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Submissions to Governor and Legislature

Within 10 calendar days after adoption by an agency of proposed PERMANENT rules, the agency must submit the rules to the Governor and the Legislature. A "statement" of such submission must subsequently be published by the agency in the *Register*.

For additional information on submissions to the Governor/Legislature, see 75 O.S., Section 303.1 and 308.

TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-448]

RULEMAKING ACTION:

Submission to Governor and Legislature

RULES:

Subchapter 1. General Provisions

777:1-1-9. Individual proceedings [NEW]

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE

June 11, 2014

[OAR Docket #14-448; filed 6-12-14]

Governor's Declarations

If a proposed permanent rule is disapproved by an omnibus joint resolution of the Legislature, as set forth in 75 O.S., Section 308.3, the Governor may issue a Governor's Declaration declaring the rule to be approved and finally adopted if, after receiving a petition from the issuing agency, the Governor determines that the rule is necessary and that the agency has the authority to make the rule.

The Governor may also issue a Governor's Declaration approving and finally adopting rules if:

- the Legislature fails to pass an omnibus joint resolution during the legislative session; or
- the Governor finds that an omnibus joint resolution has "a technical legal defect preventing approval of administrative rules intended to be approved by the Legislature" [75 O.S., Section 308.3(D)(4)].

A Governor's Declaration must be published in the *Register* on or before July 17 following that legislative session.

GOVERNOR'S DECLARATION REGARDING SUBMITTED AGENCY RULES

Pursuant to Section 308.3 of Title 75 of the Oklahoma Statutes, if the Oklahoma Legislature fails to pass an omnibus joint resolution specifying which proposed permanent administrative rules (Rules) are approved and which Rules are disapproved, the Governor may approve Rules by means of a single declaration published in the *Oklahoma Register*.

On May 23, 2014, the Oklahoma Legislature adjourned without presenting a joint omnibus resolution to me specifying which Rules are approved and which Rules are disapproved. Accordingly, pursuant to 75 O.S. § 308.3(D)(4), I hereby declare that all Rules submitted for consideration for the period beginning April 2, 2013 through April 1, 2014, are approved and finally adopted, except for the following:

40:10-3-7 175:1-5-14 490:1-7-25 45:35-1-2.

Executed this 19th day of June, 2014.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA
Mary Fallin

ATTEST:
Chris Benge
Secretary of State

Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to "final adoption," as defined in 75 O.S., Section 250.3(5), by notifying the Governor and the Legislature, and by publishing a notice of such a withdrawl in the *Register*.

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. However, the withdrawal notice is not published in the *Register* unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the emergency rules.

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

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

[OAR Docket #14-449]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Subchapter 1. General Provisions
210:10-1-18. Transfers [AMENDED]
DATES:
Adoption:
March 4, 2014
Submission of adopted rules to Governor and Legislature:
March 6, 2014
Withdrawn:
June 12, 2014
ADDITIONAL INFORMATION:
The rule is being withdrawn to allow the agency to revise the language of the rule to implement amendments to 70 O.S. § 8-103 resulting from HB 2626, which was signed into law after the rule was adopted. The agency will promulgate the rule at a later date.

[OAR Docket #14-449; filed 6-12-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #14-450]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-105. Non-traditional certification in special education [NEW]
DATES:
Adoption:
January 23, 2014
Submission of adopted rules to Governor and Legislature:
January 27, 2014
Withdrawn:
June 12, 2014
ADDITIONAL INFORMATION:
The rule is being withdrawn to allow the agency to revise the language of the rule to implement a new statute at 70 O.S. § 6-122.9 and amendments to 70 O.S. §§ 6-122.7 6-122.8 resulting from HB 2683, which was signed into law after the rule was adopted. The agency will promulgate the rule at a later date.

[OAR Docket #14-450; filed 6-12-14]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #14-451]

RULEMAKING ACTION:
Notice of Withdrawn Rules
WITHDRAWN RULES:
APPENDIX A. Residential Property Condition Disclosure Statement [REVOKED]
APPENDIX A. Residential Property Condition Disclosure Statement [NEW]
DATES:
Adoption:
March 20, 2014
Submission of adopted rules to Governor and Legislature:
March 21, 2014
Withdrawn:
June 12, 2014
ADDITIONAL INFORMATION:
The intent of this proposed change was to reformat the Oklahoma Residential Property Condition Disclosure Statement to make it more user-friendly; however, during the reformatting process, critical information was inadvertently left off the form. The Commission feels that it is more beneficial to keep the form as currently approved and perhaps consider reformatting the form in a future rule submission.

