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# The Oklahoma Register

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Oklahoma  
Secretary of State  
Office of Administrative Rules



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

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# Notices of Rulemaking Intent

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

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

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

## **TITLE 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 15. OAC GRANT PROGRAM**

*[OAR Docket #15-790]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

25:15-1-2. Definitions [AMENDED]

25:15-1-4. Programming Implementation Airport Grant Program Requirements and Procedures- [AMENDED]

### **SUMMARY:**

The proposed permanent rules allow the Oklahoma Aeronautics Commission to provide half of the required match for an airport that receives Non-Primary Entitlement funding as long as it will save the Commission state funds.

### **AUTHORITY:**

3 O.S. Section 85; Oklahoma Aeronautics Commission

### **COMMENT PERIOD:**

Persons may submit written or oral comments to Treasure Morgan at the Oklahoma Aeronautics Commission at PO Box 53305, Oklahoma City, OK 73152, or at [tmorgan@oac.ok.gov](mailto:tmorgan@oac.ok.gov), or by calling (405) 604-6915 during the period from October 16, 2015 through November 16, 2015.

### **PUBLIC HEARING:**

A public hearing will be held at 2:00 PM on Wednesday, November 18, 2015 at the Oklahoma Aeronautics Commission, Will Rogers Building, 2401 North Lincoln Boulevard, Room C-12, Oklahoma City, OK.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the contact person.

### **RULE IMPACT STATEMENT:**

Copies of the Rule Impact Statement may be obtained from the contact person on or after October 30, 2015.

### **CONTACT PERSON:**

Treasure Morgan, Aviation Education & Government Affairs Liaison, Oklahoma Aeronautics Commission, PO Box 53305, Oklahoma City, OK 73152, [tmorgan@oac.ok.gov](mailto:tmorgan@oac.ok.gov), (405) 604-6915.

*[OAR Docket #15-790; filed 9-17-15]*

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

*[OAR Docket #15-796]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

210:10-1-13. Educational services for children in residential care, treatment, or emergency shelter facilities [AMENDED]

### **SUMMARY:**

The proposed amendments to 210:10-1-13 update the rule in accordance with statutory changes. House Bill 2069 (2015) amended the residency statute at 70 O.S. § 1-113 to provide that a foster parent may choose among three options for a foster child's district of residence: the location of the current foster home, the location of the child's previous foster home, and the child's district of residence before being placed in foster care. The rule is updated to reflect these options and another statutory change, which extends the timeframe when the district of residence must be notified of a child's admittance to a facility from "within 7 days of admittance" to "within 11 days of admittance".

### **AUTHORITY:**

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1-113

### **COMMENT PERIOD:**

Written comments on the proposed rule(s) will be accepted from October 15, 2015 until 4:30 p.m., Monday, November 16, 2015.

Written comments in electronic form will be accepted during the open public comment period via email at [rules@sde.ok.gov](mailto:rules@sde.ok.gov) or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

### **PUBLIC HEARING:**

A public hearing is scheduled for 2:00 p.m. on Monday, November 16, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing.

# Notices of Rulemaking Intent

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Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

## **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

## **COPIES OF PROPOSED RULES:**

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

## **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

## **CONTACT PERSON:**

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

*[OAR Docket #15-796; filed 9-25-15]*

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

*[OAR Docket #15-797]*

## **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

## **PROPOSED RULES:**

- Subchapter 3. Priority Academic Student Skills
- Part 15. Oklahoma Standards for World Languages
- 210:15-3-133. Overview [REVOKED]
- 210:15-3-133.1. Definitions [REVOKED]
- 210:15-3-134. Language(s) awareness k-grade 3 [REVOKED]
- 210:15-3-135. Novice level range [REVOKED]
- 210:15-3-136. Intermediate level range [REVOKED]
- 210:15-3-137. Pre-advanced level range [REVOKED]

## **SUMMARY:**

The Oklahoma Standards for World Languages were revised as scheduled in 2015, under the new approval procedure established by House Bill 3399 (2014). HB 3399

removed the approval of academic subject standards from the administrative rulemaking process. Now that the new standards have received legislative approval and been codified under five new rule sections in Part 15, the superseded former standards must be revoked to update the code.

## **AUTHORITY:**

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 11-103.6a

## **COMMENT PERIOD:**

Written comments on the proposed rule(s) will be accepted from October 15, 2015 until 4:30 p.m., Monday, November 16, 2015.

