergeant Dick A. Lee, Jr., an Oklahoma soldier, who died on April 26, 2012, at the age of 31 while on active duty supporting Operation Enduring Freedom in Afghanistan.

This executive order shall be forwarded to the Director of Central Services, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

## Executive Orders

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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 14th day of May, 2012.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Michelle R. Day  
Assistant Secretary of State

*[OAR Docket #12-628; filed 5-14-12]*  
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**1:2012-12.**

### EXECUTIVE ORDER 2012-12

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, in recognition of Peace Officers Memorial Day, direct that appropriate steps be taken to fly

all American flags and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Tuesday, May 15, 2012, to honor Federal, State, and local officers killed or disabled in the line of duty.

This executive order shall be forwarded to the Director of Central Services who shall cause the provision of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 14th day of May, 2012.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Michelle R. Day  
Assistant Secretary of State

*[OAR Docket #12-629; filed 5-14-12]*  
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