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Oklahoma **TOURISM** and Recreation Department	725
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Oklahoma **TURNPIKE** Authority (*Formerly:* Oklahoma **TRANSPORTATION** Authority AND Oklahoma **TURNPIKE** Authority) - *See* also Title 745	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College *(exempted 11-1-98)*	740
Oklahoma **TURNPIKE** Authority (*Name changed to* Oklahoma **TRANSPORATION** Authority *11-1-99 - no rules enacted in this Title - See* Title 731)	745
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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 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #16-721]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:410-1-7 [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 1. General Provisions
252:410-10-1 [AMENDED]
Part 37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
252:410-10-37 [AMENDED]
Part 71. Packaging and Transporting Radioactive Material
252:410-10-71 [AMENDED]

SUMMARY:

The proposed rulemaking adopts recent revisions to NRC regulations by updating the date for incorporation of federal regulations by reference to January 1, 2016. Requirements on reporting and on protecting Safeguards information are moved from 10 CFR Parts 30 and 73 to 10 CFR Part 37 to consolidate Safeguards requirements in a single Part. Part 37 is also updated to give relief from fingerprinting and background checks to certain commercial vehicle drivers. Shipping requirements for radioactive material in 10 CFR Part 71 are revised to harmonize with International Atomic Energy Agency transportation requirements, and definitions are added or revised to conform with the updated shipping requirements. The recent revisions to NRC regulations that are adopted also include a number of miscellaneous corrections, including correction of typographical errors in 10 CFR Part 37 and Part 40, changing titles of various NRC officials, updating a web site address, and capitalizing the term "Tribe" in numerous locations, including 10 CFR Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150. The gist of the rule and the underlying reason for the rule is that adoption of these changes is required for the Oklahoma Radiation Management program to remain compatible with federal rules, and is required under the terms of the transfer of authority in the Agreement between the federal Nuclear Regulatory Commission and the state of Oklahoma.

AUTHORITY:

Environmental Quality Board and Radiation Management Advisory Council powers and duties; 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-9-104, and 2-9-105.

COMMENT PERIOD:

Written comments may be submitted to the contact person from August 15, 2016, through September 28, 2016. Oral comments may be made at the Radiation Management Advisory Council meeting on September 29, 2016, and the Environmental Quality Board meeting on November 9, 2016.

PUBLIC HEARINGS:

Before the Radiation Management Advisory Council on September 29, 2016, at 10:00 a.m., in room A-144, Tulsa Tech - Riverside Campus, 801 E. 91st Street, Tulsa, Oklahoma 74132.

Before the Environmental Quality Board meeting on November 9, 2016, at 9:30 a.m., at Carolyn Renfro Event Center, 445 Fairview Avenue, Ponca City, Oklahoma 74601.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by this proposed rulemaking provide the DEQ, within the comment period and in dollar amounts if possible, the increase or decrease in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, 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.

COPY OF PROPOSED RULE:

The proposed rule may be obtained from the contact person, reviewed in person at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at the DEQ website at www.deq.state.ok.us/LPDnew/LPProprules.htm.

RULE IMPACT STATEMENT:

The rule impact statement for the proposed rule will be on file at the Department of Environmental Quality and may be requested from the contact person or reviewed online at the DEQ website at www.deq.state.ok.us/LPDnew/LPProprules.htm.

CONTACT PERSON:

Contact Mike Broderick, Environmental Programs Manager, Radiation Management Section, Land Protection Division at mike.broderick@deq.ok.gov or (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. The TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #16-721; filed 7-25-16]

Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption," as defined in 75 O.S., Section 250.3(5), of the proposed rules.

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

Permanent rules are published in the *Oklahoma Administrative Code*, along with a source note entry that cites the *Register* publication of the finally adopted rules in the permanent rule document.

For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 308, 308.1 and 308.3.

TITLE 38. OKLAHOMA BOARD OF LICENSED ALCOHOL AND DRUG COUNSELORS.
CHAPTER 10. LICENSURE AND CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

[OAR Docket #16-419]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Application
38:10-7-7. Examinations [AMENDED]
38:10-7-10. Co-Occurring Disorders Credential Rules [AMENDED]
Subchapter 9. Supervision
38:10-9-2. Supervised work experience requirement [AMENDED]
Subchapter 11. Fees
38:10-11-1. Schedule of fees [AMENDED]
AUTHORITY:
59 O.S., § 43B-1875-1 and 1882; Oklahoma Board of Licensed Alcohol and Drug Counselors
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
March 30, 2016
COMMENT PERIOD:
February 16, 2016 through March 17, 2016
PUBLIC HEARING:
March 17, 2016
ADOPTION:
March 21, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 30, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Subchapter 7. Application. 38:10-7-7 is amended by striking language pertaining to the examinations administration, grading, failure to appear for an examination and payment of examination fees. Examinations are out-sourced to the Oklahoma Drug and Alcohol Professional Counselors Association because they hold all rights to the examinations used by the Board and examinations are not a direct function of the Board. §59-1875 (2) and (3). 38:10-7-10 Co-Occurring Disorders Credential Rules. Amended by deleting acronyms and using spelled-out credentials for clarity and other language clarification. §59-1876 (E) and (F).

Subchapter 9. Supervision. 38:10-9-2 amends language to require documentation of supervised work hours be submitted to the Board every three (3) months by the 15th day of the month in January, April, July and October. §59-1876 (D) (2) and (G) (2). Amendment also establishes a process to audit supervisors and supervisees to ensure compliance with submission of hours.

Subchapter 11. Fees. 38:10-11-1 is amended to delete examination fees from our fee schedule and states that examination fees will be set by the examination provider. § 59-1884 and 38:10-7-7. It also amends and clarifies fees for duplication of public records and a search fee for public records. §59-1884.
CONTACT PERSON:
Richard Pierson, Executive Director, Oklahoma Board of Licensed Alcohol and Drug Counselors, 101 N.E. 51st Street, Oklahoma City, Ok. 73105, 405-521-0779, rpierson@okdrugcounselors.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 7. APPLICATION

38:10-7-7. Examinations

(a) **Eligibility.** An LADC or CADC applicant is eligible to take the licensing or certification examination upon completion of the supervised work experience requirement.

(b) **Examination.** Each applicant shall take and pass both the written and oral portions of the ~~examinations~~examination.

~~(c) **Administration.** The Board shall administer the licensure examinations at least one (1) time each year or as often as deemed necessary.~~

(~~d~~c) **Application.**

(1) The Board shall mail notification of eligibility to sit for examination to the applicant's last known address ~~of applicant~~ on file with the Board.

(2) An applicant who wishes to take a scheduled examination shall complete an examination registration form, and pay the required fee before the applicant will be scheduled to test.

~~(e) **Grading.** Licensure examinations shall be graded by the Board or its designee.~~

(~~f~~d) **Notice of results.**

(1) The Board shall notify the applicant of the examination results within sixty (60) days of the date of the examination.

(2) Examination results shall be in writing and shall specify "pass" or "fail."

~~(g) **Failure to appear.** If the applicant for licensure or certification fails to appear for examination for reasons other than documented illness or other cause beyond the applicant's control after having agreed to do so by applying to take a particular examination, the applicant shall reapply and pay another examination fee before being admitted to a subsequent examination.~~

(~~h~~e) **Failure to pass.** In the event of failure to pass either portion of the examination, the applicant may retake the failed examination ~~on the next available testing date~~ upon registration with the exam provider and payment of a new examination fee. The written examination may be retaken at the intervals allowed by the examination provider. The oral examination may be retaken at the next available testing date.

38:10-7-10. Co-occurring Disorders Credential Rules

(a) **Definitions.**

(1) Bachelor of Co-occurring Disorders Certification (BCDC) is a bachelor's degree level credential which shall be achieved by certified alcohol and drug counselors (CADC), or certified alcohol and drug counselors candidates that seek to be certified in co-occurring disorders (COD). This credential is required for CADCs to recognize co-occurring disorders and integrate that into substance abuse treatment.

(2) LADC/MH is a master's degree level credential which shall be achieved by licensed alcohol and drug counselors (LADC), licensed alcohol and drug counselor candidates, or other Master's level candidates that seek to be certified in co-occurring disorders (COD). LADCs may treat co-occurring disorder within their scope of practice.

(b) **Qualifications.** To be eligible for Board approval as a Bachelors of Co-occurring Disorders Certification, a CADC or CADC candidate must be in good standing and:

(1) Have a minimum education of a bachelor's degree in co-occurring disorders or a behavioral science field with a clinical application from a college or university that is accredited by an accrediting body recognized by the United States Department of Education ~~or the Council on Higher Education Accreditation~~ or an international equivalent if the degree is from an international institution.

(2) 200 clock hours of continuing education units. Most of these should be covered by the appropriate degree in a behavioral science field. This includes a minimum of 140 hours of COD specific training, 30 hours of addiction specific training and 30 hours of mental health specific training to equal 200 hours.

(3) Have completed 4000 hours of ~~COD~~co-occurring disorders specific supervised work experience AND 2000 hours of documented work experience in counseling in the last 10 years (6000 hours total).

(4) The two years (4000 hours) of supervised experience requirements for certification as a ~~BCDC~~Bachelor Co-occurring Disorder Credential must be under the supervision of a Board approved co-occurring disorders supervisor.

(5) 200 Hour Practicum with a minimum of 20 hours in each of the domains. The domains include (A) Screening and Assessment, (B) Crisis Prevention and Management, (C) Treatment and Recovery Planning, (D) Counseling and Interventions, (E) Recovery Support and Coordination of Care, (F) Psychopathology and Etiology, (G) Psychopharmacology, and (H) Ethics.

(6) Successfully pass the written exam for ~~BCDC~~Bachelor co-occurring Disorder Credential.

(7) Employed in a nationally accredited or Oklahoma Department of Mental Health and Substance Abuse Services certified agency, unless exempt from such certification.

(8) CADCs shall not provide private or independent practice for co-occurring disorders

(9) This is not a freestanding credential.

(10) This credential is required for CADCs to recognize co-occurring disorders and integrate that into substance abuse treatment.

(c) **Qualifications.** To be eligible for Board approval as a LADC/MH, ~~a LADC, LADC candidate, or other Master's level candidate must be in good standing and:~~the applicant must be a LADC in good standing who:

(1) qualified for LADC based on the academic requirements in effect on January 1, 2012, or

(2) is also one of the other types of licensed mental health professionals identified in 43A O.S. § 1-103 and has completed a minimum of fifteen (15) hours in master's level substance abuse specific coursework as described in 59 O.S. § 1876(D)(3); or ~~also holds one of the following Oklahoma licenses in good standing: Licensed Professional Counselor, Licensed Marital and Family Therapist, Licensed Behavioral Practitioner, or Licensed Clinical Social Worker, or~~

(3) qualified for LADC based on the academic requirements in effect prior to January 1, 2012 and:

(A) holds a master's degree that meets the Oklahoma educational requirements for licensed professional counselor, licensed clinical social worker, licensed marital and family therapist or licensed behavioral health practitioner; or

(B) holds a valid co-occurring disorders certification as described in 59 O.S. § 1876(F)(2); or

(C) meets the following requirements:

(~~1~~i) ~~Have~~has a minimum education of a Master's degree in co-occurring disorders or behavioral science field with a clinical application from a college or university that is accredited by an accrediting body recognized by the United States Department of Education ~~or the Council on Higher Education Accreditation~~ or an international equivalent if degree is from an international institution.

(~~2~~ii) ~~Complete~~Completes 140 hours of ~~COD~~co-occurring disorder specific training.

(~~3~~iii) ~~Complete~~Completes 2000 hours (one year) of supervised work experience in ~~COD~~co-occurring disorder specific work.

(~~4~~iv) ~~Complete~~Completes a Practicum of 100 hours with a minimum of 10 hours in each of the domains. The domains include (A) Screening and Assessment, (B) Crisis Prevention and Management, (C) Treatment and Recovery Planning, (D) Counseling and Interventions, (E) Recovery Support and Coordination of Care, (F) Psychopathology and Etiology, (G) Psychopharmacology, and (H) Ethics.

(~~5~~v) Successfully ~~pass~~passes the LADC/MH written exam. ~~for(LADC/MH).~~

~~(6) This is not a freestanding credential.~~

~~(7) LADCs may treat co-occurring disorders within the scope of their practice.~~

(d) **Application.**

(1) Applicants who qualify based on subsection (c)(1),(2), (3)(A), or (3)(B) must:

(A) Complete an application form provided by the Board.

(B) Sign a Co-occurring disorder code of ethics.

(C) Pay the required application fee.

(2) Applicants who qualify based on subsection (c)(3)(C) must:

(~~1~~A) Complete an application form provided by the Board.

(~~2~~B) Submit two letters of reference.

(~~3~~C) Sign a supervision contract and submit to the Board for approval.

(~~4~~D) Sign a ~~COD~~Co-occurring Disorder code of ethics.

(~~5~~E) Pay the required application fee.~~of $140.00~~

(~~6~~3) ~~The~~ All the requirements for~~BCDC~~ Bachelor Co-occurring Disorder Credential must be completed within five (5) years from the original date of application.

(~~7~~4) ~~The~~ All the requirements for ~~(LADC/MH)~~ LADC/MH must be completed within three (3) years from the original date of application.