[OAR Docket #14-451; filed 6-12-14]

Emergency Adoptions

"If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated" if the Governor approves the rules after determining "that the rule is necessary as an emergency measure to do any of the following:

a. protect public health, safety or welfare,
b. comply with deadlines in amendments to an agency's governing law or federal programs,
c. avoid violation of federal law or regulation or other state law,
d. avoid imminent reduction to the agency's budget, or
e. avoid serious prejudice to the public interest." [75 O.S., Section 253(A)]

An emergency rule is considered promulgated immediately upon approval by the Governor, and effective immediately upon the Governor's approval or a later date specified by the agency in the emergency rule document. An emergency rule expires on September 15 following the next regular legislative session after its 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 cites to 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 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #14-447]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. General Provisions
340:10-1-3 [AMENDED]
Subchapter 3. Conditions of Eligibility - Need
Part 5. Assistance Payments
340:10-3-57 [AMENDED]
340:10-3-59 [AMENDED]
(Reference APA WF 14-01)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162; Public Law 112-96 § 4004, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)); 7 U.S.C. § 2012; 56 O.S. § 241.4; and SB 1706 effective November 1, 2014.
DATES:
Adoption:
May 13, 2014
Approved by Governor:
June 2, 2014
Effective:
July 1, 2014
Expiration:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Emergency rulemaking approval is requested to comply with recently effective federal law and state statute changes regarding restrictions on the use of state and federal funds on debit cards used in designated, prohibited businesses and avoid a penalty for non-compliance. The benefit reduction penalty is part of DHS policies and practices to prevent TANF cash assistance from use in prohibited businesses. The penalty coincides with SB 1706, effective November 1, 2014.
ANALYSIS:
The proposed revisions to Chapter 10 Subchapter 1 amend the rules to: (1) add federal regulations, state statutes, and Oklahoma Department of Human Services (DHS) rules governing the Temporary Assistance for Needy Families (TANF) program; (2) add debit or electronic benefit transfer (EBT) card transaction restrictions to prevent use of cards containing federal or state funds in certain businesses per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C § 608(a)(12)), and Section 241.4 of Title 56 of Oklahoma Statutes (56 O.S. § 241.4); (3) define prohibited businesses and EBT card transaction; (4) add methods the DHS uses to inform applicants and recipients of EBT card transaction restrictions; (5) add policy references for recipient benefit reduction penalties and debit card and direct deposit procedures; (6) update terminology; and (7) add clarifying information regarding appeal rights.

The proposed revisions to Chapter 10 Subchapter 3 amends the rules to: (1) update and clarify rules regarding concurrent receipt of TANF and another form of public assistance; (2) add benefit reduction penalties resulting from use of the TANF benefit in a prohibited business per 42 U.S.C. § 608(a)(12) and 56 O.S. § 241.4; (3) add clarifying language regarding the parent or needy caretaker's eligibility when Child Welfare Services (CWS) removes a child from the home with an expectation of returning the child within four months; (4) update terminology including the removal of references to the Commission for Human Services; (5) add clarifying language regarding availability of funds, minimum TANF payments, and overpayments; and (6) add policy references regarding payment to minors, TANF benefit issuance methods, and debit or EBT card transaction restrictions.
CONTACT PERSON:
Dena Thayer at 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE JULY 1, 2014 AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 1. GENERAL PROVISIONS

340:10-1-3. State Plan for Temporary Assistance for Needy Families (TANF)

The State Plan covering TANF encompasses the requirements listed in ~~paragraph~~ paragraphs (1) through ~~(12)~~(13) of this Section.

(1) **State-wide operation.** The plan is in effect in all counties of the state as a state-administered program.

(2) **Financing.** The Oklahoma State Legislature appropriates funds for financing the TANF program. Federal money is provided by block grant funding ~~in accordance with~~ per federal laws and regulations relating to the TANF program. These state and federal funds are used for assistance and administration under the plan.

(3) **Designated state agency.** The state TANF program is administered by the Oklahoma Department of

Human Services ~~(OKDHS)~~(DHS), with at least one county office in each county in the state, operating under federal regulations per Sections 261.1 through 261.80 of Title 45 of the Code of Federal Regulations (45 §§ C.F.R. 261.1 through 261.80), Sections 230.50 through 230.78 of Title 56 of the Oklahoma Statutes (56 §§ O.S. 230.50 through 230.78) and DHS rules ~~and regulations adopted by the Oklahoma Commission for Human Services (Commission)~~per Oklahoma Administrative Code (OAC) 340:10 and 340:65.

(4) **~~Fair hearings~~Appeal rights.** ~~Any individual whose application~~Individuals applying for or receiving TANF ~~is denied or is not acted upon with reasonable promptness, or who is dissatisfied with the amount of the~~cash assistance ~~payment or with~~have the right to appeal any ~~other~~ action ~~taken in regard to his or her assistance payment, is provided an opportunity for a fair hearing with OKDHS~~relating to the application for or receipt of TANF benefits. An applicant may also appeal a delay in processing an application timely. Refer to OAC 340:2-5 for fair hearing procedures.