Written comments in electronic form will be accepted during the open public comment period via email at [rules@sde.ok.gov](mailto:rules@sde.ok.gov) or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

## **PUBLIC HEARING:**

A public hearing is scheduled for 2:00 p.m. on Monday, November 16, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

## **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

## **COPIES OF PROPOSED RULES:**

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

## **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

## **CONTACT PERSON:**

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard,

Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #15-797; filed 9-25-15]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 20. STAFF**

[OAR Docket #15-798]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 27. Support Personnel  
210:20-27-1. Support personnel; reporting requirements  
[AMENDED]

**SUMMARY:**

The rule governing school district reporting requirements for support personnel must be updated to incorporate changes made this year to the reporting dates in the certified personnel rule. The list of required report elements is also simplified.

**AUTHORITY:**

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1-113

**COMMENT PERIOD:**

Written comments on the proposed rule(s) will be accepted from October 15, 2015 until 4:30 p.m., Monday, November 16, 2015.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

**PUBLIC HEARING:**

A public hearing is scheduled for 2:00 p.m. on Monday, November 16, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also

available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

**CONTACT PERSON:**

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #15-798; filed 9-25-15]

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 25. FINANCE**

[OAR Docket #15-799]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Funding Criteria  
210:25-3-4. Personnel [AMENDED]

**SUMMARY:**

The proposed amendment removes language that too broadly states the eligibility of certain teachers for credit for years of teaching service. Certified teachers employed by charter schools are eligible to accrue years of service in the same manner as teachers in traditional public schools, although the minimum salary schedule itself does not apply to charter schools. However, some Statewide Virtual Charter Schools do not directly contract with their teachers and instead contract with a third party education services provider which employs the teachers. Because teachers who work for these third party contractors are not actually employees of the school, years of service cannot be counted for these indirectly employed teachers. The amendment is necessary because the language of subsection (o) is overbroad, implying that all teachers at Statewide Virtual Charter Schools are eligible for years of service credit regardless of their employment status. Certified teachers who contract directly with Statewide Virtual Charter Schools are and will remain eligible for credit for years of service, but striking the problematic language from the rule will prevent confusion over eligibility.

**AUTHORITY:**

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

## Notices of Rulemaking Intent

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### COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from October 15, 2015 until 4:30 p.m., Monday, November 16, 2015.

Written comments in electronic form will be accepted during the open public comment period via email at [rules@sde.ok.gov](mailto:rules@sde.ok.gov) or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

### PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Monday, November 16, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

### COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

### CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

*[OAR Docket #15-799; filed 9-25-15]*

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## TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 25. FINANCE

*[OAR Docket #15-800]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Subchapter 7. Classification of Financial Transactions  
210:25-7-1. Oklahoma Cost Accounting System  
[AMENDED]

### SUMMARY:

The rule governing the Oklahoma Cost Accounting System (OCAS) must be updated to reflect changes to federal regulations and guidance. The definition for "Equipment" includes an acquisition cost of at least \$2,500, which will be amended to \$5,000 to reflect a revised dollar amount in the Code of Federal Regulations definition. A reference to an outdated handbook is also updated, and a statement is added referring to the availability of the OCAS manual on the State Department of Education website.

### AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 2 C.F.R. § 200.33

### COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from October 15, 2015 until 4:30 p.m., Monday, November 16, 2015.

Written comments in electronic form will be accepted during the open public comment period via email at [rules@sde.ok.gov](mailto:rules@sde.ok.gov) or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

### PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Monday, November 16, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

### COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also

available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

**CONTACT PERSON:**

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

*[OAR Docket #15-800; filed 9-25-15]*

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

*[OAR Docket #15-789]*

**INTENDED RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking  
**PROPOSED RULES:**

- Subchapter 1. General Provisions
- 240:10-1-2. Definitions [AMENDED]
- 240:10-1-6. Date of Receipt of Payments [NEW]
- Subchapter 3. Benefits
- Part 5. Eligibility
- 240:10-3-22. Filing Claims for Benefits [AMENDED]
- Part 11. Filing Claims - Notice
- 240:10-3-54. ~~E-mail~~ Electronic Notification for Employer in Unemployment Benefit Claims [AMENDED]

**SUMMARY:**

The amendments to these rules will limit a "temporary layoff" to no more than eight (8) weeks; set out more clearly the date that a payment of money is deemed to be received by the Commission; clarify that unemployment benefit claims must be filed by the claimant and not a third party; and provide for electronic notification for employers of unemployment benefit claim information through the employer portal system.

**AUTHORITY:**

40 O.S. §§2-203, 2-503, 4-302 and the Oklahoma Employment Security Commission.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

The Oklahoma Employment Security Commission requests that business entities affected by this rule provide the Oklahoma Employment Security Commission, within the

comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

**COMMENT PERIOD:**

Written and oral comments will be accepted through November 16, 2015, during regular business hours by the contact person listed below.