(e) **Supervision.** To be eligible~~a Board approved supervisor~~ to supervise candidates for co-occurring disorders certification, ~~you~~the proposed supervisor must~~:~~ hold valid supervision credentials recognized by the Board and:

(1) ~~Be in good standing as a licensed alcohol and drug counselor and a state mental health professional~~Be a LADC who also holds another Oklahoma Master's degree level or above behavioral health license; or

(2) A Be an Oklahoma licensed mental health professional ~~whose license is in good standing,and~~ whose scope of practice includes treatment of alcohol and drug abuse or dependency~~;or~~. The proposed supervisor must provide proof, satisfactory to the Board, of practice which includes treatment of alcohol and drug abuse; or

(3) ~~ALADC whose license is in good standing and whose scope of practice includes co-occurring disorders~~ Be a LADC/MH~~; and~~.

(4) ~~Be approved by the Board to supervise CADCs, CADC candidates, or LADC candidates or other Master's level candidates for co-occurring disorders.~~ All the licenses of proposed supervisors must be in good standing.

(f) **Renewal of ~~BCDC~~Bachelor Co-occurring Disorder Credential or ~~(LADC/MH)~~LADC/MH credential.** To maintain the ~~BCDC~~Bachelor Co-occurring Disorder Credential or ~~(LADC/MH)~~LADC/MH credential, the certified person shall complete, prior to June 30:

(1) The requirements for renewal of CADC/LADC.

(2) Pay a co-occurring disorders credential renewal fee.~~of $50.00.~~

SUBCHAPTER 9. SUPERVISION

38:10-9-2. Supervised work experience requirement

(a) **Licensed alcohol and drug counselor.** The one year supervised experience requirement for licensure as an LADC must be under the supervision of an alcohol and drug counselor holding the LADC license.

(b) **Certified alcohol and drug counselor.** The two year supervised experience requirement for certification as a CADC must be under the supervision of an alcohol and drug counselor holding an LADC license.

(c) **Practicum.** Practicum supervision may be signed off by anyone who is in a supervisory or educational role and has firsthand knowledge that the candidate did complete the requirement for the practicum. 300 Practicum hours must be documented before a supervision contract will be approved.

(d) Supervision hours acquired outside the State of Oklahoma, whether completed or in the process, may be approved by the Board on a case-by-case basis.

(e) The required supervision for an applicant who provides community or home-based services shall include, in addition to other supervision requirements, at least six (6) direct observations by the supervisor of the supervisee conducting counseling sessions in the client's home, school or other remote location outside of the applicant's employer's office. The observations must be made periodically throughout the applicant's supervised work experience at least once every other month, and documented in a form prescribed by the Board. Direct observations may be conducted via interactive live audio/video conferencing, and shall be documented in a form approved by the Board. No more than three (3) of the direct observations per year may be conducted via interactive live audio/video conferencing.

(f) An applicant for LADC who holds a current, valid Oklahoma license in another behavioral health profession may count alcohol and drug counseling services provided in the applicant's private or independent practice under the other license toward the supervised work experience. All other licensure supervision requirements apply.

(g) Supervisors and supervisees shall maintain records of supervision, including supervision logs, ~~and~~ evaluation ~~form,~~forms, direct observation forms and ~~may include~~ other supporting documents relevant to supervision such as ~~a~~ sign-in ~~sheet~~sheets for supervisory sessions, electronic and paper calendar entries noting dates of supervision, written summaries and/or reports of topics discussed at supervision sessions, etc. The supporting documentation shall be submitted to the Board upon request.

(h) The supervisor and the supervisee must each submit to the Board supervision logs in a format approved ~~to~~by the Board every three months until the license is granted. Supervision logs are due on the 15th~~th~~ day of January, April, July, and October, and shall include dates and number of hours of supervision and number of hours worked in the three months prior to the due date.

(i) The Board may conduct annual audits of compliance with supervision requirements. A minimum of five percent of supervisors and five percent of applicants may be randomly selected

for audit. Persons selected for audit must submit supervision logs and supporting documentation and any other information requested by the Board within ten calendar days of receipt of notice of audit.

(j) A candidate for LADC who meets the academic requirements in effect as of January 1, 2012 may treat mental health only disorders provided that the candidate's licensure supervisor or the candidate's employer's clinical supervisor meets the Board qualifications for supervisors of candidates for co-occurring disorders certifications.

(~~i~~k) Failure to comply with the rules for supervision is grounds for disciplinary action~~, which may include denial of the application.~~as authorized by Board statutes.

SUBCHAPTER 11. FEES

38:10-11-1. Schedule of fees

Fees are non-refundable and include:

(1) **Application fee.** One-hundred and forty dollars ($140.00) and shall be submitted with the application form.

(2) **~~Written examination~~Examination fee.** ~~One hundred and twenty-five dollars ($125.00). Shall be submitted prior to taking the written examination.~~The fee shall be the amount set by the examination provider, and is paid by the applicant directly to the examination provider.

~~(3) **Oral examination fee.** Seventy-five dollars ($75.00). Shall be submitted prior to taking the oral examination.~~

(~~4~~3) **Initial license or certification fee.** One-hundred dollars shall be submitted prior to the receipt of license or certificate. The initial license or certification notices shall invoice the licensed or certified person for the interim period between the original license or certification date and the following June 30 so that subsequent renewals shall be on a July 1 annual basis.

(~~5~~4) **Renewal fee.** One-hundred dollars ($100.00). Shall be submitted upon notification by the Board on or before June 30, and validates the license or certification for twelve (12) months.

(~~6~~5) **Late renewal fee.** Twenty-five dollars ($25.00) will be charged each month, if the license or certification is not renewed by June 30. This fee combined with the renewal fee shall not exceed $200.00. The licensed or certified person must submit this fee as well as the renewal fee on or before the following June 30 to avoid revocation.

(~~7~~6) **Replacement fee.** Twenty-five dollars ($25.00). Shall be submitted for the issuance of a license or certification to replace a license which has been lost, damaged, or is in need of revision.

(~~8~~7) **Inactive license or certification fee.** Twenty-five dollars ($25.00). Payment of this fee renders the license or certification inactive and suspends all rights and privileges granted by the license or certification for a period of no more than two (2) years. If not renewed within the two (2) year period, license or certification is considered lapsed.

(~~9~~8) **Mailing list of licensed and certified counselors.** Thirty-five dollars ($35.00).

(~~10~~9) **Written verification of licensure or certification.** Five dollars ($5.00).

(~~11~~10) **Duplication of public records.** Twenty-five cents ($.25) per page~~.~~ for un-certified copies; one dollar per page ($1) for certified copies.

(11) Search fee for public records. $25 per hour.

(12) **Investigation or prosecution.** At cost incurred.

(13) **Returned check processing fee, or denied or non-payment of credit card fees.** Fifty Dollars ($50.00).

(14) **Probation.** Twenty-five dollars ($25.00) per month.

(15) **Board approved supervisor status designation.** Thirty-five Dollars ($35.00) for initial application fee.

(16) **Supervisor status designation annual renewal fee.** Twenty-five Dollars ($25.00).

(17) **Co-occurring disorders Certification application fee.** One Hundred Forty Dollars ($140.00)

(18) **Co-occurring disorders Certification renewal fee.** Fifty Dollars ($50.00).

[OAR Docket #16-419; filed 6-13-16]

TITLE 55. BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTERED INTERIOR DESIGNERS OF OKLAHOMA CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTRATION OF INTERIOR DESIGNERS

[OAR Docket #16-426]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Licensing and Registration
55:10-9-7. [AMENDED]
55:10-9-10. [AMENDED]
Subchapter 17. Continuing Education Requirements
55:10-17-1. [AMENDED]
55:10-17-2. [AMENDED]
55:10-17-3. [AMENDED]
55:10-17-4. [AMENDED]
55:10-17-5. [AMENDED]
55:10-17-7. [AMENDED]
55:10-17-10. [AMENDED]
55:10-17-11. [AMENDED]
55:10-17-12. [AMENDED]

AUTHORITY:
Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma; 59 O.S., Sections 46.1 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 5, 2015

COMMENT PERIOD:
March 3, 2015 through April 1, 2015

PUBLIC HEARING:
April 2, 2015

ADOPTION:
April 2, 2015

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 3, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The powers and duties of the Board were expanded to adopt rules providing for a program of continuing education in order to ensure that all Registered Interior Designers remain informed of those technical and professional subjects that the Board deems appropriate in compliance with O.S. 59, Section 46.7 (21) effective July 1, 2014 and as established by these Rules. These proposed revisions to Subchapter 9 and 17 provide rules for a continuing education program for Registered Interior Designers. It also requires continuing education and exemption as it pertains to Emeritus status and the reinstatement of canceled registration for Registered Interior Designers.
CONTACT PERSON:
Jean Williams, Executive Director, 220 NE 28th Street, Suite 150, Oklahoma City, OK 73105, 405-949-2383

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. LICENSING AND REGISTRATION

55:10-9-7. Emeritus status requirements

Licensees and Registrants who are residents of Oklahoma and who have been licensed or registered in this state for ten (10) consecutive years, sixty-five (65) years of age or older and retired from active practice, providing services as interior design or other related professional activities, may request emeritus status by filing the application showing compliance with this Section. If the Rules of this Chapter have been met, all fees and penalties for biennial License or Registration shall be waived by the Board. Emeritus status Licensees and Registrants are also exempt from continuing education requirements unless they reinstate their License or Registration to active status in accordance with OAC 55:10-9-9. At that time, they shall complete the continuing education requirements for the current licensing period.

55:10-9-10. Reinstatement of canceled License or Registration

(a) **Reinstatement of any License or Registration within three (3) years.** Licenses or Registrations canceled for non-payment of fees and/or failure to comply with continuing education requirements if applicable, may be renewed at any time within three (3) years, from the date of the cancellation, upon compliance with the Act and the Board's current Rules and upon paying the Board all fees which shall have been accrued at the time of the cancellation and which would have been paid at the time of reinstatement had not the License or Registration been suspended and revoked, together with the amount of penalties prescribed in 55:10-3-13. Additionally, no License or Registration shall be reinstated unless the individual has completed all past continuing education requirements, where applicable for the three (3) years and paid to the Board the penalties for reinstatement set forth in OAC 55:10-3-13. These Licenses and Registrations may be reinstated by the Board's staff upon compliance with the Act and Rules of the Board without Board action.

(b) **Reinstatement of initial License or Registration after three (3) years.** For those Architects, Landscape Architects or Registered Interior Designers licensed or registered initially in Oklahoma that allow their License or Registration to remain cancelled for a period exceeding three (3) consecutive years, such former Licensee or Registrant may have the License or Registration reinstated in a manner as determined by the Board consistent with the Act and these Rules, after reapplying and paying a readmission application fee. Additionally, the Licensee or Registrant shall meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties.

(c) **Reinstatement of Reciprocal Licenses or Registrations after three (3) years.** Any Architect or Landscape Architect licensed to practice in Oklahoma by reciprocity must, after his/her reciprocal License has been canceled for more than three (3) years, re-apply through the means of which the initial License was granted or demonstrate a current License in another jurisdiction, meet all continuing education where applicable that would have been required, and pay a readmission application fee and all back fees and penalties. Registered Interior Designers must re-apply and prove a current Registration in another jurisdiction or through CIDQ, pay a readmission application fee, meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties.

(d) **Returning from temporary military deployment.** Licensees or Registrants returning from temporary military deployment shall notify the Board office consistent with OAC 55:10-3-13(b)

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

55:10-17-1. Purpose

These Rules provide for a continuing education program to insure that all Architects and Landscape Architects licensed in the state and Registered Interior Designers remain informed of technical and professional subjects that the Board deems appropriate to the practice of architecture, ~~and l~~andscape architecture and interior design to safeguard life, health, and promote the public welfare.

55:10-17-2. Board responsibilities

(a) The Board shall:

(1) Perform continuing education audits of all professionals~~Architects and Landscape Architects~~.

(2) Determine if courses address the health, safety and welfare of the public through an audit.

(3) Discipline Architects, ~~and~~ Landscape Architects and Registered Interior Designers, as may be appropriate.

(b) Members of the Board may attend courses for purposes of auditing the content and compliance with this rule.

55:10-17-3. Noncompliance and sanctions

The continuing education requirements contained in this Section will apply to every Architect and Landscape Architect, as a condition for renewing of his/her license and Registered Interior Designers and/or the Certificate of Authority and Certificate of Title. Failure to fulfill the continuing education requirements, or file the required biennial report and affidavit, properly completed and signed, or to pay all required fees by June 30th of the renewal year, shall result in non-renewal of an Architect's or Landscape Architect's License, Registered Interior Designers certificate and/or Certificate of Authority or Certificate of Title.

55:10-17-4. Continuing education requirements

(a) Beginning with applications for renewal of licenses which expire on June 30, ~~2001,~~every other year, each Architect, ~~and~~ Landscape Architect and Registered Interior Designer shall have completed 24 CEU's of acceptable continuing education requirements during the two-year period immediately preceding the biennial renewal date as a condition for ~~License~~ renewal. One CEU shall represent one Contact Hour. No credit will be allowed for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(b) If the ~~Architect or Landscape Architect~~ person exceeds the continuing education requirements in any renewal period~~, the~~~~Licensee~~ they may carry a maximum of 4 CEU's forward into the subsequent renewal period.