(5) **Proper and efficient administration.** ~~OKDHS~~DHS operates under the State Merit System, which establishes and maintains personnel standards on a merit basis for certain federal grant-in-aid agencies, including ~~OKDHS~~DHS. Employees of ~~OKDHS~~ DHS engaged in the administration of the TANF State Plan are covered by the Merit System.

(6) **Reports as required.** ~~The Finance Division~~DHS Financial Services:

(A) assists in fulfilling the requirements of state and federal laws by making necessary reports;

(B) cooperates with various federal agencies by providing current and special reports; and

(C) furnishes ~~OKDHS~~DHS with data necessary for the operation of its programs.

(7) **Safeguarding of information.** Federal and state laws and ~~the~~DHS rules ~~and regulations adopted by the Commission~~ restrict the use or disclosure of information concerning applicants for or recipients of TANF to purposes directly connected with the administration of the program.

(8) **Right to apply.** An individual has the right to:

(A) make application for TANF;

(B) expect an investigation of eligibility; and

(C) a prompt decision by ~~OKDHS~~DHS in regard to the application.

(9) **Assistance under only one program.** The needs of an eligible person ~~can~~must only be included in one State Supplemental Payment (SSP) or TANF payment.

(10) **Standards for determining eligibility and amount of payment.** Uniform standards for determining eligibility and policies and procedures for such determination are provided in OAC 340:65, and this Chapter. As a means of promoting uniformity and accuracy in determining the basic needs, such as food, clothing, basic drugs, personal items, shelter, utilities, and household equipment of each TANF assistance unit, a flat grant consisting of these requirements is used.

(11) **Income and resources.** ~~In~~When determining need for TANF, ~~OKDHS~~DHS~~takes into consideration~~considers any available income and resources of an individual requesting assistance, except income and resources required to be disregarded by federal or state law or by DHS rules ~~of OKDHS~~. Income and resources received on behalf of a member of the assistance unit by another individual ~~which~~that include, but ~~is~~are not limited to, a guardian or conservator, is considered available to the assistance unit.

(12) **Civil rights.** The TANF program is administered ~~in accordance with~~per the provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1975, as amended, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Title IX of the Education Amendments of 1972, as amended.

(13) **Electronic benefit transfer (EBT) restrictions.** Per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)), States are required to maintain policies and practices as necessary to prevent TANF cash assistance from being used in any EBT transaction in certain prohibited businesses. Section 241.4 of Title 56 of Oklahoma Statutes (56 O.S. § 241.4) also restricts the use of EBT transactions in these businesses and adds one additional prohibited business.

(A) Prohibited businesses include any:

(i) liquor store. The term liquor store means any establishment that sells exclusively or primarily intoxicating liquor. The term does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods per 7 U.S.C. § 2012;

(ii) casino, gambling casino, or gaming establishment except for:

(I) a grocery store that sells groceries, including staple foods per 7 U.S.C. § 2012, and also offers, or is located within the same building or complex as an establishment offering casino, gambling, or gaming activities; or

(II) any other establishment offering casino, gambling, or gaming activities incidental to the principal purpose of the business;

(iii) retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(iv) retail establishment whose principal business is that of selling cigarettes, cigars, or tobacco products. This type of retail establishment is prohibited only by state statute.

(B) EBT transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service.

(C) DHS informs applicants and recipients of this prohibition by including information about the prohibition in:

(i) Form 08MP003E, Rights, Responsibilities, and Signature for Benefits, of the application;

(ii) a poster displayed in the county office lobby;

(iii) the certification notice; and

(iv) a sign sent to identified prohibited businesses for use in educating staff and customers that the DHS issued debit card is not accepted at their business.

(D) Refer to OAC 340:10-3-57(h) for recipient benefit reduction penalties when DHS determines a recipient used his or her debit card in a prohibited business.

(E) Refer to OAC 340:65-3-6 for debit card and direct deposit procedures, including information about accessing benefits, free services, and fees.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 5. ASSISTANCE PAYMENTS

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~~must not concurrently be included in a Temporary Assistance for Needy Families (TANF) assistance unit ~~or may be a recipient of~~and SSP ~~if all eligibility requirements are met~~for the same month. The person may ~~also~~ be included in the TANF assistance unit while an application is pending ~~determination of eligibility~~ for SSP or Supplemental Security Income (SSI) ~~if~~when all eligibility requirements are met.