**PUBLIC HEARING:**

A public hearing will be scheduled for November 16, 2015, at 9:00 a.m. in the OESC Commission Room, 5<sup>th</sup> Floor, Will Rogers Building 2401 North Lincoln Boulevard, Oklahoma City, OK 73105.

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained for review from the contact person listed below.

**RULE IMPACT STATEMENT:**

Copies of the Rule Impact Statement may be obtained for review from the contact person listed below.

**CONTACT PERSON:**

For information regarding processing of proposed rulemaking for this agency contact Gina Antipov at P.O. Box 53039, Oklahoma City, OK 73152-3039, 405/557-7146, Fax: 405/557-5320, E-Mail: [Gina.Antipov@oesc.state.ok.us](mailto:Gina.Antipov@oesc.state.ok.us).

*[OAR Docket #15-789; filed 9-15-15]*

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #15-794]*

**RULEMAKING ACTION:**

Notice of proposed **PERMANENT** rulemaking  
**PROPOSED RULES:**

- Subchapter 23. Oklahoma Higher Learning Access Program
- 610:25-23-2. Eligibility of participants [AMENDED]

**SUMMARY:**

The proposed rule changes address the following issues:  
The proposed revision implements an amendment to the Oklahoma Higher Learning Access Program, known as Oklahoma's Promise, statutes as passed in SB 137 of the 2015 Oklahoma Legislative. The amendment relates to the determination of financial eligibility of students applying for the program in the 8<sup>th</sup>, 9<sup>th</sup> or 10<sup>th</sup> grade. The new statutory language requires the State Regents to review the financial eligibility of the student if the income of the student's parent(s) includes income from either non-taxable military benefits or Social Security benefits due to the death or disability of a parent (Social Security retirement benefits are not included in the review). If the review determines that the total income

## Notices of Rulemaking Intent

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of the parent(s), excluding non-taxable military benefits and Social Security benefits due to the death or disability of a parent, does not exceed \$50,000, then the student will be eligible to enroll in the program.

**AUTHORITY:**

70 O.S. §2601 *et seq.*; 70 O.S. §3206 (i); Oklahoma State Regents for Higher Education

**COMMENT PERIOD:**

Interested persons may submit written and oral comments to David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., November 16, 2015.

**PUBLIC HEARING:**

A public hearing has not been scheduled; however, one can be requested by contacting David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., November 16, 2015.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

**RULE IMPACT STATEMENT:**

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after October 30, 2015.

**CONTACT PERSON:**

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

*[OAR Docket #15-794; filed 9-24-15]*

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### **TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

*[OAR Docket #15-795]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 31. Oklahoma Tuition Equalization Grant Program

610:25-31-3. Eligibility Requirements [AMENDED]

610:25-31-5. Refunds, ~~and~~ institutional liability, and complaint process [AMENDED]

**SUMMARY:**

One of the proposed rule revisions is due to an amendment to the Oklahoma Tuition Equalization Grant (OTEG) statutes in Senate Bill 414 of the 2015 Oklahoma legislative session. The amendment was necessary to comply with the United States Department of Education (USDE) "state authorization" regulations that went into effect on July 1, 2015. For a postsecondary institution to be eligible to participate in federal student financial aid programs, the federal regulations require the institution to have certain types of state oversight and approvals. One requirement is that each state must have a process to review and act appropriately upon complaints concerning the institution. To comply with this provision, the rule revision reflects the new statutory language in SB 414 directing OTEG-eligible institutions to adhere to the complaint process administered by the Oklahoma State Regents for Higher Education.

The second policy revision corrects wording related to the \$50,000 family income limit to be consistent with the existing statutory language.

**AUTHORITY:**

70 O.S. §§ 2630-2632; 70 O.S. §3206(i); Oklahoma State Regents for Higher Education

**COMMENT PERIOD:**

Interested persons may submit written and oral comments to David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., November 16, 2015.

**PUBLIC HEARING:**

A public hearing has not been scheduled; however, one can be requested by contacting David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., November 16, 2015.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of proposed rules may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

**RULE IMPACT STATEMENT:**

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after October 30, 2015.

**CONTACT PERSON:**

David B. Harting, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

*[OAR Docket #15-795; filed 9-24-15]*

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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.