55:10-17-5. Exemptions

~~An Architect or Landscape Architect~~A person may be exempt from participating in the continuing education program required by these Rules for one of the following reasons:

(1) A first-time License or Registration issued by examination or reciprocity shall be exempt for his/her first renewal period if the first renewal period is less than two years from the original date of licensure or registration. A Reciprocal Licensee or Registrant will be exempt from these requirements if the Licensee or Registrant is licensed or registered in another jurisdiction and has met continuing education requirements equal to or exceeding the requirements of this Subchapter. The~~ Licensee~~person shall certify to the Board that the requirements of this Subchapter have been met and substantiate same when audited.

(2) ~~An Architect or Landscape Architect~~ A person who has taken emeritus status must certify to the Board that they are not currently practicing one of these professions ~~architecture or landscape architecture~~. In the event the emeritus individual elects to return to active practice, the individual shall earn the continuing education required for the current licensing period, not to exceed two (2) years.

(3) ~~An Architect or Landscape Architect~~A person called to active military duty in the armed forces of the United States shall be exempt from obtaining the continuing education required for the duration of the temporary deployment and all penalties, if applicable and shall comply with OAC 55:10-3-13.

(4) ~~An Architect or Landscape Architect~~A person experiencing physical disability, illness or other extenuating circumstances may request exemption from the continuing education requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

55:10-17-7. General course/program requirements

(a) All programs and courses are subject to auditing and the Board may disapprove any course not meeting the intended continuing education criteria set forth in this Subchapter.

(b) All courses sponsored by NCARB, CLARB, The American Institute of Architects , ~~and~~ the American Society of Landscape Architects, Interior Design Continuing Education Council, American Society of Interior Designers and International Interior Design Association or their successors will count for the required continuing education requirements if they met the requirements of this Subchapter and the intent of the Board.

(c) Continuing education courses must be at least one Contact Hour in length and meet the topic area guidelines described in this Subchapter.

(d) Continuing education courses will be approved or disapproved by the Board based upon the information presented at the time of audit.

(e) To qualify for continuing education, the course must:

(1) include technical and practical applications which impact public health, safety and welfare and,

(A) maintain, improve, expand or enhance the quality of the existing technical knowledge;

(B) fill voids that may exist in the professional education and internship training; or

(C) develop new and relevant technical profession skills and knowledge.

(2) have clear purposes and objectives;

(3) be well organized, presented in a sequential manner, and provide evidence of pre-planning;

(4) be presented by individuals who are well-qualified by education or experience in the field being taught; and

(5) provide individual participant documentation for record keeping and reporting.

(f) Architects, ~~and~~ Landscape Architects and Registered Interior Designers may secure continuing education credit through the following types of programs and courses:

(1) attending professional or technical presentations at meetings, conventions or conferences;

(2) attending in-house programs sponsored by corporations or other organizations;

(3) successfully completing seminars, tutorials, short courses, correspondence courses, televised courses or video-taped courses;
(4) making professional or technical presentations at meetings, conventions or conferences;
(5) teaching or instructing, complying with OAC 55:10-17-6;
(6) authoring published papers, articles or books;
(7) successfully completing college or university sponsored courses; and

(g) Subject content acceptable for purposes of architecture continuing education shall be limited to:
(1) Study of Codes including safety codes, and laws and regulations governing the practice of architecture.
(2) Environmental Issues.
(3) Design proficiency.
(4) Study within planning, engineering, interior design, construction contracting and related disciplines.
(5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.
(6) Specialization, preservation, adaptive reuse, building types) etc.
(7) Construction Documents and Services.
(8) Materials and Methods.
(9) Mechanical, Plumbing, Electrical and Life Safety.
(10) Structural technology.
(11) Energy efficiency.
(12) Project administration.
(13) Professional ethics.
(14) Americans with Disabilities Act guidelines.

(h) Subject content acceptable for purposes of landscape architecture continuing education shall be limited to:
(1) Study of Codes including safety codes, and laws and regulations governing the practice of landscape architecture;
(2) Environmental issues;
(3) Design proficiency;
(4) Study within planning, engineering, horticulture, construction contracting and related disciplines;
(5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.
(6) Specialization in areas of concentration;
(7) Construction documents and sources;
(8) Project administration;
(9) Professional ethics;
(10) Safety guidelines (Playgrounds, trails, etc.);
(11) Herbicide and pesticide use;
(12) American Disability Act Guidelines;
(13) Irrigation system design;
(14) Grading and drainage.

(i) Subject content acceptable for purposes of interior design continuing education shall be limited to:
(1) Legal: codes, including life-safety codes and standards, laws and regulations governing the practice of interior design; professional ethics, zoning, insurance to protect owners and public
(2) Environmental: energy efficiency, sustainability, natural resources, hazardous materials, weather proofing, insulation and natural hazards
(3) Design: interior building design, interior specifications, accessibility, safety and security measures
(4) Study within planning, interior design, construction contracting and related disciplines
(5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.
(6) Preservation: historic, adaptation, reuse, building types
(7) Construction Documents and Services
(8) Materials and Methods: building systems, products, finishes, furnishings, equipment
(9) Technical: structural, mechanical, electrical, communications, fire protection, controls
(10) Pre-design: programming, project analysis, survey of existing conditions, including materials and configuration of the interior space of a project
(11) Occupant Safety: indoor air quality, lighting, acoustics, ergonomics
(12) Project administration
(13) Americans with Disabilities Act guidelines

55:10-17-10. Licensee responsibilities

(a) The Architect, or Landscape Architect and Registered Interior Designer is responsible for retaining proof of participation in continuing education activities. Such verification includes, the following as applicable:
(1) A log showing activity claimed, sponsoring organization, location, duration, etc. signed by the Sponsor; or
(2) Attendance certificates; or
(3) Signed attendance receipts; or
(4) Sponsor's list of attendees (signed by an individual in responsible charge of the activity).

(b) These records must be retained until January 1st following the filing of an application for License or Registration renewal. Copies shall be furnished to the Board for audit purposes if requested.

(c) The Architect~~, or~~ Landscape Architect and Registered Interior Designer must be present for the entire duration of the course for all approved course Contact Hours.

55:10-17-11. Biennial report and affidavit

(a) Each Architect, ~~or~~ Landscape Architect or Registered Interior Designer, at License or Registration renewal, shall submit an affidavit attesting to the individual's fulfillment of continuing education requirements during the two years preceding the renewal. Affidavits, with an accompanying report concerning the courses taken by the individual to fulfill continuing education requirements, shall be submitted either on the back of the Licensee's or Registrant's renewal form provided by the Board or attached separately to the renewal form.

(b) Each affidavit shall be reviewed by the Board's staff for completeness, and may be subject to audit for verification of compliance with requirements. ~~Architects and Landscape~~

~~Architects~~All persons shall retain proof of fulfillment of requirements until January 1st after submission in the event that the affidavit and report is selected for audit and the submissions pass the audit as completed.

55:10-17-12. Requirements and responsibilities

(a) The Board has set forth the following criteria that will be reviewed in approving continuing education hours:

(1) Subject matter meeting the intent and purpose of requiring continuing education for Architects, ~~and~~ Landscape Architects and Registered Interior Designers that complies with the requirements of the Act and these Rules.

(b) Courses shall be related to health, safety or welfare only as adopted by this Board

(c) Architects, ~~and~~ Landscape Architects and Registered Interior Designers are encouraged to take programs of intermediate and advanced levels.

(d) Courses that are issuing reporting certificates should contain the following: participant's name, sponsor name, course title, number of contact hours, date course given, sponsor or monitor signature.

(e) Licensees or Registrants shall maintain a record of all reporting certificates or other documentation issued for verification of attendance until January 1st after submitting the License or Registration renewal and passing the audit as completed. Duplication or falsification, as-well-as misuse, of reporting certificates or other documentation may be grounds for disciplinary action against the Licensee or Registrant.

(f) Courses should issue to attendees seeking continuing education credit, a "Course Evaluation Summary Form".

(g) Sponsors should verify the identity of course participants.

(h) Sponsors are encouraged to publicize their courses. A list of licensed Architects and/or Landscape Architects and/or Registered Interior Designers may be secured for a nominal fee from the Board. Applicable fees must be submitted with the request. The Board shall have thirty (30) days from receipt of the request to process and provide the requested listing.

(i) Architects, ~~and~~ Landscape Architects and Registered Interior Designers cannot obtain partial credit for portions of courses taken.

(j) Brief absences or tardiness during a course are discouraged, however, if necessary the total of the absence of the attendee from the course should not exceed 10% of the course Contact Hours.

(k) Administrative procedures and introductions should be limited to no more than 10% of the course's Contact Hour credits. Specific course content should utilize no less than 80% of the course Contact Hours.

[OAR Docket #16-426; filed 6-14-16]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 10. FINE SCHEDULE

[OAR Docket #16-423]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Administrative Fine Schedule
158:10-3-1 [AMENDED]
158:10-3-2 [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. §§ 858-627, 1000.4, 1000.5, 1002, 1032, 1681, 1850.3 and 1151.2a
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2015
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to OAC 158:10-3-1 correct an ambiguity which exists in the current language related to requirements for display of any commercial endorsement on vehicles and on postings at job sites. Current language references commercial endorsement "number"; however, the only number assigned by the Construction Industries Board to a roofing contractor, whether residential or commercial, is the registration number. The proposed amendments to OAC 158:10-3-2 clarify that the rule is applicable to the electrical, mechanical, and plumbing trades.
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. ADMINISTRATIVE FINE SCHEDULE

158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act, the Plumbing License Law of 1955, Home Inspection Licensing Act, and the Roofing Contractor Registration Act

(a) The schedule of fines in this Section is based on violation of requirements common to the rules promulgated under authority of the Electrical License Act, the Mechanical Licensing Act and The Plumbing License Law of 1955, or each of the respective licensing laws, and the Roofing Contractor Registration Act. Except residential roofing jobs where a written warning may be issued prior to applying the fine schedule and as provided in Section 158:10-3-2, the fine schedule for citations issued by the Board for violations of the following requirements is:

(1) Contracting without license or registration or endorsement, which includes offering to perform work through advertisement or otherwise:
(A) First - $500.00
(B) Second or subsequent - $1,000.00.

(2) Inactive contractor or a journeyman engaged in contracting:
(A) First - $500.00
(B) Second or subsequent - $1,000.00.

(3) Contractor working unlicensed or unregistered individual (per person):
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(4) Contractor working registered apprentice without direct supervision (per apprentice):
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(5) Unlicensed or unregistered individual performing trade work under the direction of one acting as a contractor:
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(6) Loaning a license or registration or endorsement:
(A) First - $500;
(B) Second or subsequent - $1,000.00.

(7) Forging, falsifying or altering a license or registration or endorsement:
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(8) Code violations per day (after NOV compliance date): First - $500.00.

(9) Contracting with an expired bond:
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(10) Contracting with expired insurance
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(11) Failure to properly display firm name and state license number, roofing registration number, and if applicable commercial endorsement ~~number~~ on vehicles; or roofing registrants failing to post on the job site and all media the name, registration number, and if applicable commercial endorsement ~~number~~:
(A) First - $500.00;
(B) Second or subsequent - $1,000.00.

(b) The fine schedule for citations issued by the Board for Violations of the Home Inspection Licensing Act or the Rules promulgated there under shall be subject to the following fines:

(1) Violation of 158:70-5-2(d):
(A) First violation: $50.00
(B) Subsequent violation: $200.00

(2) Violations of 158:70-11-2(a):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(3) Violations of 158:70-11-2(b):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(4) Violations of 158:70-11-2(c):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(5) Violations of 158:70-11-2(d):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00

(6) Violations of 158:70-11-2(e):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(7) Violations of 158:70-11-2(f):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(8) Violations of 158:70-11-2(g):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(9) Violations of 158:70-11-2(h):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(10) Violations of 158:70-11-2(i):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00

(11) Violations of 158:70-11-2(j):
(A) First violation: up to $1,000.00
(B) Subsequent violation: up to $2,000.00

(12) Violations of 158:70-11-2(k):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00

(13) Violations of 158:70-11-2(l):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00

(14) Violations of 158:70-11-2(m):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00

(15) Violations of 158:70-11-2(n):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00

(c) Violations of any other provision of the Electrical Industry Regulations, the Mechanical Industry Regulations and the Plumbing Industry Regulations not otherwise provided hereinabove or in 158:10-3-2, shall be subject to a fine of $200.00 for the first offense and $400.00 for each subsequent offense.

(d) Violations of any other provision of the Roofing Contractor Registration Act or the Roofing Contractor Registration Regulations involving a residential job as provided in Chapter 85 of OAC 158, shall be subject to a fine of $500.00 for the first offense, $1,000.00 for a second offense, and $3,500.00 for each subsequent offense.
(e) Subsequent violations involving residential roofing jobs after adjudication of a $1,000.00 fine, can be fined up to $3,500.00.
(f) Violations of any other provision of the Roofing Contractor Registration Act or the Roofing Contractor Registration Regulations involving a commercial job as provided in Chapter 85 of OAC 158, shall be subject to a fine of $500.00 for the first offense, $1,000.00 for a second offense, and $5,000.00 for each subsequent offense.
(g) Subsequent violations involving commercial roofing jobs after adjudication of a $1,000.00 fine, can be fined up to $5,000.00.

158:10-3-2. Other violations ~~requirements under the Electrical License Act and/or the Mechanical Licensing Act~~

The schedule of fines in this Section are based on violation of requirements common to the rules promulgated under authority of ~~the Electrical License Act, or each of~~ the respective licensing laws. Except as provided in Section 158:10-3-3, the fine schedule for citations issued by the Board for violations of the following requirements is: Failure to display state contractor license number on advertising, contracts, and bids ~~(electrical trade only)~~:

(1) First - $70
(2) Second or subsequent - $190.