(b) **Concurrent receipt of TANF and SSI.** A person ~~is~~must not concurrently be included in a TANF benefit ~~for the same month he or she is included in an~~and receive a SSI payment for the same month. When 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~~must inform the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS)~~if~~when any member of the assistance unit makes application for, ~~SSI~~ or becomes eligible ~~for~~to receive, SSI. ~~If any assistance unit member applies for TANF, or is receiving TANF when~~When the payee or a member of the assistance unit makes an application for SSI, the payee must inform the Social Security Administration (SSA) of TANF receipt.

(1) When the only dependent child(ren) ~~is receiving~~receives SSI, the natural or adoptive parent(s) or needy caretaker relative may receive an adult only TANF ~~if~~benefit when all other eligibility factors are met. ~~The assistance unit consists of the adult(s only).~~

(2) When a TANF applicant is also a SSI applicant, he or she may be included in the TANF ~~eligibility must be determined and~~benefit, ~~if~~when eligible, ~~is included in the benefit~~ until notified of SSI eligibility.

(3) When a TANF recipient is a SSI applicant, SSA ~~advises~~notifies~~OKDHS~~DHS of SSI eligibility~~,and requests the month of~~to coordinate closure of the person's TANF ~~termination~~benefit and approval of SSI and requests 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 closure date ~~of termination~~ is later than the date given orally to SSA, TANF payments to SSI recipients are TANF overpayments and must be recouped per Oklahoma Administrative Code (OAC) 340:65-9.

(4) When a TANF recipient is determined ineligible for SSI, the person may continue to be included in the TANF assistance unit ~~if~~when 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~~a SSP, instead of TANF, if ~~all other eligibility conditions are met~~determined disabled by the Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU) per OAC 317:35-5-4(1)(D).

(c) **Concurrent receipt of state and tribal TANF.** A person must not concurrently be included in a tribal TANF payment ~~is not included in another~~and a state approved TANF benefit in the same month. ~~If~~When the person meets the criteria of a tribal TANF service area and population, the entire assistance unit must be served by tribal TANF. ~~If~~When the household moves out of the tribe's service area, the worker coordinates certification of state TANF benefits.

(d) **Concurrent receipt of TANF in more than one ~~form of public assistance~~state.** A person must not be included in a TANF benefit ~~is not included in another TANF or SSP benefit~~in Oklahoma and another state for the same ~~period~~month. ~~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 SSP recipient 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, parent who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances, 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~~a SSI recipient.

(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~~; [~~per 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.

(A) For the purpose of this rule, "living in the home with" means ~~that~~ a person of the opposite sex is acting in the role of a spouse.

(i) The opposite sex individual is acting in the role of a spouse when one or both of these factors exist:

(I) they represent themselves to be a couple; or

(II) have a physical relationship with each other.

(ii) When the client states the conditions in (A)(i) of this paragraph do not exist, factors that may indicate the opposite sex individual is acting in the role of a spouse include when he or she:

(I) assists in parenting the ~~child~~child(ren), such as exercising responsibility for the child(ren), providing day-to-day care, physical care, and guidance for the child(ren);

(II) provides financial support for the family beyond his or her own pro rata share of the household expenses;

(III) shares joint bank accounts or real property ownership with the client; or

(IV) files a joint tax return with the client.

(B) 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.

(C) 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~~The income of non-relative adults of the opposite sex ~~not receiving TANF~~ may be excluded ~~if~~when the adults have separate living quarters and demonstrate no characteristics of a person acting in the role of spouse.

(4) **Parent who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances.** The income, earned and unearned, of a parent who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances per OAC 340:10-4-1 is considered in its entirety.

(5) **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~~%~~percent of the payment standard when a determination of program violation is made. The 25~~%~~percent penalty is removed the next effective date when compliance is documented or the penalty time period ends. When multiple types of program violations ~~have occurred~~occur, a 25~~%~~percent~~for~~ 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 (FSPI) in the Supplemental Nutrition Assistance Program (SNAP) per OAC 340:50-7-29(c)(1)(A). 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 340:65-9-2(d) and ~~OAC~~ 340:65-9-4~~(c)(1)(A-C)~~.

(h) **Benefit reduction penalty resulting from use of the TANF benefit in a prohibited business.** Per Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)) and Section 241.4 of Title 56 of Oklahoma Statutes (56 O.S. § 241.4), TANF recipients must not use a debit or electronic benefit transfer (EBT) card containing TANF cash assistance in prohibited businesses. Refer to OAC 340:10-1-3(13) for a list of prohibited businesses and the definition of an EBT transaction.