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 410. RADIATION MANAGEMENT**

*[OAR Docket #15-793]*

**RULEMAKING ACTION:**

Submission for gubernatorial and legislative review

**RULES:**

Subchapter 1. General Provisions

252:410-1-7. Incorporation of federal regulations by reference [AMENDED]

Subchapter 10. Radioactive Materials Program

Part 1. General Provisions

252:410-10-1. Radioactive Materials Program [AMENDED]

Part 37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material [NEW]

252:410-10-37. 10 CFR 37 incorporations by reference [NEW]

Part 40. Domestic Licensing of Source Material

252:410-10-40. 10 CFR 40 incorporations by reference [AMENDED]

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

September 18, 2015

*[OAR Docket #15-793; filed 9-22-15]*

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

*[OAR Docket #15-791]*

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 34. Feral Swine  
35:15-34-3. Importation of feral swine [NEW]

### AUTHORITY:

Oklahoma Constitution, Article 6, Section 31; 2 O.S. § 2-4; and 2 O.S. § 6-601 et seq.; Oklahoma State Board of Agriculture

### ADOPTION:

August 11, 2015

### APPROVED BY GOVERNOR:

August 24, 2015

### EFFECTIVE:

Immediately upon Governor's approval

### EXPIRATION:

Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

After recent violations of the Feral Swine Control Act where feral swine that tested positive for pseudorabies and brucellosis were transported into Oklahoma from Texas, the State Veterinarian and the State Board of Agriculture have determined it to be necessary to ban importation of feral swine without the express written consent of the State Veterinarian. The State Veterinarian issued a ninety (90) day emergency order banning the importation of live feral swine on May 20, 2015 and renewed on July 20, 2015.

Pursuant to the Feral Swine Control Act, 2 O.S. § 6-601 *et seq.*, no person shall import live feral swine into Oklahoma unless the live feral swine are going directly to a slaughter facility in a sealed trailer and accompanied by a USDA vs 1-27 permit for the movement of restricted animals. The State Board of Agriculture finds it necessary to impose a ban on the import of feral swine, with only limited exceptions.

As a result of the foregoing, the State Board of Agriculture determined that an emergency exists requiring a ban on the importation of feral swine.

### ANALYSIS:

The proposed emergency rules bans the importation of feral swine into the State of Oklahoma, except under the following conditions:

- a. The live feral swine are transported directly to a slaughter facility;
- b. The live feral swine are contained in a sealed trailer;
- c. The live feral swine are accompanied by a USDA vs 1-27 permit for the movement of restricted animals; and
- d. The live feral swine entering the State of Oklahoma are accompanied by a written consent order signed by the State Veterinarian.

### CONTACT PERSON:

Bennett Abbott, (405) 522-5803, bennett.abbott@ag.ok.gov

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

## SUBCHAPTER 34. FERAL SWINE

### **35:15-34-3. Importation of feral swine**

No person shall import live feral swine into this state unless the live feral swine are transported directly to a slaughter facility in a sealed trailer and are accompanied by a written consent order to enter the state signed by the State Veterinarian and a USDA vs 1-27 permit for the movement of restricted animals.

*[OAR Docket #15-791; filed 9-21-15]*

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

*[OAR Docket #15-802]*

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 79. Dentists  
317:30-5-696. [AMENDED]  
(Reference APA WF# 15-01)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.100

### ADOPTION:

August 12, 2015

### APPROVED BY GOVERNOR:

August 24, 2015

# Emergency Adoptions

## EFFECTIVE:

Immediately upon Governor's approval or October 1, 2015, whichever is later.

## EXPIRATION:

Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature.

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to add limited dental coverage for adults seeking organ transplant approval. Without the recommended revisions, untreated dental infections will interfere with the already compromised immune system and may lead to rejection of the organ.

## ANALYSIS:

Rules are amended to add limited dental services for adult SoonerCare members who meet all medical criteria, but need dental clearance to obtain organ transplant approval. These changes are needed to improve the long-term transplant survival for SoonerCare members.

## CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR OCTOBER 1, 2015, WHICHEVER IS LATER:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 79. DENTISTS

#### 317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

##### (1) Adults.

(A) Dental coverage for adults is limited to:

- (i) medically necessary extractions and approved boney adjustments. Tooth extraction must have medical need documented;
- (ii) Smoking and Tobacco Use Cessation Counseling; and
- (iii) medical and surgical services performed by a dentist or physician to the extent such services may be performed under State law when those services would be covered if performed by a physician.

(B) Payment is made for dental care for adults residing in private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and who have been approved for ICF/IID level of care, similar to the scope of services available to individuals under age 21.

(C) Limited dental services are available for members who meet all medical criteria, but need dental clearance to obtain organ transplant approval. Providers must have prior authorization for all services before delivery of dental service, with the exception of evaluation and extractions. All requests must be filed on the currently approved ADA form and must include diagnostic X-rays, six-point periodontal charting, narratives and comprehensive treatment plans. The OHCA will notify the provider of determination using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization request. The following dental services are available:

- (i) Comprehensive oral evaluation,
- (ii) two radiographic bitewings,
- (iii) prophylaxis,
- (iv) fluoride application,
- (v) limited restorative procedures, and
- (vi) periodontal scaling/root planing.