[OAR Docket #16-423; filed 6-14-16]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #16-424]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. License Classifications
158:40-7-7 [NEW]
Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals
158:40-9-2 [AMENDED]
Subchapter 11. License Revocation or Suspension and Prohibited Acts
158:40-11-1 [AMENDED]
Subchapter 13. Procedures of the Variance and Appeals Board, Plan Review Applications and Filing Fees, Code Variance Applications and Filing Fee and Code Interpretation Appeals
158:40-13-3 [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. §§ 1000.4(A)(1), 1000.5, and 1681.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2015
COMMENT PERIOD:
December 16, 2015, through January 15, 2016
PUBLIC HEARING:
January 20, 2016
ADOPTION:
January 20, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. License Classifications
158:40-7-7. Poultry house electrical contractor license [NEW]
Gubernatorial Approval:
June 4, 2015
Register publication:
32 Ok Reg 703
Docket number:
15-721
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
A poultry house contractor license category was established by House Bill 2208 which became effective July 1, 2015. The new rule, OAC 158:40-7-7, is for the purpose of administering the new provisions of the Electrical License Act related to establishment of the new license category. The amendment to OAC 158:40-9-2 is for the purpose of clarifying by reference to the laws and regulations on which electrical license examinations may be based. The amendments to OAC 158:40-11-1 and OAC 158:40-13-3 correct grammar and punctuation.
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 7. LICENSE CLASSIFICATIONS

158:40-7-7. Poultry house contractor license

(a) **Definition.** **"Poultry house contractor"** means any person who has qualified to become licensed in accordance with 59 O.S. § 1686.1 and 158:40-7-7.
(b) **Limitations.** Poultry house contractor license holders cannot perform any wiring for a structure or electrical facility that is not directly involved in the operation of the environmentally controlled poultry house wiring system. The poultry house contractor license allows contracting only for wiring of environmentally controlled poultry house systems and does not disallow or exclude unlimited electrical contractors from performing poultry house wiring work under an unlimited electrical contractor license without a poultry house contractor license. All licenses shall be nontransferable.
(c) **License requirements.**

(1) Applicants for Poultry House Contractor must be eighteen (18) years of age or over, be the party performing, overseeing, or otherwise responsible for the work performing solely poultry house premise wiring for environmentally controlled poultry house systems, and the insured poultry house wiring to connect the premise wiring, and who do not perform any wiring for a structure or electrical facility that is not directly involved in the operation of the environmentally controlled poultry house wiring system.

(2) Applicants must provide all necessary information and documentation required under the Electrical Licensing Act, rules, and as requested by the Board.

(d) **Insurance requirements.**

(1) Applicants for the Poultry House Contractor License must provide a copy of the certificate of liability insurance at the time of application.

(2) The amount of liability insurance shall not be less than Five Hundred Thousand Dollars ($500,000.00).

(3) Any insurance company issuing a liability policy to the applicant shall be required to notify the Construction Industries Board in the event such liability policy is cancelled for any reason or lapses for nonpayment of premiums.

(4) Applicants shall submit proof of Worker's Compensation coverage under the Worker's Compensation Act or affidavit of exemption or self-insurance as authorized pursuant to the Worker's Compensation Act.

(e) **License renewal.** A poultry house license shall expire one (1) year from the date of issuance at which time the license may be renewed upon meeting the requirements of 59 O.S. § 1686.1, and paying the nonrefundable license renewal fee in the amount of Two Hundred Dollars ($200.00). No continuing education is required for renewal of a poultry house contractor license.

(f) **Experience non-qualifying for other license categories.** Experience under the Poultry House Contractor license shall not be considered qualifying experience for application of any other electrical license category.

(g) **Suspension or revocation of license.** The Electrical Hearing Board shall suspend or revoke a poultry house contractor license for reasons as stated in the Act in accordance with procedures established in this Chapter and in OAC 158:1.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS

158:40-9-2. Examinations

(a) Electrical license examinations may include, without limitation, the following parts:

(1) Written questions, consisting of open book, closed book and problems, based on the standard of installation as described in OAC 158:40-1-4 and other related questions; and

(2) Practical shop, which for contractors shall also include written questions on job estimating and the laws and regulations relating to electricians as found in the Act and this Chapter.

(b) The maximum grade value of each part of the examination shall be 100 points. A passing score is 75% or more on each part.

(c) Each applicant shall pay all examination and license fees before undertaking any examination. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited. Reexamination fees shall be the same as the initial examination fees.

(d) Applicants for a contractor license must be capable of reading without assistance.

(e) Unless authorized by the Administrator, only examinees shall be permitted in the examination area.

(f) Any applicant who fails a first examination must wait thirty (30) days before taking any other electrical examination. All subsequent failures will result in a waiting period of at least ninety (90) days.

(g) Applicants shall present positive identification before undertaking an examination.

(h) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Administrator shall determine when the applicant may retake the exam, which time shall be no fewer than thirty (30) days and no longer than three hundred sixty-five (365) days.

(i) Any previously certified examination may be used to meet an examination requirement.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

158:40-11-1. License revocation or suspension

(a) The employment and use of unlicensed individuals performing electrical work, the employment and use of individuals as apprentices without registration, or cheating may be considered justification to suspend or revoke said electrical contractor's license based upon illegal use of license.

(b) The repeated violation of any of the rules ~~of~~ in this Chapter or any provision of the Act, or the violation of a multiple of any of the rules ~~of~~ in this Chapter or provision of the Act, may be considered justification to suspend or revoke the licensee's license or registration.

SUBCHAPTER 13. PROCEDURES OF THE VARIANCE AND APPEALS BOARD, PLAN REVIEW APPLICATIONS AND FILING FEES, CODE VARIANCE APPLICATIONS AND FILING FEE AND CODE INTERPRETATION APPEALS

158:40-13-3. Code variance applications and filing fee

(a) Applications for a variance from the standard of installation as described in OAC 158:40-1-4 shall be submitted to the Administrator. An application and the fifty dollar ($50.00) filing fee shall accompany sufficient technical data submitted to support the proposed variance. Applications submitted after the use of materials or methods of construction not in conformance with the standard of installation as described in OAC 158:40-1-4 that are relevant to the application, or submitted where a city or town has adopted a more stringent trade installation code by ordinance, shall not be considered by the Variance and Appeals Board.

(b) The applicant and the Administrator or the Administrator's designee may offer testimony to the Variance and Appeals Board which is relevant to the code variance requested. If testimony will be offered to support the application, the applicant shall include in the application the identity of the applicant's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness. If the Administrator or the Administrator's designee contests the application~~,~~ and will offer testimony to rebut the application, the Administrator or the Administrator's designee will provide the applicant with the identity of the witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness.

[OAR Docket #16-424; filed 6-14-16]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #16-425]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:50-1-2 [AMENDED]
Subchapter 3. Procedures of the Committee and the Hearing Board
158:50-3-2 [AMENDED]
Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration
158:50-9-1 [AMENDED]
158:50-9-5 [AMENDED]
158:50-9-7 [AMENDED]
Subchapter 11. License Revocation or Suspension and Prohibited Acts
158:50-11-3 [AMENDED]
Subchapter 13. Procedures of the Variance and Appeals Board, Plan Review Applications and Fees, Code Variance Applications and Fee, Code Interpretation Appeals
158:50-13-3 [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. §§ 1000.4 and 1850.3
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Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration
158:50-9-1. Qualifications for mechanical licensure [AMENDED]
Gubernatorial Approval:
October 26, 2015
Register publication:
33 Ok Reg 127
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to OAC 158:50-1-2 is the addition of a definition for "Chemical plant" [59 O.S. § 1850.10(D)] in response to a request for written clarification from an agricultural fertilizer plant involved in developing chemicals. The amendments to OAC 158:50-9-1 allow substitution of vocational education of less than 500 hours for comparable experience which would encourage mechanical program development and attendance and allow a shortened time frame to obtain licensing. The amendment to OAC 158:50-9-5 corrects a scrivener's error made during the 2015 rulemaking process which resulted in OAC 158:50-9-5(e) being inadvertently omitted from the text of the rules. It was not the intent to have this subsection deleted, and the text was not included with strikethrough to indicate the agency intended to delete the text. The amendments to OAC 158:50-3-2, 158:50-9-7, 158:50-11-3 and 158:50-13-3 correct references in accordance with the Secretary of State's rules on rulemaking (Appendix A of OAC 655:10).
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

158:50-1-2. Definitions

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

"Act" means Mechanical Licensing Act as found at 59 O.S. § 1850.1, *et seq*.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq*.

"Applicant" means any person applying for an examination, for a license or registration, for review of plans and specifications or for a mechanical code variance from the standard of installation described in OAC 158:50-1-4 by the Construction Industries Board under the Act.

"Associated with and responsible for" means the relationship between a mechanical contractor and mechanical firm based on the mechanical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the mechanical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Mechanical Licensing Act and this Chapter.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds and insurance under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Chemical plant" means a chemical plant within the context of 59 O.S. §1850.10(D) including a fertilizer plant engaged in formulating chemicals ultimately used generally in the agricultural fertilizer industry.

"Committee" means the Committee of Mechanical Examiners.

"**Credit Hour or Hour"** means at least 50 minutes of classroom instruction with a 10 minute break.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed mechanical contractor or mechanical journeyman.

"Gas piping" means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises up to the connection with a natural gas meter, regulator, or other source of supply.

"Ground source piping" means piping buried below the earth's surface or submerged in a water well, lake or pond and used in conjunction with a heat pump to provide heating, ventilation and/or air conditioning to a structure.

"Health care facility" includes but is not limited to hospitals, nursing homes, limited care facilities, clinics, medical or dental offices, and ambulatory care centers, whether permanent or moveable.

"**Hearing Board"** means the Mechanical Hearing Board.

"Humidification" when applied to air conditioning, means and includes an increase or decrease in moisture content of the air being conditioned and supplied to the space for human occupancy by means of that integral part of the entire air conditioning system, equipment, and control devices; when applied to refrigeration, means and includes an increase or decrease in the moisture content of the air or product being conditioned for a food preservation measure or manufacturing process by means of the integral part of the entire refrigeration system, equipment, and control devices.

"HVAC" or **"heating, ventilation and air conditioning"** means the process of treating air by controlling its temperature, humidity, and cleanliness and of supplying such air to spaces for human occupancy by means of an integrated system of air conditioning and ventilation equipment, accessories and control devices.

"ICC" means the International Code Council.

"Limited residential journeyman" means a type and category of mechanical license that is restricted to new installations in new construction for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress as regulated by this Chapter.

"Mechanical License Unit" means the staff and administrative support unit to the Committee of Mechanical Examiners and the Mechanical Hearing Board.

"Mechanical work" means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system, exhaust system, cooling system, mechanical refrigeration system, ventilation system, medical gas system, medical-surgical vacuum systems, or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor or Department of Health, provided that minor repairs and maintenance are excluded.

"Medical gas piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in health care facilities for oxygen, nitrous oxide, medical air, carbon dioxide, helium, nitrogen, instrument air, medical-surgical vacuum, waste anesthetic gas disposal, mixtures thereof, or any other gaseous, partly gaseous substance, material or any mixtures thereof used in a health care facility. Replacing cylinders and filters, and performing routine and preventive maintenance that does not breach the integrity of the medical gas piping system and does not constitute the installation, repair, or replacement of medical gas piping shall not require a medical gas piping licensee.

"Medical gas journeyman" means a type and category of mechanical license that is restricted to medical gas piping.

"Minor repairs and maintenance" means minor repairs or maintenance as each are prescribed in the manufacturer's operating instructions to be performed by the equipment owner or his authorized agent, and shall not include replacement and repairs of any nature on natural gas piping, natural gas controls, the manufacturer installed controls and components, the vent system of fuel burning appliances, a breach of the integrity of a refrigeration system or any repair or maintenance which would violate the safe operation of the equipment.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et seq.*, and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Petroleum refinery" means an industrial plant which processes petroleum for purposes of creating products derived from petroleum and includes industrial plants which produce and/or refine alternative fuels or petroleum additives. "Petroleum refinery" shall not mean gas processing plant or gas gathering pipeline operations.

"Petroleum refinery journeyman" means a type and category of mechanical license that is restricted to petroleum refinery process piping.

"Petroleum refinery process piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in the petroleum refining process or product refining systems of a petroleum refinery.

"Process" means a series of operations performed in the making or treatment of a product.

"Process piping" means lay out, assembly, installation, and maintenance of pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating and fire sprinklers, not subject to regulation pursuant to the Alarm Industry Act, and industrial production and processing systems, and piping used to carry any gaseous, or partly gaseous, substance or material as part of a medical gas piping system.

"Reciprocity" means an agreement whereby a person holding a mechanical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refrigeration system" means installation, repairing and servicing of a system employing fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process.

"Variance" means the use of an alternative material or method of construction from that prescribed in the standard of installation as described in OAC 158:50-1-4 and/or other approved documents by the OUBCC for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Mechanical Installation Code Variance and Appeals Board.

"Verifiable experience" means mechanical experience obtained while employed by a licensed Mechanical contractor, or by other means approved by the Committee of Mechanical Examiners including equivalent experience earned while serving in the U.S. Military, for which one (1) year of verifiable experience equals two thousand (2,000) hours.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE AND THE HEARING BOARD

158:50-3-2. Procedures of the Hearing Board

(a) The Hearing Board shall meet as often as is necessary to enforce the requirements of the Act and ~~these Rules~~this Chapter. The Hearing Board shall be comprised of a designee of the Oklahoma Construction Industries Board and the Committee.