(1) When it is determined the parent or caretaker violated provisions per OAC 340:10-1-3(13), the TANF cash assistance payment standard is reduced:

(A) 25 percent for three months for the first violation;

(B) 35 percent for six months for the second violation;

(C) 50 percent for 12 months for the third violation; and

(D) permanently by deeming the parent or needy caretaker ineligible for TANF benefits for subsequent violations.

(2) When the parent or needy caretaker is permanently deemed ineligible to receive TANF cash assistance for this reason and all other factors of eligibility are met, he or she may receive child only benefits. The ineligible parent's earned and unearned income is considered in its entirety.

(3) The amount of the penalty reduction applies as FSPI for SNAP per OAC 340:50-7-29(c)(1)(A).

(~~h~~i) **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, no consideration is given to ~~that parent's~~his or her 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~~close, 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~~j) **TANF eligibility when the child(ren) is placed in out-of-home care.** When Child Welfare (CW) staff removes the child(ren) ~~is removed by a child protection action~~from the home and ~~it is~~ reasonably ~~anticipated~~anticipates the child(ren) will return ~~to the~~ home within four months, the natural or adoptive parent or needy caretaker relative ~~continues~~ may continue to be eligible ~~for~~to receive an adult only TANF benefit~~, if~~ per OAC 340:10-3-56(a)(2)(B)(ii). The adult remains eligible when all other conditions of eligibility are met unless the child(ren) is placed with a relative requesting needy caretaker benefits. The child(ren) must be removed from the TANF benefit effective the next advance notice deadline date per Appendix B-2, Deadlines for Case Actions.

(1) A team consisting of the worker, ~~Child Welfare (~~CW~~) worker~~specialist, natural or adoptive parent or needy caretaker relative, and any other appropriate ~~partner(s)~~ partner must meet to develop a mutually agreed upon plan of action. ~~This~~The plan ~~addresses~~must include the parent or needy caretaker's employability plan and strategies to correct the conditions that 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~~adult only TANF ~~benefits are discontinued~~benefit is closed.

(~~j~~k) **Strikers.** The assistance unit is not eligible for TANF for any month the natural or adoptive parent, whether 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.

340:10-3-59. Assistance benefits

(a) **Availability of funds.** ~~If funds in any category of assistance are not sufficient to meet the full need of all persons in that category within the Oklahoma Department of Human Services (OKDHS) policy, the Commission for Human Services (Commission) specifies the percentage of total requirements for which funds are available. The formula for computing the~~

~~assistance payment is the need standard multiplied by the percent specified by the Commission equals the payment standard. The payment standard minus the total available net income equals the amount of the assistance payment.~~The Oklahoma Temporary Assistance for Needy Families (TANF) Cash Assistance Program is funded by a federal TANF block grant. In the event of insufficient block grant funds, the program may be terminated or benefits not paid during the insufficiency period.

(b) **Maximum benefits.** The maximum benefit a ~~Temporary Assistance for Needy Families (~~TANF~~)~~ assistance unit is eligible to receive cannot exceed a nine-person payment standard. A TANF eligible child(ren) who is not a blood-related sibling to the other TANF eligible child(ren) must ~~have his or her own~~receive benefits in a separate case per Oklahoma Administrative Code (OAC) 340:10-3-56(a).

(c) **Minimum payments.** The minimum TANF benefit paid to a recipient is $10 except for recoupment of an overpayment per OAC 340:65-9-6. ~~No TANF benefit is issued when the family is eligible for a monthly benefit of less than $10. However, the~~The TANF case ~~is eligible as an active case~~remains open and, when applicable per OAC 340:10-2, the parent or needy caretaker is subject to TANF Work participation rules. The assistance unit remains eligible for SoonerCare (Medicaid) and ~~the family can~~may continue to receive food benefits in this case, ~~if~~when eligible.

(d) **Payment to minors.** Minors may be considered as the adult payee for TANF on behalf of others ~~if~~when the ~~person~~minor is assuming the responsibilities of an adult and meets all conditions of eligibility for TANF. Refer to OAC 340:10-3-56(3)(O) for rules regarding when a minor parent may not be considered part of the assistance unit.

(e) **Overpayments.** ~~The overpayment may be the whole or any part of the benefit or vendor payment made when~~When the recipient received assistance but did not meet all conditions of eligibility, refer to OAC 340:65-9 for overpayment procedures.

(f) **~~Non-conditioning~~Flat grant system and use of benefits.** The flat grant system of budgeting was developed to determine the extent of need based on the number of eligible persons ~~and is not interpreted to restrict in any way the use the recipient makes of the TANF benefit~~.

(1) ~~This also~~A flat grant precludes any agreement on the part of ~~OKDHS~~Oklahoma Department of Human Services (DHS) to pay or guarantee payment for goods or services provided to recipients by vendors in lieu of a money payment.