(2) **Home and community based waiver services (HCBWS) for the intellectually disabled.** All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. Dental services are defined in each waiver and must be prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for members under 21 years of age without prior authorization. All other dental services must be prior authorized. Anesthesia services are covered for children in the same manner as adults. All providers performing preventive services must be available to perform needed restorative services for those members receiving any evaluation and preventive services.

(A) **Comprehensive oral evaluation.** This procedure may be performed for any member every 36 months. An examination should precede any radiographs, and chart documentation must include radiographic interpretations, caries risk assessment and both medical and dental health history of member. The comprehensive treatment plan should be the final results of this procedure.

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record if not seen by a dentist for more than six months. An examination should precede any radiographs, and chart documentation must include radiographic interpretations, caries risk assessment and both medical and dental health history of member. The comprehensive treatment plan should be the final results of this procedure.

(C) **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the member is involved in active treatment unless trauma or acute infection is the presenting complaint. This

procedure is only compensable to the same dentist or practice for two visits prior to an examination being completed.

(D) **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be of diagnostic quality and medically necessary. A clinical examination must precede any radiographs, and chart documentation must include member history, prior radiographs, caries risk assessment and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Periapical radiograph must include at least 3 millimeters beyond the apex of the tooth being x-rayed. Panoramic films and full mouth radiographs (minimum of 12 periapical films and two posterior bitewings) are allowable once in a three year period and must be of diagnostic quality. Individually listed intraoral radiographs by the same dentist/dental office are considered a complete series if the fee for individual radiographs equals or exceeds the fee for a complete series. Panoramic films are only compensable when chart documentation clearly indicates reasons for the exposure based on clinical findings. This type of exposure is not to rule out or evaluate caries. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

(E) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on the interproximal and occlusal surfaces to be eligible for this service. This service is available through 18 years of age and is compensable once every 36 months if medical necessity is documented.

(F) **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.

(G) **Stainless steel crowns for primary teeth.** The use of any stainless steel crowns is allowed as follows:

- (i) Stainless steel crowns are allowed if:
  - (I) the child is five years of age or under;
  - (II) 70 percent or more of the root structure remains; or
  - (III) the procedure is provided more than 12 months prior to normal exfoliation.
- (ii) Stainless steel crowns are treatment of choice for:
  - (I) primary teeth treated with pulpal therapy, if the above conditions exist;
  - (II) primary teeth where three surfaces of extensive decay exist; or
  - (III) primary teeth where cuspal occlusion is lost due to decay or accident.
- (iii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(iv) Placement of a stainless steel crown is allowed once for a minimum period of 24 months. No other restoration on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(H) **Stainless steel crowns for permanent teeth.** The use of any stainless steel crowns is allowed as follows:

- (i) Stainless steel crowns are the treatment of choice for:
  - (I) posterior permanent teeth that have completed endodontic therapy if three or more surfaces of tooth is destroyed;
  - (II) posterior permanent teeth that have three or more surfaces of extensive decay; or
  - (III) where cuspal occlusion is lost due to decay prior to age 16 years.
- (ii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.
- (iii) Placement of a stainless steel crown excludes placement of any other type of crown for a period of 24 months. No other restoration on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(I) **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies and pulpal debridement are allowable once per lifetime. Pre-and post-operative periapical x-rays must be available for review, if requested. Therapeutic pulpotomies and pulpal debridement is available for the following:

- (I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;
- (II) Tooth numbers O and P before age 5 years;
- (III) Tooth numbers E and F before 6 years;
- (IV) Tooth numbers N and Q before 5 years;
- (V) Tooth numbers D and G before 5 years.

(ii) Therapeutic pulpotomies and pulpal debridement are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

(J) **Endodontics.** Payment is made for the services provided in accordance with the following:

- (i) This procedure is allowed when there are no other missing anterior teeth in the same arch requiring replacement.
- (ii) The provider documents history of member's improved oral hygiene and flossing ability in records.