(b) The standard of installation to be used by the Hearing Board for individual proceedings concerning the work of contractors, journeymen and apprentices shall be the applicable standard established pursuant to OAC 158:50-1-4, unless a city or county mechanical requirement is otherwise applicable as a matter of law.

SUBCHAPTER 9. QUALIFICATIONS FOR MECHANICAL LICENSURE, LICENSE AND REGISTRATION FEES, DURATION OF LICENSE, MECHANICAL LICENSE APPLICATION, AND APPRENTICE REGISTRATION

158:50-9-1. Qualifications for mechanical licensure

(a) **Application.** A person desiring to be licensed under this Chapter shall file an application with the application fee, examination fee (unless the examination fee is paid directly to a testing provider), and the initial License fee to the Administrator. The fees must be received no less than three (3) working days before the examination date. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

(b) **Experience.** All persons applying for a license must provide proof of experience in the mechanical trade. Applicants for mechanical license examinations who are not licensed and wish to include experience gained in Oklahoma must maintain an apprentice registration on file with the Oklahoma Construction Industries Board for all experience obtained in Oklahoma. The Construction Industries Board will not consider experience obtained in or outside of Oklahoma as verifiable experience for periods in which an apprentice is unregistered, except for experience lawfully obtained according to any applicable federal or state laws, and must be comprised of mechanical work as defined under the Act and in this Chapter.

(1) Applicants for a journeyman license must be at least eighteen (18) years of age and have:

(A) three (3) years of verifiable experience in the mechanical trade in the category for which he or she is applying, or

(B) an associate's degree or vocational diploma certifying completion of an educational program consisting of one thousand (1,000) hours or more from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for and one (1) year of verifiable experience in the mechanical trade, or

(C) a vocational diploma certifying completion of an educational program consisting of five hundred (500) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for, and two (2) years of verifiable experience in the mechanical trade, or

(D) a vocational diploma certifying completion of an educational program consisting of a minimum of three hundred and seventy five (375) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-fourth (2 1/4) years of verifiable experience in the mechanical trade, or

(E) a vocational diploma certifying completion of an educational program consisting of a minimum of three hundred and thirty four (334) or more hours

from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-third (2 1/3) years of verifiable experience in the mechanical trade, or

(F) a vocational diploma certifying completion of an educational program consisting of a minimum of two hundred and fifty (250) or more hours from a school, approved by the Committee, which exhibits knowledge of the trade and in the category of license applied for, and two and one-half (2 1/2) years of verifiable experience in the mechanical trade, or

(G) equivalent, verifiable experience in the mechanical trade while serving in the U.S. military, or

(~~E~~H) experience sufficient to obtain the special certification required for the mechanical category sought by the tendered application, such as Ground Source Piping and Medical Gas, or

(~~F~~I) a verifiable out-of-state license in the mechanical classification for which the applicant is applying. The license must:

(i) be current,

(ii) be in good standing, and

(iii) meet qualifications listed in (A) through (E) above.

(2) Applicants for a contractor license must meet the same requirements as a journeyman with an additional one (1) year of experience.

(c) **Examination.** A license cannot be issued until the applicant has passed the appropriate examination for the license type and category. Examinations and the passing score for each examination shall be approved by the Committee. Applicants for the Ground Source Piping category shall provide proof of being certified by examination in the proper installation of ground source piping by an organization approved by the Committee. Applicants for the Petroleum Refinery journeyman category shall provide proof of being certified by examination in the area of industrial pipefitter by an organization approved by the Committee. Applicants for the Medical Gas category shall provide proof of being certified by examination in accordance with the most current NFPA 99 standard or certified in the proper installation of medical gas piping by an organization approved by the Committee.

(1) If the applicant does not pass the exam, the applicant may reapply for the exam and pay an additional retesting fee. However, no person will be allowed to retake an exam within thirty (30) days of the first failed exam or within ninety (90) days of the second or subsequent failed exam.

(2) Any person suspected of cheating during an examination shall be immediately notified of the suspicion and shall not be allowed to finish the examination. He or she shall be called before the Committee during the next scheduled meeting for discussion of the incident. If the Committee determines that the person did in fact cheat, the examinee's application for licensure shall be denied and the Committee shall determine when the applicant can next apply for an examination.

(3) No person shall be allowed any assistance in reading the contractor's examination, nor shall any persons other than the examinees or the Committee members be allowed in the examination area. However, an applicant may request that the Committee make reasonable accommodations for any disability.

(d) **Outstanding fines.** A license cannot be issued or renewed until the applicant has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

158:50-9-5. Apprentice registration

(a) A person may register as a mechanical apprentice if the person does not meet the qualifications for licensure but wishes to learn or perform mechanical work. An individual licensed in any category shall be permitted to work as an apprentice in any category for which they are not licensed by complying with the requirements of this chapter for ratio and direct supervision.

(b) The apprentice will be registered for a one (1) year period if a completed application form with the application and registration fee listed in OAC 158:50-9-2(b)(10) is submitted to the Mechanical License Unit along with verification of enrollment in an approved school or training course or a statement of employment by the licensed mechanical contractor who arranged for employment of the apprentice.

(c) The apprentice must perform mechanical work in the same category as the licensed mechanical person who is supervising the apprentice.

(d) An apprentice who participates in activities inconsistent with the provisions of the Act and the rules of this Chapter shall be subject to the sanctions described in OAC 158:50-11-3.

(e) Apprenticeship registration is effective upon the posting of the application and evidence of such posting shall be a copy of the executed application form with proof of tender of the properfee which may serve as evidence of registration for a period not to exceed thirty (30) days.

(f) Mechanical apprentices must be under the direct supervision of a licensed Mechanical contractor or journeyman when engaged in Mechanical work.

158:50-9-7. Continuing Education

(a) **Continuing Education Requirements:**

(1) By July 1, 2014, no contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education ("CE"); and thereafter, the licensee shall complete six (6) hours every three (3) years or thirty-six (36) months. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee or its designee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the OUBCC and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved

by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing Act, the trade regulations as set forth in this Chapter as well as the rules of the Construction Industries Board in OAC 158:10, and other trade or safety related subject matters approved by the Committee.

(2) If a license expires before the licensee completes the CE requirement, any CE that is completed while the license is expired will be applied to the CE requirement for the thirty-six (36) months preceding the date the license expired. Six (6) hours of CE will still have to be completed in order to meet the CE requirement for the subsequent thirty-six (36) month period.

(3) Credit will be given for CE programs approved by the Committee, or its designee.

(4) Except as provided herein, this Section shall apply to every licensed mechanical journeyman or contractor.

(5) A licensee is exempt from the education requirements of this Section for three (3) years from the date he or she passed their current licensing exam.

(b) **Standards.** The following standards will govern the approval of continuing education programs by the Committee.

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training. The training provider and instructors will be of good reputation and of good moral character.

(2) Any written material that is distributed during the session shall be readable, of high quality and shall be made available to all attendees.

(3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.

(4) The training session shall be presented outside the regular workplace or after regular working hours. An on-site conference room, that meets standards imposed by (3) of this subsection, shall be considered outside the regular workplace.

(5) A credit hour means at least fifty (50) minutes of classroom instruction with a ten (10) minute break.

(6) CE courses shall be presented in one of the following formats.

(A) Six (6) credit hours presented in one (1) day.

(B) Two (2) sessions of three (3) credit hours each presented within a seven (7) day period.

(C) One (1) session of two (2) credit hours of trade related instruction, Mechanical Licensing Act and/or Mechanical Industry Regulations.

(D) An approved correspondence course.

(E) Another format approved by the Committee.

(7) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets from the course to the Mechanical License Unit of the Construction Industries Board.

(D) Providers shall maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(E) Complaint Procedure.

(i) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of this Section, and specifying the grounds for the complaint.

(ii) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(iii) The Committee may consider an unsigned or anonymous complaint for further investigation.

(iv) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of the Act or this Chapter. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this Section.

(v) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) **Application Procedures.**

(1) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least thirty (30) days prior to the scheduled start date. Supporting documents shall include the following:

(A) A resume or brief summary of qualifications of all course developers and instructors.

(B) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and evaluation time.

(C) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the trade related instruction being provided.

(2) An application is to be submitted for each date, or dates, that constitute a single course.

(3) Each course must be included on a separate application.

(d) **Mechanical Examiners Committee Acceptance.**

(1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.

(2) The approval of any course will be made by a majority vote of the Committee at a regularly scheduled meeting of the Mechanical Examiners Committee.

(3) The Committee's designee may approve additional dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.

(4) The applicant will be notified in writing whether the program is approved or disapproved, detailing the basis of the decision if disapproved.

(5) Approval is rescinded upon the adoption of a different statewide code and a new application showing updates of new code is necessary.

(e) **Committee Rejection and Reevaluation of a Course.**

(1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.

(A) Failure to comply with the continuing education provisions.

(B) Inadequate application or supporting documentation.

(C) Failure to instruct on topic approved.

(D) Inadequate experience of program developer or instructor.

(E) Unsatisfactory evaluation of the course instructor or materials from previous classes.

(2) The Committee may, at any time, re-evaluate and grant or revoke approval of application or course.

(A) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.

(B) A provider's failure to comply with this Section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.

(3) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.

(f) **Appeals.**

(1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the Committee within fifteen (15) days of the receipt of the notice.

(2) All appeals will be heard by the Committee at its next regularly scheduled meeting.

(g) **Course Presentation.**

(1) The program, including the named advertised participants, shall be conducted as approved by the Committee, subject to emergency withdrawals and minor alterations.

(2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.

(h) **Course Advertisement.**

(1) All advertising must include the course ID number.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # has been approved by the Construction Industries Board Mechanical Examiners Committee for hours of CE credit.

(i) **Correspondence and Online Courses.**

(1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.

(2) Correspondence courses shall be required to comply with all requirements of continuing education courses, except sign-in sheets.

(3) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction.

(4) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.

(5) Applications shall be resubmitted annually, from date of approval, for review and approval.

(j) **Alternate Credit Method.** Credit may be earned through teaching an approved continuing education course. The Committee may award up to six (6) hours of CE credit, not to exceed the number of approved hours for that CE course.

(k) **Continuing Education Not Required for Petroleum Refinery Journeyman.** ~~Provisions~~Subsections (a) ~~-~~through (j) ~~herein~~of this Section shall not apply to the license category of Petroleum Refinery Journeyman. The Petroleum Refinery Journeyman license may be renewed without continuing education.

(l) **Continuing Education Not Required for Ground Source Piping.** ~~Provisions~~Subsections (a) ~~-~~through (j) ~~herein~~of this Section shall not apply to the license category of Ground Source Piping. The Ground Source Piping category license may be renewed without continuing education provided that a current approved certification is submitted.

(m) **Continuing Education Not Required for Medical Gas.** ~~Provisions~~Subsections (a) ~~-~~through (j) ~~herein~~of this Section shall not apply to the license category of Medical Gas. The Medical Gas category may be renewed without continuing education provided that a current approved certification is submitted.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

158:50-11-3. License revocation or suspension

(a) The employment and use of unlicensed individuals performing mechanical work, the employment and use of individuals as apprentices without registration, or cheating may be considered justification to suspend or revoke said mechanical contractor's license based upon illegal use of license.

(b) The repeated violation of any of ~~these~~the rules in this Chapter or any provision of the Act, or the violation of a multiple of any of ~~these~~the rules in this Chapter or provision of the Act, may be considered justification to suspend or revoke the licensee's license or registration.

SUBCHAPTER 13. PROCEDURES OF THE VARIANCE AND APPEALS BOARD, PLAN REVIEW APPLICATIONS AND FEES, CODE VARIANCE APPLICATIONS AND FEE, CODE INTERPRETATION APPEALS

158:50-13-3. Code variance applications and fee

(a) Applications for a variance from the standard of installation as described in OAC 158:50-1-4 by an Oklahoma-licensed, mechanical contractor, or other person as stated in ~~statute~~the Act, shall be submitted to the Administrator. An application form and the fifty-dollar ($50.00) filing fee shall accompany sufficient technical data submitted to support the proposed variance. Applications submitted after the use of materials or methods of construction not in conformance with the standard of installation as described in OAC 158:50-1-4, or submitted where a city or town has adopted a more stringent mechanical installation code by ordinance, shall not be considered by the Variance and Appeals Board.

(b) The applicant and the Administrator or the Administrator's designee may offer testimony to the Variance and Appeals Board which is relevant to the code variance requested. If testimony will be offered to support the application, the applicant shall include in the application the identity of the applicant's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness. If the Administrator or the Administrator's designee contests the application, and will offer testimony to rebut the application, the Administrator or the Administrator's designee will provide the applicant with the identity of the Administrator's or the Administrator's designee's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness.