(2) Per OAC 340:65-3-6, DHS issues TANF cash assistance by debit card or direct deposit.

(3) Except per OAC 340:10-1-3(13), DHS does not restrict where the recipient uses the TANF benefit.

[OAR Docket #14-447; filed 6-9-14]

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

[OAR Docket #14-446]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. Eligibility for Benefits
340:65-3-6 [AMENDED]
(Reference WF 14-02)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162; Public Law 112-96 § 4004, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)); 7 U.S.C. § 2012; and 56 O.S. § 241.4.
DATES:
Adoption:
May 13, 2014
Approved by Governor:
June 2, 2014
Effective:
July 1, 2014
Expiration:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Emergency rulemaking approval is requested to comply with recently effective federal law and state statute changes regarding restrictions on the use of debit cards with state and federal funds used in designated, prohibited locations.
ANALYSIS:
The proposed amendments to Chapter 65 Subchapter 3 amend the rule to: (1) add debit or electronic benefit transfer (EBT) card transaction restrictions to prevent use of cards containing federal or state funds in certain businesses per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a)(12) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)) and Section 241.4 of Title 56 of Oklahoma Statutes (56 O.S. § 241.4); (2) add client contact and assistance requirements prior to closing the State Supplemental Payment (SSP) or Temporary Assistance for Needy Families (TANF) benefit when notified benefits were expunged due to the client's failure to activate his or her debit card; (3) add reopening information; (4) reorganize information included in the Section for clarity; (5) add clarifying language regarding debit card and direct deposit routine procedures and issuance problem procedures; and (6) update terminology.
CONTACT PERSON:
Dena Thayer at 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE JULY 1, 2014 AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-6. Payment method for Temporary Assistance for Needy Families (TANF) and State Supplemental Payment (SSP) benefits

(a) **Payment method choices.** ~~When an applicant applies for Temporary Assistance for Needy Families (TANF)~~The Oklahoma Department of Human Services (DHS) issues TANF and~~or State Supplemental Payment (~~SSP~~)~~ benefits~~, the worker advises the applicant that these benefits are issued~~ through a contractor on a debit card or by direct deposit. DHS initially issues the benefit on a debit card.

(1) After the first benefit issues, the recipient may continue to receive benefits by debit card or change the payment method to direct deposit.

(2) The recipient may switch between direct deposit and debit card as needed.

(b) **Debit card procedures.** Debit card procedures are listed in (1) through (7) of this paragraph.

(1) ~~When~~Unless the applicant was previously issued a debit card ~~has not previously been issued to the applicant~~, it is issued ~~when benefits are placed in~~to the applicant after the application is placed in application status or after benefits are approved.

(A) ~~When a~~A debit card ~~has previously been issued to~~issues after the application is placed in application status when the applicant~~, a new one is not sent~~was previously issued a client number. ~~It is activated once benefits are approved.~~ DHS assigns a client number to a person after he or she is approved for a DHS benefit or when the person has an open child support case with DHS Child Support Services (CSS).

(B) When the applicant does not have a client number, the debit card issues after the worker certifies the TANF or SSP benefit.

(C) DHS does not issue a debit card to an applicant when he or she was previously issued a debit card. When the applicant states he or she no longer has the debit card, the applicant must call 1-888-401-9843, the contractor's customer service telephone number, to obtain a replacement card.

(2) Once the ~~client~~applicant receives the debit card, he or she must call the customer service telephone number located on the back of the debit card to activate the card and choose a personal identification number (PIN).

(3) Initial and replacement debit cards are mailed to the applicant or recipient's mailing address along with information regarding:

(A) the customer service telephone number the applicant must call to activate the debit card or to report a lost or stolen card;

(B) how to make purchases using the debit card or get cash from participating automated teller machine (ATM) locations;

(C) free services, including two free ATM withdrawals per calendar month from the Bank of Oklahoma and Transfund banking locations, and fees;

(D) how to request an alternate cardholder or switch to direct deposit; and

(E) the website address where the applicant may access his or her account balance and transaction information.

(4) The recipient is eligible for a free replacement card once every 12 months upon request. The recipient is charged a fee when he or she requests a replacement card more than once every 12 months. The debit card expires every three years and a free replacement is sent to recipients with open benefits.

(~~3~~5) The ~~client~~recipient may choose another person to be a secondary cardholder for the benefits. When there is a substitute payee for the TANF benefit per Oklahoma Administrative Code (OAC) 340:65-5-66, the substitute payee is the secondary cardholder.

(A) The recipient and the secondary cardholder must complete and sign a Secondary Cardholder Request form and return it to the address listed on the form before a debit card is issued to the secondary cardholder.