## Emergency Adoptions

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- (iii) Prior authorization is required for members who have a treatment plan requiring more than two anterior and/or two posterior root canals.
  - (iv) Pre and post-operative periapical x-rays must be available for review.
  - (v) Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA.
  - (vi) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.
  - (vii) Endodontically treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.
- (K) **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.
- (i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:
    - (I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge.
    - (II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.
    - (III) If there are missing posterior teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.
    - (IV) The teeth numbers shown on the claim should be those of the missing teeth.
    - (V) Post-operative bitewing x-rays must be available for review.
    - (VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.
  - (ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:
    - (I) Lingual arch bar is used when permanent incisors are erupted and the second primary molar (K or T) is missing in the same arch.
    - (II) The requirements are the same as for band and loop space maintainer.
    - (III) Pre and post-operative x-rays must be available.
- (L) **Analgesia.** Analgesia services are reimbursable in accordance with the following:

- (i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four occurrences per year and is not separately reimbursable, if provided on the same date by the same provider as IV sedation, non-intravenous conscious sedation or general anesthesia. The medical need for this service must be documented in the member's record.
  - (ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date by the same provider as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of the member and /or the dentist, it must be medically necessary.
- (M) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted calcium hydroxide or Mineral Trioxide Aggregate materials, not a cavity liner or chemical used for dentinal hypersensitivity. Indirect and direct pulp cap codes require specific narrative support addressing materials used, intent and reasons for use. Application of chemicals used for dentinal hypersensitivity is not allowed as indirect pulp cap. Utilization of these codes is verified by post payment review.
- (N) **Protective restorations.** This restoration includes removal of decay, if present, and is reimbursable for the same tooth on the same date of service with a direct or indirect pulp cap, if needed. Permanent restoration of the tooth is allowed after 60 days unless the tooth becomes symptomatic and requires pain relieving treatment.
- (O) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, nurse midwives, Oklahoma State Health Department and FQHC nursing, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS) staff in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything

under three minutes is considered part of a routine visit.

[OAR Docket #15-802; filed 9-25-15]

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

[OAR Docket #15-801]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Eligibility and Countable Income  
Part 5. Countable Income and Resources  
317:35-5-41.8. [AMENDED]  
(Reference APA WF # 15-10)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 U.S. Code § 1396p

**ADOPTION:**

August 12, 2015

**APPROVED BY GOVERNOR:**

August 24, 2015

**EFFECTIVE:**

Immediately upon Governor's approval

**EXPIRATION:**

Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to amend long-term care eligibility rules to be consistent with federal regulation. Changes include modifying the home equity maximum amount of \$500,000 to include the increased annual percentage increase in the urban component of the consumer price index. Revisions clarify home exemption criteria for persons living in the home. In addition revisions include changes to how annuities are accessed.

**ANALYSIS:**

Agency long-term care eligibility rules are amended to be consistent with federal regulation. Changes include modifying the home equity maximum amount of \$500,000 to include the increased annual percentage increase in the urban component of the consumer price index. Revisions clarify home exemption criteria for persons living in the home. In addition revisions include changes to how annuities are accessed.

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

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

**SUBCHAPTER 5. ELIGIBILITY AND  
COUNTABLE INCOME**

**PART 5. COUNTABLE INCOME AND  
RESOURCES**

**317:35-5-41.8. Eligibility regarding long-term care services**

(a) **Home Property.** In determining eligibility for long-term care services for applications filed on or after January 1, 2006, home property is excluded from resources unless the individual's equity interest in his or her home exceeds \$500,000 (increased by the annual percentage increase in the urban component of the consumer price index beginning in 2011, rounded to the nearest \$1,000).

(1) Long-term care services include nursing facility services and other long-term care services. For purposes of this Section, other long-term care services include ~~services detailed in (A) through (B) of this paragraph.~~

(A) A level of care in any institution equivalent to nursing facility services; and

(B) Home and community-based services furnished under a waiver.

(2) An individual whose equity interest exceeds \$500,000 (increased by the annual percentage increase in the urban component of the consumer price index beginning in 2011, rounded to the nearest \$1,000) is not eligible for long-term care services unless one of the following circumstances applies:

(A) The individual has a spouse who is lawfully residing in the individual's home;

(B) The individual has a child under the age of twenty-one who is lawfully residing in the individual's home;

(C) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home; or

(D) The denial would result in undue hardship. Undue hardship exists when denial of SoonerCare long-term care services based on an individual's home equity exceeding \$500,000 would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(E) An individual may reduce their total equity interest in the home through the use of a reverse mortgage or home equity loan.

(3) Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The OKDHS Form 08MA010E, Acknowledgment of Temporary Absence/Home Property Policy, is completed at the time of application for nursing facility care when the applicant has home property. After an explanation of temporary absence, the member, guardian, or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable

## Emergency Adoptions

resource. For members in nursing facilities, a lien may be filed in accordance with OAC 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the member when it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return home. However, a lien is not filed on the home property of the member while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the 12 months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for SoonerCare benefits, and

(ii) after 12 months of nursing care, it is assumed there is no reasonable expectation the member will be discharged from the facility and return home and a lien may be filed against real property owned by the member for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the 12-month period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the member to return to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A member who leaves the nursing facility must remain in the home at least three months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, ~~minor child(ren) under 18, or relative who is aged, blind or disabled or a recipient of TANF~~minor child under 21, or child who is blind or permanently disabled resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse ~~or relative, minor child, or child who is blind or permanently disabled~~ lives there (regardless of whether the absence is temporary).