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TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #16-420]

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PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-6. Time computations and extensions; effective date [AMENDED]
Part 5. Response to Citizen Environmental Complaints
165:5-1-25. Definitions [AMENDED]
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of a Cause
Part 5. Public Utilities
165:5-7-61. Procedures for causes filed pursuant to OAC 165:70 [AMENDED]
Subchapter 17. Post Order Relief
165:5-17-1. Within 10 days; motion [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. § 52, 17 O.S. § 152 *et seq.*, 17 O.S. § 166.1, 17 O.S. § 166.1a, 27A O.S. § 1-3-101, 52 O.S. § 139, 47 O.S. § 1013, Article IX, Sections 18 and 19 of the Oklahoma Constitution, and OAC 165:5-1-7

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 21, 2016

COMMENT PERIOD:
January 21, 2016, through March 4, 2016

PUBLIC HEARING:
March 22, 2016

ADOPTION:
March 22, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2016

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:
June 9, 2016

EFFECTIVE:
August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The $5,000.00 transportation network company (TNC) annual permit fee in amendments to OAC 165:5-3-1 is required by 47 O.S. § 1013(B), which provides that the Commission shall issue a permit to each applicant that presents proof, in a form prescribed by the Commission, that the applicant meets the requirements for a TNC set forth in the Oklahoma Transportation Network Company Services Act (Act) (47 O.S. § 1010 through 47 O.S. § 1030), and proof of insurance required by the Act and pays to the Commission an annual permit fee of Five Thousand Dollars ($5,000.00). Other rules were amended in efforts to update, streamline and clarify existing Rules of Practice, including, but not limited to, procedures for rate change causes and regarding motions filed after an order of the Commission is entered, and to assess filing fees for Oil and Gas Conservation Division transfer of well operator and notification of intent to plug forms. No filing fees are currently assessed for transfer of well operator or notification of intent to plug forms, and revenue generated from filing fees for such forms would assist in providing funding for the Oil and Gas Conservation Division's seismicity department.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-6. Time computations and extensions; effective date

(a) **Computation of time.** In computing any period of time prescribed by statute,~~or~~ by the rules of this Chapter, or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall be omitted and the last day of the designated period shall be included, unless the last day falls on a Saturday, Sunday, or legal holiday or official agency closing, in which case the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday or official agency closing.

(b) **Extension of time.** Whenever an act is by the rules of this Chapter or by order of the Commission required or allowed to be done at or within a specified time, the Commission may, in its discretion upon its own motion or upon motion of any person, after notice and hearing, order the period extended if the order therefore is made prior to expiration of the period originally prescribed or as extended by previous order. Statutory time limits can not be extended by the Commission.

(c) **Effective date of orders.** Every order of the Commission issues and is effective, unless an effective date is otherwise stated in the order, the date such order is signed by the Commissioners or by the Secretary upon approval of the Commissioners. Every order shall contain the language: "Done and performed this _____ day of _____". Periods of time prescribed by the order, or by statute, or by the rules of this Chapter shall run from the "Done and performed" date.

PART 5. RESPONSE TO CITIZEN ENVIRONMENTAL COMPLAINTS

165:5-1-25. Definitions

The following words or terms, as used in this Part, shall have the following meaning unless the context clearly indicates otherwise:

"Pollution complaint" means any communication, whether verbal or written, from any person not acting within the scope of employment of an environmental regulatory agency, which alleges that any site specific pollution has occurred or is imminent, or that a site specific pollution control law or rule has been violated, and for which the complainant expects action to be taken by an environmental regulatory agency. The term "pollution complaint" ~~a~~as used in this Part shall include anonymous pollution complaints, although the requirements of this Part regarding written or telephonic reply to the complainant shall not apply.

"Site specific" means limited in geographical extent to a specific well site, service yard, section of pipe, disposal or other pit, petroleum ~~or hazardous substance~~ storage tank, or other such site or facility and its immediate surroundings; or originating from an identifiable and definite source at a specific well site, service yard, section of pipe, disposal or other pit, petroleum storage tank, or other such site or facility.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(H) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. For documents that are being filed in paper form, all associated filing fees must be paid and the documents submitted to the Court Clerk's Office for filing prior to 4:00 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Commercial recycling facility application - $1,000.00

(E) Conservation docket and pollution docket base applications - $100.00

(F) Permit to drill - $175.00

(G) Emergency walk-thru permit to drill - $500.00

(H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(I) Permit for one-time land application of water based fluids - $100.00

(J) Emergency walk-through of permit for one-time land application water based fluids - $200.00

(K) Application for non-commercial injection or disposal well - $100.00

(L) Emergency application on the conservation or pollution docket - $100.00

(M) Tax exemption application filed pursuant to OAC 165:10-21 - $100.00

(N) Transfers of well operatorship - Forms 1073 and 1073I - single well - $25.00

(O) Transfers of well operatorship - Forms 1073IMW and 1073MW - multiple wells - $250.00

(P) Notification of intent to plug - Form 1001 - $100.00

(2) **Transportation fees.**

(A) Transportation docket application - $100.00

(B) Other transportation fees:

(i) Intrastate license and certificate fees.

(I) Original application filing fee - $100.00

(II) Sub application filing fee - $100.00

(III) Renewal application filing fee - $50.00

(IV) Reinstatement application filing fee - $100.00

(V) Name change application filing fee - $50.00

(VI) Identification device or per vehicle fee - $7.00

(ii) Deleterious Substance License Permit application filing fee - $350.00

(iii) International Fuel Tax Agreement (IFTA) fees.

(I) IFTA decal - $2.00 per vehicle per decal set

(II) IFTA reinstatement fee - $100.00

(iv) Trailer registration processing fee per trailer registered through the IRP System - $2.00

(v) Temporary registration and fuel permit fees.

(I) Temporary registration (72 hour trip permit) - $12.00

(II) Temporary fuel permit (120 hours) - $25.00

(III) Unladen or hunters permit (45 days) - $25.00

(vi) Harvest permit fees (power units only).

(I) Thirty day permit - $20.00 per axle

(II) Sixty day permit - $35.00 per axle

(III) 15 day extension - $8.75 per axle

(vii) Transportation Network Company annual permit fee - $5,000.00

(3) **Utility fee.** Public utility docket application - $100.00

(4) **Enforcement fee.** Enforcement docket application - $100.00

(c) **Certified copies.** A fee of $1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) Copies of any file or order -

(A) Non-certified copies - $0.25 per page; certified copies $1.00 per page

(B) Postage - actual cost

(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25

(4) Batch reproduction on continuing basis (per page) - $0.25

(5) Copy of any document prepared in OCC offices (per page) - $0.25

(6) Copy of any Chapter of Commission rules and regulations - $10.00

(7) Copy of Oil and Gas Conservation rules - $20.00

(8) Current ownership/lienholder information - $1.00 per vehicle record page

(9) Computer generated title history - $5.00 per vehicle

(10) Manual title history - $7.50 per vehicle

(11) Copy of lien release - $7.50 per vehicle

(12) Certified copy of lien release - $10.00 per vehicle

(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer

data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page.

(h) **Payments by Credit Card and other means of electronic funds transfer.**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(6) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 5. PUBLIC UTILITIES

165:5-7-61. Procedures for causes filed pursuant to OAC 165:70

(a) **Purpose.** The purpose of this Section is to establish procedures regarding rate change causes filed on the Public Utility Docket pursuant to OAC 165:70 which will allow the Oklahoma Corporation Commission to fulfill its responsibility to process rate changes within the time prescribed by Title 17 O.S. (Supp. 1993) § 152 et seq.

(1) This Section shall apply to all parties to the proceeding, including the utility, the Commission Staff, the Attorney General and any intervening party of record.

(2) To the extent this Section conflicts with other Sections of the Commission's Rules of Practice, OAC 165:5, the procedures established in this Section shall control.

(b) **Definitions.** The definitions set forth in OAC 165:70-1-2 shall be deemed applicable to this Section.

(c) **Intervening party requirement.**

(1) The Commission Staff, the Attorney General and any intervening party of record shall conform their testimony and exhibits to the format set forth in OAC 165:70-5-4. A waiver of any requirements of Chapter 70 shall be obtained as outlined in OAC 165:70-3-6.

(2) Any interested person seeking to intervene pursuant to OAC 165:5-9-4 shall request permission to intervene no later than ninety (90) days following the filing date of the application for a general rate change. The filing or granting of any Motion to Intervene shall not be grounds to delay, continue or extend any hearing date, deadline or time limit set or to be set in a proceeding.

(3) If the Commission does not rule on a motion to intervene within twenty (20) days from the date the motion to intervene is filed, the motion to intervene shall be deemed to have been granted.

(d) **Data requests/responses.** Any party, including but not limited to the utility, the Commission Staff, the Attorney General and any other intervening party of record, shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time. Any data requests received after 3:00 p.m. shall be deemed received the next regular business day.

(1) Data requests submitted by any party prior to the date of filing the application package shall be deemed received the date the application package is filed pursuant to OAC 165:70-3-1.

(2) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(3) The party served with the data request shall notify the issuing party within five (5) business days of receipt of the requests that the ten (10) business day requirement or otherwise agreed-upon response time cannot be met and provide an explanation for the delay. The party served with the data request shall commit, at the time of such notification, to a response date.

(4) Any objection(s) relating to a data request or the date a response is to be provided shall be presented by the objecting party within five (5) business days of receipt of the data request. If the parties are unable to reach a resolution regarding the dispute within three (3) business days of the date of the objection, the objecting party shall file a written objection and a hearing on all such objections shall be set on the next Public Utility Motion Docket. It shall be the responsibility of the objecting party to notify the Commission or the Administrative Law Judge that the matter will appear on the Docket.

(e) **General instructions regarding testimony and exhibits.** The following instructions are applicable to all classes of utilities, the Commission Staff, the Attorney General and any intervening party of record who filed testimony and exhibits regarding a general rate change filed pursuant to OAC 165:70:

(1) All schedules and exhibits shall be mathematically correct and properly cross-referenced.

(2) All schedules and exhibits shall be designated as provided in 165:70-5-4.

(3) Headings on all schedules and exhibits shall clearly indicate the party's name, the nature and content of the schedule, the test period covered and the cause number.

(4) All schedules and exhibits shall be typed and/or clearly legible.

(f) **Filing of responsive and rebuttal testimony, notice of major issues to be raised and oral surrebuttal.**

(1) The Commission Staff, the Attorney General and any intervening party of record seeking to present evidence shall file responsive testimony and exhibits no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. Any party seeking only to cross-examine witnesses shall file a statement of position no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. At the time of filing testimony the Commission Staff, the Attorney General and any intervening party of record shall, upon request, provide a copy of the workpapers which support the recommendations contained in their testimony to the requesting party of record. The workpapers shall be organized and presented in the same format as required of the utility by Part 5 of OAC 165:70-5.

~~(2) The Commission Staff, the Attorney General and any intervening party of record shall provide to the utility, thirty (30) days prior to filing responsive testimony, a list of any major issues the party anticipates to raise in connection with the utility's application for a general rate change. Said list of anticipated major issues shall be updated, as necessary, up to five (5) days prior to filing responsive testimony.~~

(~~3~~2) If the utility elects to present rebuttal testimony, the rebuttal testimony shall be filed by the one hundred fortieth (140) day subsequent to the filing date of the application for a general rate change.

(~~4~~3) A hearing on the merits shall commence no later than the one hundred fiftieth (150th) day subsequent to the date the application for a general rate change was filed pursuant to OAC 165:70-3-1.

(~~5~~4) Parties filing direct testimony pursuant to this subsection (f) may present oral rebuttal testimony to any issue raised for the first time during the hearing. Parties filing responsive testimony pursuant to this subsection (f) may present oral surrebuttal.

(~~6~~5) Nothing in this Section shall preclude the trier of fact from permitting parties who filed testimony to present oral surrebuttal regarding issues raised for the first time in oral testimony presented during the hearing, if deemed appropriate.

~~(g) **Staff's schedule of auditing and investigation dates.**~~

~~(1) The Director, within thirty (30) days following the receipt of the filing of the Notice of Intent, shall advise the utility of the approximate date on which the Commission Staff will conduct its field review of that portion of the supplemental package, if required, which is impractical to produce, voluminous and/or confidential, to assess compliance with the Minimum Filing Requirements.~~

~~(2) The Director, within thirty (30) days following the receipt of the filing of the Notice of Intent, shall advise the utility of the approximate date(s) on which the Commission Staff will conduct its field investigation and audit of the rate request.~~

(~~h~~g) **Hearings regarding intervention, waiver of requirements, deficiencies, the confidentiality agreement and/or protective order.** Any hearings regarding motions to intervene disputes related to the Waiver of Requirements contained in OAC 165:70, Deficiencies, the Confidentiality Agreement and/or the need for a protective order shall be set before the

Commission en banc, since time is of the essence in resolving these disputes.

(~~i~~h) **Amending an application.**

(1) A utility may not significantly amend an application for a general rate change filed pursuant to OAC 165:70 after it has been docketed by the OCC Court Clerk, except as provided in this subsection.

(2) An amendment may be accommodated by withdrawing the initial filing and substituting a new, amended filing in place of the original cause, which will establish a new filing date. An amended filing must conform to the requirements of OAC 165:70-5-1 and will be subject to the sanctions in OAC 165:70-5-2.

(3) For purposes of this Section, an amendment shall be deemed "significant" if it changes the test year, or if it requests more than a five percent (5%) increase in the previously requested revenue requirement, unless such changes are the result of arithmetical error or are mandated by law.

(4) A utility may incorporate a significant change without refiling an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

(~~j~~i) **Limitations on active applications for a general rate change.**

(1) A utility may not have more than one active general rate change application pending before the Commission at any one time, unless the Commission has failed to issue a final order upon the first application within two hundred seventy (270) days of that application's filing date. This shall not prohibit the utility from filing a new application for a general rate change if the utility can show its financial integrity or service reliability is materially impacted during the period from the closing of the record to the time in which the Commission makes a final determination on an active rate application.