(B) The ~~client must either contact~~recipient obtains the Secondary Cardholder Request form by contacting the customer service telephone number located on the back of the debit card ~~to requestthis~~ or ~~download~~downloading the ~~alternate cardholder request~~ form from www.eppicard.com. ~~The client and the secondary cardholder must complete and sign the form and return it to the address on the form before a debit card is issued to the secondary cardholder.~~

(C) After the secondary cardholder receives the debit card, he or she must choose a PIN number ~~before accessing~~to access benefits.

(~~4~~6) When the ~~client~~recipient advises the ~~Oklahoma Department of Human Services (OKDHS)~~(DHS) staff that he or she ~~never received~~did not receive the debit card, the worker checks to see if ~~it was returned as undeliverable~~the recipient's address changed. If the address changed, the worker updates the system with the correct address. The recipient must call the customer service telephone number to request a replacement card.

~~(5)There are certain fees a client may be charged when using a debit card. A list of fees may be found at www.eppicard.com. The client is sent information about fees when a debit card is first issued. The client may access account and transaction information online at www.eppicard.com free of charge at any time.~~

(~~6~~7) ~~If~~When the ~~client~~recipient fails or refuses to activate his or her debit card within 90 calendar days, the benefits are expunged from the debit card and ~~the contractor returns any funds~~loaded on a debit card returned to ~~OKDHS~~DHS.

(A) Upon notification of expunged benefits, the worker contacts the recipient to offer assistance in pinning the debit card.

(i) When the worker is unable to reach the recipient by telephone, the worker sends Form 08AD092E, Client Contact and Information Request, and gives the recipient 10 calendar days to contact the worker.

(ii) When the worker is able to talk to the recipient, the worker determines why the recipient did not pin the debit card and offers assistance. The worker advises the recipient to pin the debit card within 10 calendar days and let the worker know when it is pinned so he or she can restore expunged benefits to the debit card. If the client does not contact the worker within 10 calendar days to reissue the expunged benefits, the worker sends Form 08AD092E and gives the client 10 calendar days to respond.

(B) ~~These~~The funds may be reloaded on the ~~client's~~recipient's debit card if he or she pins the debit card and requests ~~from OKDHS~~DHS reissuance within 365 calendar days of the issuance date ~~of issuance~~.

(~~A~~C) ~~For SSP, when~~When the ~~client~~recipient fails or refuses to pin the debit card within ~~90~~10 calendar days ~~and attempts have been made to urge the client to do so~~ of issuing Form 08AD092E, the worker closes the TANF or SSP benefit due to non-cooperation. When the:

(i) TANF benefit closes due to non-cooperation, the assistance unit's SoonerCare (Medicaid) benefit closes. When the recipient wants to continue to receive SoonerCare (Medicaid) benefits, he or she must reapply through the Oklahoma Health Care Authority's online enrollment system; and

(ii) SSP benefit closes due to non-cooperation, the recipient's SoonerCare (Medicaid) benefit remains open.

(~~B~~D) ~~For~~The recipient's TANF~~, the worker does not close the~~or SSP benefit may be reopened when the ~~client fails to pin~~recipient pins the debit card and notifies the worker within ~~90~~30 calendar days of closure.

(c) **Electronic benefit transfer (EBT) transaction restrictions.** Electronic benefit transfer transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or service. Per Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, Section 608(a) of Title 42 of the United States Code (42 U.S.C. § 608(a)(12)), and Section 241.4 of Title 56 of Oklahoma Statutes, no debit or EBT card containing state or federal funds from programs including, but not limited to, TANF may be used in any transaction in any:

(1) liquor store. The term liquor store means any establishment that sells exclusively or primarily intoxicating liquor. The term does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods per Section 3(r) of the Food and Nutrition Act;

(2) casino, gambling casino, or gaming establishment except for:

(A) a grocery store that sells groceries, including staple foods per 7 U.S.C. § 2012, and also offers, or is located within the same building or complex as an establishment offering casino, gambling, or gaming activities; or

(B) any other establishment offering casino, gambling, or gaming activities incidental to the principal purpose of the business;

(3) retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment; or

(4) retail establishment whose principal business is that of selling cigarettes, cigars, or tobacco products.

(~~b~~d) **Direct deposit procedures.** Direct deposit procedures are listed in (1) through (7) of this paragraph.

(1) When the ~~client~~recipient prefers to receive benefits through direct deposit, he or she must ~~call the contractor's call center telephone number to request direct deposit. The contractor's staff mails or faxes a direct deposit form to the client to complete and return before benefits are issued by direct deposit. The client may also obtain a direct deposit formby accessing www.eppicard.comand downloading it~~.

~~(1) The client must~~ complete and sign the direct deposit form, provide a voided check or a savings account deposit slip, and return them to the address on the form.