(G) ~~For purpose of this reference a relative is defined as: son, daughter, grandson, granddaughter, stepson, stepdaughter, in laws, mother, father, stepmother, stepfather, half sister, half brother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.~~

(HG) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(b) **Promissory notes, loans, or mortgages.** The rules regarding the treatment of funds used to purchase a promissory

note, loan, or mortgage on or after February 8, 2006, are found in (1) through (2) of this subsection.

(1) Funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are treated as assets transferred ~~for less than fair market value in, and the value of such note, loan, or mortgage shall be~~ the amount of the outstanding balance due on the note, loan, or mortgage as of the date of the individual's application for medical assistance unless the note, loan, or mortgage meets all of the conditions in paragraphs (A) through (C) of this paragraph.

(A) The note, loan, or mortgage has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration).

(B) The note, loan, or mortgage provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made.

(C) The note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

(2) Funds used to purchase a promissory note, loan, or mortgage for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The note, loan, or mortgage was purchased before February 8, 2006; or

(B) The note, loan, or mortgage was purchased on or after February 8, 2006, and the conditions described in paragraph (1) of this subsection were met.

(c) **Annuities.** Treatment of annuities purchased on or after February 8, 2006.

~~(1) The entire amount used to purchase an annuity on or after February 8, 2006, is treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in (A) through (C) of this paragraph.~~

(A) ~~The annuity is an annuity described in subsection (b) or (c) of Section 408 of the United States Internal Revenue Code of 1986.~~

(B) ~~The annuity is purchased with proceeds from:~~

(i) ~~An account or trust described in subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;~~

(ii) ~~A simplified employee pension as defined in Section 408(k) of the United States Internal Revenue Code of 1986;~~

(iii) ~~A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986;~~ or

(C) ~~The annuity:~~

(i) ~~is irrevocable and nonassignable;~~

(ii) ~~is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration; and~~

- (iii) ~~provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.~~
- (2) ~~In addition, the entire amount used to purchase an annuity on or after February 8, 2006, is treated as a transfer of assets unless the Oklahoma Health Care Authority is named as the remainder beneficiary either:~~
  - (A) ~~in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or~~
  - (B) ~~in the second position after the community spouse, child under 21 years of age, or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.~~
- (1) The purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless the Oklahoma Health Care Authority is named as the remainder beneficiary -
  - (A) in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or
  - (B) in the second position after the community spouse, child under 21 years of age, or disabled child and is named in the first position if the spouse or a representative of the child disposes of any such remainder for less than fair market value.
- (2) For purposes of determining financial eligibility for long-term care services under this chapter, the term "assets" shall include an annuity purchased by or on behalf of an annuitant who has applied for SoonerCare nursing facility services or other long-term care services unless the annuity meets one of the following conditions.
  - (A) The annuity is an annuity described in subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986; or
  - (B) The annuity is purchased with proceeds from:
    - (i) An account or trust described in subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;
    - (ii) A simplified employee pension as defined in Section 408(k) of the United States Internal Revenue Service Code of 1986;
    - (iii) A Roth IRA described in Section 408A of the United States Internal Revenue Service Code of 1986; or
  - (C) The annuity:
    - (i) is irrevocable and nonassignable;
    - (ii) is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration; and
    - (iii) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