(2) A cause which has been remanded to the Commission by the Oklahoma Supreme Court after appellate review shall not be deemed an active general rate change application pursuant to this Section.

SUBCHAPTER 17. POST ORDER RELIEF

165:5-17-1. Within 10 days; motion

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order. However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state:

(1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.

(2) The specific modifications or other relief sought by the motion.

(3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. ~~A copy of the motion, including notice of the date set for hearing, shall be served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents listed on the affidavit of mailing and all parties of record.~~ The movant is required to serve copies of the motion and notice of hearing on all respondents and parties of record at least five (5) business days prior to the hearing date. The motion and notice of hearing can be served by regular mail, facsimile, electronic mail or in person.

[OAR Docket #16-420; filed 6-13-16]

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

[OAR Docket #16-421]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 10. Oil and Gas Conservation [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. § 52, 17 O.S. § 180.10, 27A O.S. § 1-3-101, 52 O.S. § 139, 52 O.S. § 317.1, and OAC 165:5-1-7
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 15, 2016
COMMENT PERIOD:
January 14, 2016, through March 16, 2016
PUBLIC HEARING:
March 22, 2016
ADOPTION:
March 22, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Certain amendments to OAC 165:10-12-9 regarding assistance to an owner of property which has a seeping natural gas occurrence were made to conform to amendments to 17 O.S. § 180.10 in Enrolled House Bill No. 2234 (2015). OAC 165:10-1-7 was amended to provide for use of a new Form 1073IMW for transfers of operatorship involving more than ten underground injection wells pursuant to OAC 165:10-5-10, and new Form 1073MW for transfers of operatorship involving more than ten oil or gas wells pursuant to OAC 165:10-1-15. OAC 165:10-1-7 was also amended to provide for use of a new Form 3000NGS by owners of properties which have seeping natural gas who are required to file an application with the Commission regarding the Commission's investigation and/or abatement of the seeping natural gas pursuant to OAC 165:10-12-9. Other rules were amended in efforts to update, clarify and streamline language and procedures appearing in OAC 165:10, as well as to require monitoring and reporting for wells within areas of interest

regarding seismicity and address administrative shutdown or other action concerning underground injection wells.

CONTACT PERSON:

Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939, s.conrad@occemail.com.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH HOUSTON, SUITE 114, TULSA, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

OAC 165:10-1-4 is amended to update the list of effective dates for OAC 165:10 rulemakings; OAC 165:10-1-7 to update the list of Oil and Gas Conservation Division prescribed forms and to eliminate requirements for the submission of multiple copies of forms to the Commission; OAC 165:10-1-15 regarding transfer of operatorship of oil and gas wells; OAC 165:10-3-1 concerning permits to drill for horizontal wells; OAC 165:10-3-15 regarding the venting and flaring of gas from wells; OAC 165:10-3-16 with respect to operations in hydrogen sulfide areas; OAC 165:10-5-7 to add a provision concerning requested monitoring and reporting within areas of interest regarding seismicity and to address administrative shutdown of underground injection wells; OAC 165:10-5- 9 with respect to duration of underground injection well orders or permits, and OAC 165:10-5-10 is amended regarding transfer of authority to inject concerning underground injection wells.

OAC 165:10-5-13 is amended to eliminate surface casing injection of reserve pit fluids; OAC 165:10-7-16 regarding liner requirements for flow back water pits in hydrologically sensitive areas, sampling of monitor wells and leachate collection systems, and the use of flow back water pits by other operators; OAC 165:10-7-20 to eliminate a requirement that applications to permit noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater be submitted in duplicate to the Commission and regarding sampling of monitor wells and leachate collection systems pertaining to such pits; OAC 165:10-7-33 regarding sampling of monitor wells and leachate collection systems with respect to truck wash pits; OAC 165:10-9-1 regarding monitoring by engineers during construction of commercial pits, geomembrane liners installed in such pits and sampling of monitor wells pertaining to such pits; OAC 165:10-9-2 with respect to sampling of monitor wells concerning commercial soil farming; OAC 165:10-9-3 to eliminate a requirement that applications to permit commercial disposal well pits be submitted in duplicate to the Commission, amend requirements regarding geomembrane liners installed in such pits, and approval and sampling of monitor wells and leachate collection systems regarding such pits, and OAC 165:10-9-4 is amended concerning monitoring by engineers during construction of commercial recycling facilities, geomembrane liners installed in pits pertaining to such facilities, and sampling of monitor wells and leachate collection systems regarding such facilities.

In addition, OAC 165:10-10-1 is amended concerning the purpose, authority and applicability of the Brownfield program; OAC 165:10-10-2 regarding Brownfield sites; OAC 165:10-10-3 concerning administration and enforcement of rules pertaining to Brownfield sites; OAC 165:10-10-4 with respect to determination of eligibility for the Brownfield program; OAC 165:10-10-5 regarding the Brownfield program application process; OAC 165:10-10-6 concerning Brownfield site eligibility is revoked; OAC 165:10-10-7 with respect to the Commission's maintenance of a list of Brownfield sites; OAC 165:10-10-8 regarding processing of Brownfield applications is revoked; OAC 165:10-10-9 concerning assessment and remediation of Brownfield sites; OAC 165:10-10-10 with respect to public notice requirements pertaining to Brownfield sites; OAC 165:10-10-11 regarding public meetings and public comments concerning Brownfield sites; OAC 165:10-10-12 with respect to closure of Brownfield sites; OAC 165:10-10-13 regarding issuance of Brownfield certificates by the Commission, and OAC 165:10-10-14 is amended concerning closures of sites by responsible parties.

Further, OAC 165:10-11-4 is amended to eliminate a requirement that notification of intention to plug forms be submitted in duplicate to the Commission; OAC 165:10-11-7 to eliminate a requirement that plugging record forms be submitted in duplicate to the Commission; OAC 165:10-12-3 to change the reference to the statute authorizing the Commission to promulgate and enforce rules and issue and enforce orders relating to seeping natural gas; OAC 165:10-12-6 regarding notice requirements for seeping natural gas occurrences; OAC 165:10-12-8 concerning procedures for the Rapid Action Assessment Team pertaining to gas surface seeps; OAC 165:10-12-9 regarding assistance to an owner of property which has a seeping natural gas occurrence and in accordance with 17 O.S. § 180.10 and amendments thereto in Enrolled House Bill No. 2234 (2015), and OAC 165:10-15-17 is amended to eliminate a requirement that initial production test forms regarding excessive water exempt oil projects be submitted in duplicate to the Commission.

The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at http://www.occeweb.com.

[OAR Docket #16-421; filed 6-13-16]

TITLE 165. CORPORATION COMMISSION
CHAPTER 15. FUEL INSPECTION

[OAR Docket #16-526]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
165:15-1-2. Definitions [AMENDED]
165:15-1-3. Application of rules [AMENDED]
165:15-1-4. Application of motor fuel rules [AMENDED]
165:15-1-6. Fuel Specialists'~~Identification~~ Requirements [AMENDED]
Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance
Part 1. General Authority
165:15-3-1. Authority to enter and/or stop for inspection [AMENDED]
165:15-3-2. Authority to lock or seal for violation [AMENDED]
Part 3. Motor Fuels and Antifreeze
165:15-3-11. Testing methods [AMENDED]
Part 5. Liquid Measuring Devices
165:15-3-15. Fuel Specialist's duty [AMENDED]
165:15-3-16. Inspection for compliance [AMENDED]
Part 7. Storage Tanks and Ancillary Equipment
165:15-3-20. Water in storage tanks [AMENDED]
165:15-3-21. Containment of petroleum products [AMENDED]
165:15-3-23. Marina inspections [AMENDED]
165:15-3-24.3. ~~Farm~~UST inspections at farms [AMENDED]
Part 9. Large Volume Meters
165:15-3-25. Testing and inspection of large volume meters [AMENDED]
Subchapter 7. Specifications, Standards, and Labeling for Motor Fuels
165:15-7-5. Diesel fuel [AMENDED]
Subchapter 9. Description of Motor Fuel
165:15-9-1. General representation; lettering [AMENDED]
Subchapter 13. Labeling of Tanks and Product Lines
165:15-13-1. General identification and color coding requirements [AMENDED]
165:15-13-2. Underground tanks [REVOKED]
165:15-13-3. Aboveground storage tanks [REVOKED]
Subchapter 15. Liquid Measuring Devices
Part 9. Equipment and Operations
165:15-15-54. Wholesale devices [AMENDED]
Subchapter 19. Violations and Contempt
165:15-19-1. Penalty; violations and contempt [AMENDED]
165:15-19-2. Enforcement procedure [AMENDED]

165:15-19-3. Notices of Violation [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321, 52 O.S. § 325, 47 O.S. §466.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

COMMENT PERIOD:

October 22, 2015 to January 15, 2016

PUBLIC HEARING:

February 3, 2016

ADOPTION:

February 3, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:

June 9, 2016

EFFECTIVE:

August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The adopted rules clarify certain ambiguities that arose during the calendar year and remove obsolete or incorrect references. The adopted rules update current practices to align with changes in the fuel industry.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

165:15-1-2. Definitions

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

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, antifreeze, motor oil, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Airport" means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

"Analog type" means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"Approval seal" means an inspection label or tag pasted on the face of a dispenser indicating its official approval, showing day, month, and year.

"Aviation gasoline" means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

"Bulk plant" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Calibrate" or **"Calibration"** means the comparison of the indicated volume to the volume actually delivered by a retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell.

"Change in service" means discontinuing the use of a storage tank system for purposes regulated by the Commission.

"Commission" means the Corporation Commission of Oklahoma.

"Computing type" means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

"Diesel fuel" means a hydrocarbon or biodiesel fuel suitable for use in a diesel engine.

"Digital type" means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"Dry hose type" means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.

"Face of the pump" means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values

digitally. It is the side of the pump where the unit price, volume dispensed, and dollar amount of the sale appear.

"Fuel" means any petroleum product, oxygenate, or blend of products suitable for use in an internal combustion or diesel engine.

"Fuel Specialist" means any field inspector employed by the ~~Fuel Inspection and~~ Compliance and Inspection Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

"Gasoline" means a volatile unleaded fuel that is suitable for use in a spark ignition, internal combustion engine.

"Gravity type" means a type of device designed for discharge by gravity.

"Gum" means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

"Index of an indicator" means that particular portion of an indicator that is directly used in making a reading.

"Indicating element" means that component located on the face of the pump that signifies the amount relative to a quantity measured by a measuring device.

"Isooctane" means a pure hydrocarbon 2,2,4-trimethylpentane used as a reference fuel that has an octane rating of one hundred.

"Kerosene" means a refined hydrocarbon fuel intended for use in heating and illumination.

"Liquid measuring device" or **"liquid fuel device"** means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"MtBE" means methyl tertiary butyl ether for use as a component in gasoline.

"Manufacturer" means any person engaged in the manufacture of gasoline, motor fuel, kerosene, aviation gasoline, diesel fuel, burning oil, or oxygenate offered for sale or use in the State of Oklahoma, whether such products are manufactured by the method of processing crude petroleum or natural gas or collecting natural or drip gasoline or the blending or mixing of any two or more products obtained from these processing methods. Blending or mixing, as used in this Chapter, does not include the multi-blend pumps at service stations.

"Measuring device" or **"meter"** means all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"Motor fuel" means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

"NACE" means the National Association of Corrosion Engineers.

"N-heptane" means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.

"Octane", "octane number", or **"octane rating"** means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

"Owner or operator" means the person responsible for and in control of a facility's day-to-day operations, whether the person actually possesses a title to the facility or controls it as a lessee or by any other agreement. The term also includes a past operator at the time of a release or a violation of state statutes or Commission rules.

"Oxygenate" means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum products" means antifreeze, motor oil, gasoline, kerosene, ethanol, diesel and biodiesel fuel and aviation gasoline.

"Primary indicating elements" or **"recording elements"** means those principal visual indicating elements and recording elements that may be used by the operator in the normal commercial use of a device and which are readily visible to the public.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's home, analogous to a garage and driveway used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"(R+M)/2" means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Retail device" means a measuring device or mechanism designed for single deliveries of motor fuels to individual land, air, and water vehicles.

"Retail level" means all places of business where gasoline, motor fuel, kerosene, diesel fuel, or aviation gasoline is dispensed or delivered directly into the tank of the consuming vehicle or receptacle, and may include bulk agents, consignment agents, distributors, or jobbers.

"SIR" means Statistical Inventory Reconciliation.

"Security Seal" or **"seal"** or **"lock/locking mechanism"** means a lead and wire seal, lock or locking device, or similar device, attached to a petroleum storage tank system for protection against access, removal, or adjustment.

"TAME" means tertiary amyl methyl ether for use as a component in gasoline.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use, but not removed, with the intent to return to service.

"Tolerance" means a value fixing the limit of allowable error or departure from the highest performance or value.

"Transport calibration" or **"truck calibration"** means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

"Underground storage tank" or **"UST"** means a regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers and ancillary equipment.

"Unleaded gasoline" means a refined gasoline to which no lead has been intentionally added during the refining or blending process.

"Visible type" means a type of device in which the measurement takes place in visible glass measuring chambers.

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

165:15-1-3. Application of rules

(a) The rules contained in this Chapter apply to:

(1) All manufacturers and handlers of fuel subject to the jurisdiction of the Commission.

(2) All persons who sell or distribute any petroleum product, motor fuel, oxygenate, or blend of products.