(A) To obtain the direct deposit form, the recipient calls the customer service telephone number located on the back of the debit card, downloads a direct deposit form from the www.eppicard.com website, or obtains one from the worker.

(~~2~~B) ~~Once~~After receiving the completed form ~~is completed~~ and confirming account information ~~confirmed~~, the contractor has five ~~working~~business days to enter direct deposit information in the system.

(~~3~~C) Benefits are changed to direct deposit for the next payment due after direct deposit information is entered in the system.

(~~4~~D) Funds cannot be transferred from a debit card to direct deposit.

(~~c~~e) **Benefit issuance.** ~~The client's~~After the initial issuance, the recipient's cash benefit is deposited in the ~~client's~~recipient's checking or savings account on the first banking day of each month or loaded on the ~~client's~~recipient's debit card on the first day of each month.

(1) The funds are available for withdrawal after deposit.

(2) After the monthly benefit is deposited in the ~~client's~~recipient's account or loaded on the debit card, ~~OKDHS~~DHS is not responsible if someone other than the payee withdraws the funds. Banking regulations govern withdrawals.

(3) ~~Clients~~Recipients are encouraged to be prudent about giving withdrawal privileges or debit card access to other people.

~~(d) The client may switch from direct deposit to the debit card or from the debit card to direct deposit by calling the contractor's call center to request the change and following directions given by the contractor's staff.~~

(~~e~~f) **Issuance problem procedures.** When problems occur with direct deposit or debit card deposits, procedures for dealing with these problems are ~~detailed~~listed in (1) through (5) of this subsection.

(1) When ~~direct deposit cannot be accomplished for a~~the recipient provides incorrect account information, the TANF or SSP benefit cannot be deposited in the recipient's bank account~~,~~. ~~the~~The contractor's staff attempts to contact the ~~client~~recipient to obtain current banking information. When the ~~client~~recipient fails to provide current information or five calendar days ~~elapse~~lapse without contact, the contractor converts the payment method to a debit card. ~~If the client wishes to receive direct deposit again, the client~~The recipient must complete a new direct deposit form and provide current account information before another attempt is made to issue benefits through direct deposit.

(2) ~~If~~When~~a client reports that~~ a deposit ~~was~~is not made to ~~his or her~~the recipient's direct deposit account or loaded on the debit card, the ~~client~~recipient~~reports this~~must report the problem to the contractor's ~~call center~~customer service telephone number. The contractor handles any communication with banking institutions or ~~MasterCard~~debit card vendors and then contacts the ~~client~~recipient regarding resolution.

(3) ~~Payments may be made by direct deposit or debit card after the death of the payee.~~When the recipient dies while receiving benefits, questions may arise concerning unspent funds in the recipient's bank account or on his or her debit card.

(A) When ~~a payment is made after the death of the payee for which the payee~~the client is not eligible for a payment made after death to the recipient's debit card or bank account, an overpayment may be established against the estate.

(i) DHS notifies the debit card contractor to expunge the funds from the debit card, when possible.

(ii) Payments made by direct deposit, cannot be expunged or retrieved.

(B) ~~If~~When there are unused benefits on the debit card at the time of death for which the ~~client~~recipient was entitled and someone contacts ~~OKDHS~~DHS to request these benefits, he or she is advised to contact the customer service number located on the back of the ~~client's~~recipient's debit card ~~for assistance~~to request the funds. When unused funds remain in a bank account, the person must contact the financial institution to request the funds.

(4) When ~~a~~the recipient's cash benefit ~~is closed~~closes~~, the closure action automatically closes out direct deposit or debit card payments unless the client's cash benefit reopens.~~

~~(A) When the client's cash benefit is closed~~ due to transfer of eligibility to another TANF or SSP case, ~~direct deposit or debit card deposit~~the payment method is automatically transferred to the new case provided the client number of the payee in the closed and new case is the same.

~~(B)~~ When the ~~client's~~recipient's cash benefit ~~is closed and~~closes and he or she later reapplies and is approved with the same client number, the previously chosen payment method is used to issue the cash benefit. The ~~client~~recipient must call the contractor's ~~call center~~customer service telephone number to change the payment method or to update bank account information.

(5) When the payee for the cash benefit changes for any reason, ~~he or she~~the new payee is assigned a new client number ~~and a debit card is issued if~~unless one ~~has not~~was previously ~~been~~ issued ~~for the new client number~~to him or her.

(A) ~~The client must call the contractor's call center to set up direct deposit if he or she prefers that payment method.~~The new payee is considered an applicant. Refer to (a) and (b) of this Section regarding payment methods and initial payments.

(B) The new payee does not have access to benefits issued prior to the payee change.

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