- (d) **Life Estates.** This subsection pertains to the purchase of a life estate in another individual's home.
  - (1) The entire amount used to purchase a life estate in another individual's home on or after February 8, 2006, is treated as assets transferred for less than fair market value, unless the purchaser resides in the home for at least one year after the date of the purchase.
  - (2) Funds used to purchase a life estate in another individual's home for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:
    - (A) The life estate was purchased before February 8, 2006; or
    - (B) The life estate was purchased on or after February, 8, 2006, and the purchaser resided in the home for one year after the date of purchase.
- (e) **Oklahoma Long-Term Care Partnership (LTCP) Program.** This subsection pertains to individuals with Oklahoma Long-Term Care Partnership policies. The Oklahoma Insurance Department approves long-term care insurance policies as Long-term Care Partnership Program policies. The face page of the policy document will indicate if the insurance qualifies as a ~~Long-Term~~ Long-Term Care Partnership Program policy.
  - (1) Benefits from the LTCP policy must be exhausted before the individual can be eligible for ~~long term~~ long-term care under the SoonerCare program.
  - (2) Assets in an amount equal to the amount paid out under the LTCP policy can be protected for the insured individual once the LTCP policy benefits are exhausted. Protected assets are disregarded when determining eligibility for the SoonerCare program per 317:35-5-41.9(26). A record of the amount paid on behalf of the policy holder is available through the OHCA or insurance company holding the LTCP policy.
    - (A) At the time of application for SoonerCare the individual must determine the asset(s) to be protected. The protected asset(s) cannot be changed. If the value of the protected asset(s) decreases, the individual does not have the option to select additional assets to bring the total up to the protected amount.
    - (B) If the protected asset(s) are income-producing, the income earned while on SoonerCare is counted in accordance with 317:35-5-42.
    - (C) The individual can choose to transfer the protected asset without incurring a transfer of assets penalty.
    - (D) When determining resource eligibility for a couple when one of them enters the nursing home or applies for a HCBS waiver, the LTCP protected asset(s) are disregarded in determining the total amount of the couple's resources.

[OAR Docket #15-801; filed 9-25-15]



# 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

**1:2015-40.**

### EXECUTIVE ORDER 2015-40

WHEREAS, pursuant to Section 2 of Article 6 of the Oklahoma Constitution, the Supreme Executive power is vested in the Governor of the State of Oklahoma;

WHEREAS, the Craig County Hospital Authority is a public trust created pursuant to the Oklahoma Public Trust Act (60 O.S. §§ 176-180.4), with one of its beneficiaries being the State of Oklahoma;

WHEREAS, 60 O.S. § 176(C) and (D) provide that the Governor of Oklahoma has executive oversight of an entity created under the Oklahoma Public Trust Act, to include approval and oversight of bylaws of the trust and all amendments of operations;

WHEREAS, 11 U.S.C. § 109(c)(2) provides, among other things, that in order to qualify as a debtor under chapter 9, Craig County Hospital Authority must be specifically authorized to be a debtor by a governmental officer or organization empowered by State law to make such authorization; and

WHEREAS, it is in the public interest for Craig County Hospital Authority to be able to avail itself of Bankruptcy Court so as to negotiate, in good faith, settlement of claims with its creditors, including, but not limited to, claims held by the Oklahoma Public Employees' Retirement System.

NOW, THEREFORE, I, MARY FALLIN, Governor of the State of Oklahoma, by virtue of the Constitutional and statutory authority vested in me, and pursuant to 11 U.S.C. § 109(c)(2), do hereby authorize Craig County Hospital Authority to be a debtor under Chapter 9 of the Bankruptcy Code.

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 21<sup>st</sup> day of September, 2015.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:

Chris Morriss, Assistant Secretary of State  
Chris Bengel, Secretary of State

*[OAR Docket #15-792; filed 9-21-15]*

**1:2015-41.**

### EXECUTIVE ORDER 2015-41

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct that appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff upon receipt to 5:00 p.m. on Tuesday, September 29, 2015, to honor former Representative Jerry Sokolosky, who passed away on Sunday, September 27, 2015.

Jerry Sokolosky was elected to serve in the Oklahoma House of Representatives in 1964. He served in the House of Representatives until 1968. Afterwards, he remained active in both state and national politics. He was appointed by President Carter to serve on the Judicial Selection Committee. His commitment to public service and the law is greatly appreciated and shall not be forgotten.

This Executive Order shall be forwarded to the Department of Capital Assets Management, 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 29<sup>th</sup> day of September, 2015.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Chris Bengé  
Secretary of State

*[OAR Docket #15-808; filed 9-30-15]*  
\_\_\_\_\_

**1:2015-42.**

### EXECUTIVE ORDER 2015-42

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to Section 10 of Article 6 of the Oklahoma Constitution, hereby grant a stay of the execution of Richard Eugene Glossip of thirty-seven days from the current scheduled date of execution, September 30, 2015. This stay is ordered due to the Department of Corrections having received potassium acetate as drug number three for the three-drug protocol. This stay will

give the Department of Corrections and its attorneys the opportunity to determine whether potassium acetate is compliant with the execution protocol and/or to obtain potassium chloride. The execution for Richard Eugene Glossip is therefore scheduled for Friday, November 6, 2015.

This Executive Order shall be forwarded to the Director of the Oklahoma Department of Corrections and the Oklahoma Attorney General 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 30<sup>th</sup> day of September, 2015.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Chris Bengé  
Secretary of State

*[OAR Docket #15-809; filed 9-30-15]*  
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