~~(3) All persons who use liquid measuring devices in the sale or distribution of motor fuel.~~

(b) All persons who use liquid measuring devices in the sale or distribution of motor fuel, as defined by applicable statutes and (a) of this Section, must comply with this Chapter.

(c) Motor fuel in transit or manufactured in Oklahoma for consumption in other states is not subject to inspection under the rules of this Chapter.

(d) The tolerances on ~~the~~ metric equipment must be equivalent to those specified in English units for similar equipment.

165:15-1-4. Application of motor fuel rules

(a) The rules contained in this Chapter apply to all manufacturers and handlers of motor fuel intended for use in the State of Oklahoma.

(b) No person can sell any ~~petroleum product~~regulated substance, motor fuel, oxygenate, or blend within the State of Oklahoma that does not meet the tests, specifications, and standards set forth in this Chapter.

(c) All motor fuel manufactured in, or imported into, the State of Oklahoma for use or sale must be tested by the manufacturer or importer to ensure its compliance with the rules of this Chapter.

(d) The results of these tests, together with any other information required by the Commission, must be maintained by the manufacturer in accordance with usual and customary business practices, and copies must be furnished to the Petroleum Storage Tank Division upon request. These test results, excluding trade secrets and proprietary information, must also be furnished to the jobber or wholesale dealer of the manufacturer upon request.

165:15-1-6. Fuel Specialists'~~Identification~~ Requirements

Fuel Specialists must:

(1) Identify themselves before they begin working and offer identification if requested.

(2) Leave a copy of the completed inspection form.

(3) Return all samples to their respective petroleum storage tanks.

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 1. GENERAL AUTHORITY

165:15-3-1. Authority to enter and/or stop for inspection

(a) A Fuel Specialist has the authority to enter upon the premises of any manufacturer, bulk dealer, or retailer of any regulated substance, as well as any other place where a regulated substance is or was sold or stored prior to sale or use, and perform tests required by ~~this Chapter~~PSTD rules, take samples, or make any other investigation in order to ensure compliance with this Chapter or the laws of the State. Fuel Specialists will also inspect TOU petroleum storage tank systems.

(b) The Fuel Specialist has the authority to inspect any records and documents pertaining to the operation, maintenance, or repair of tank systems and the ordering of, delivery of, and/or payment for petroleum products offered for sale.

165:15-3-2. Authority to lock or seal for violation

A Fuel Specialist or PSTD Director's designee has the authority to place or to direct that a lock or seal be placed on any pump, delivery device, receptacle, or container tank used in the sale, distribution or storage of regulated substances in Oklahoma when the rules in this Chapter, Chapter 25, Chapter 26, or a Commission order are being violated.

PART 3. MOTOR FUELS AND ANTIFREEZE

165:15-3-11. Testing methods

~~(a)~~ A Fuel Specialist will test the octane rating or check for any contaminants or foreign substances as necessary for each type of motor fuel sold at any retail facility, airport, bulk plant or marina using the Zeltex machine or other Commission-approved device.

~~(b) Though Fuel Specialists are not required to test the octane in motor fuel dispensed at fleet or commercial facilities at which a company dispenses fuel for its own use, they may, time permitting check fuel octane as a courtesy to an owner or operators' request.~~

PART 5. LIQUID MEASURING DEVICES

165:15-3-15. Fuel Specialist's duty

Fuel Specialists have the responsibility to implement and enforce the rules of this Chapter, Chapter 16, Chapter 25 and Chapter 26, which includes determining that a measuring device and equipment are accurate and as safe as possible for the public and the environment. If a measuring device does not conform to all official requirements, the Fuel Specialist is required to prohibit its use until the device is brought into compliance.

165:15-3-16. Inspection for compliance

(a) Retail liquid measuring devices subject to the rules of this Chapter are calibrated with a five (5) gallon test measure by the Fuel Specialist from time to time or as often as deemed necessary. High volume dispensers (those that are used to pump at a rate of at least twenty (20) gallons per minute) used to fill large tanks must be calibrated using a fifty (50) or one hundred (100) gallon prover.

(b) All wholesale liquid measuring devices subject to the rules of this Chapter must be calibrated by the Fuel Specialist no more than 10 million gallons of use, or more often if the Fuel Specialist deems it necessary.

(c) Before a new facility is open for business and before new dispensers are put into service at a pre-existing facility, the owner or operator must have the dispensers calibrated and be able to show written proof when requested by the Fuel Specialist.

(d) These tests may be ordered or directed by the Commission at any time.

(e) When a liquid measuring device is found not to be in compliance with this Chapter, the owner or operator will be advised of the problem and the device placed out of service.

(f) A Fuel Specialist has the responsibility to place or to direct that a lock or seal be placed on a measuring device. The lock or seal must remain in place until the defective measuring device is repaired or replaced and complies with Commission standards.

(g) The owner or operator of a locked measuring device may obtain permission to remove the lock or seal after repair by:

(1) Written permission from the Fuel Specialist who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the seal or lock; or

(2) Written or verbal permission from the Petroleum Storage Tank Division Director or the Director's designee; or

(3) Order of the Commission.

~~(h) For a fleet or commercial facility where fuel is dispensed for internal use by the company or its agents, there is no requirement that a Commission Fuel Specialist check the calibration of that facility's dispensers. However, a Fuel Specialist may do so time permitting as a courtesy for an owner or operator.~~

PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

165:15-3-20. Water in storage tanks

(a) **Water in storage tanks in excess of Commission standards is prohibited.** All underground storage tanks must be checked for water by the Fuel Specialist from time to time. However, water inspections by the Fuel Specialist does not remove the responsibility of the tank owner/operator that water levels in tanks do not exceed Commission standards.

(b) **Area surrounding fill pipe.** The area surrounding the fill pipe to the storage tank must not contain any water. When water is present, the owner or operator is responsible for promptly removing the water. Upon the second notice of violation of this subsection, the owner or operator must make whatever system modifications are necessary to prevent water from entering the spill containment and may be subject to citation or formal enforcement action.

(c) **Fill pipe.** All fill pipes to storage tanks must have watertight caps that must be securely fastened at all times, except when servicing the tank(s).

(d) **Water removal; repairs.** When a Fuel Specialist checks a motor fuel storage tank at a retail outlet and finds water in it, it is the responsibility of the owner or operator of the retail outlet to completely remove the water and make necessary repairs to prevent any water intrusion to the storage tank. Water shall not exceed one inch (1") in depth when measured with water indicating paste or other acceptable means in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends, and kerosene sold at retail. No water phase greater than one-fourth inch (1/4") as determined by an appropriate detection paste or other acceptable means is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel blends, E85 fuel ethanol, aviation gasoline, and aviation turbine fuel. The owner or operator is required to find the source of the water including, but not limited to, excavating and replacing the product lines and/or the storage tanks as necessary. This must be done as quickly as possible. The Fuel Specialist or Compliance and Inspection Manager may be notified verbally or by written confirmation when the necessary repairs have been completed.

(e) **Water from dispensing nozzle.** When a Fuel Specialist checks a retail outlet for water and finds water coming through the dispensing nozzle, it is the responsibility of the Fuel Specialist to immediately take the affected dispensing unit or units out of operation. The owner or operator is required to find the source of the water, including but not limited to, excavating and replacing the product lines and/or the storage tanks as necessary. The product dispensing units are to remain out of operation until the problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health and safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards met to prevent releases.

(1) **Spill and overfill protection.** Fuel Specialists must ensure that appropriate spill and overfill protection devices are in place and operational.

(2) **Leak detection on tanks.** Fuel specialists must check the condition of an owner or operator's selected method(s) of leak detection at a location. The requirements of each method listed below are offered as a general outline; a complete list of leak detection requirements is in Chapter 25 and Chapter 26 of Commission rules.

(A) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any single vapor monitoring well reading above 4,000 units/ppm for gasoline and 1,500 units/ppm for diesel ~~fuel should have been~~shall be reported to a Commission ~~hydrologist~~Project Environmental Analyst by telephone at ~~(405) 521-6575~~(405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner or operator, agents, Monitor Well Technicians, or any of his or her employees at the facility knowing the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 units/ppm ~~should have been~~shall be reported. If this has not been reported, the Fuel Specialist shall report it.

(B) **Groundwater monitoring wells.** The Fuel Specialist must ensure, if groundwater monitoring wells are an owner or operator's method of leak detection, that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any indication of product discovered ~~should have been~~shall be reported to a Commission ~~hydrologist~~Project Environmental Analyst by telephone at ~~(405) 521-6575~~ (405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner or operator, agents, Monitor Well Technicians, or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist shall report it.

(C) **Tank system tightness testing with monthly inventory control.** When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed. This will expire June 30, 2018.

(i) **Tank tightness testing.** Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. The test must be performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(ii) **Inventory control.**

(I) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis.

(II) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(III) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(IV) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(V) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(VI) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(VII) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(VIII) Use of OCC Monthly Inventory Reconciliation Form or an electric equivalent is required.

(D) **Statistical Inventory Reconciliation (SIR).**

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.

(ii) The tank must be equipped with a drop tube and measured for water at least monthly.

(iii) Records must be submitted to a certified SIR vendor for monthly evaluation.

(iv) Results of monthly SIR analysis must be on premises no later than the last day of the following month.

(E) **Automatic tank gauging (ATG).**

(i) The ATG must be in operating condition. It must perform a monthly test capable of detecting a 0.1 or 0.2 gallons per hour (gph) leak rate; and if the system detects a 0.2 gph leak rate, monthly inventory reconciliation must be completed in conjunction with it.

(ii) If the Fuel Specialist has concerns about the operation of the system, they may require notice and be present when an authorized person is printing relevant reports from the ATG.

(F) **Manual tank gauging.** If manual tank gauging is the selected form of release detection Fuel Specialists must determine that the test duration is appropriate, and that tank tightness testing is performed in conjunction with manual tank gauging in accordance with Chapter 25 or Chapter 26 of Commission rules. Manual tank gauging is only accepted as a method of leak detection on tanks with a capacity of up to 2,000 gallons.

(G) **Interstitial monitoring.** Sampling or testing must be capable of detecting a release monthly in accordance with the manufacturer's instructions.

(H) **Other methods.** If a method of leak detection other than those listed in this Chapter is used, it must be approved by the Commission and checked by the Fuel Specialist.

(3) **Leak detection on pressurized lines.** The Fuel Specialist must check for leak detection on pressurized piping. A complete list of requirements is in Chapter 25 and Chapter 26 of Commission rules. All pressurized piping must have electronic/automatic or mechanical line leak detectors capable of detecting a three gallons per hour leak. New installations and facilities replacing a piping system must have double-walled piping. An annual line tightness test is required unless the alternative criteria listed in (C) below are met.

(A) **Electronic/automatic and mechanical line leak detectors; sump sensors, floats and similar mechanical devices.**

(i) Automatic electronic or mechanical line leak detectors must be installed on all pressurized lines. Double-walled piping systems must have dispenser and tank sumps with a sensor, float or similar mechanical device installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(ii) The line leak detectors, floats and other devices must be tested annually according to manufacturer's specifications.

(B) **Annual line tightness testing.** An annual line tightness test, either hydrostatic or electronic, must be performed unless the requirements of (C) below are met.

(C) **Alternative to line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(D) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and the OCC approved monitoring well site assessment must be made available to the Fuel Specialist.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(E) **Interstitial monitoring.**

(i) All double-walled piping must be sloped to allow a leak to flow to the sump at the tank or dispensers.

(ii) Containment sumps connected to product piping must be equipped with at least one sump sensor at the lowest end of the piping gradient.

(iii) Sump sensors must detect any liquid or leaking petroleum product in accordance with the manufacturer's specifications.

(4) **Suction piping.** A line tightness test must be performed every 3 years according to manufacturer's specifications unless one of the line leak detection methods listed above is used, or unless it is safe suction piping that meets the specifications of (5) below.

(5) **Safe suction piping.** No annual line tightness test and no leak detection method is required if piping meets these specifications: below-grade piping must operate under vacuum, be sloped to allow product to drain back into the tank, and have only one check valve installed on each line directly below the pump. Compliance with these standards must be readily determined by the Fuel Specialist.

(6) **Cathodic protection.** The Fuel Specialist must ensure that cathodic protection is installed and in proper working order for all metal tanks and piping that routinely contain regulated substances or product and are in contact with the ground. Cathodic protection can be an impressed current or galvanic system with these requirements:

(A) A site map and anode information should be made available to the Fuel Specialist and all tanks and lines must be protected.

(B) Continuity tests must be conducted, and the soil-to-structure potential must be at least -0.85 volts.

(C) Rectifier and cathodic protection tests must be performed by a qualified cathodic protection tester once every three years.

(D) Rectifier readings on impressed current systems must be recorded at least every 60 days and kept on site for review.

165:15-3-23. Marina inspections

In addition to the inspection requirements for all facilities, Fuel Specialists must inspect items particular to marina petroleum storage tank systems.

(1) **Aboveground tanks.** The Fuel Specialist must ensure that the special requirements of marina aboveground tanks are met. The tanks must be appropriately located and have a capacity appropriate to their locations. The Fuel Specialist will also check these requirements:

(A) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the scope of Commission standards.

(B) If the tank produces a gravity head, it must be equipped with a normally-closed solenoid valve, and manual shutoff valves must be located at the tank and at the shoreline.

(2) **Requirements for dispensers and attached parts.** The Fuel Specialist will ensure that fueling hoses are well-maintained, and that dispensing devices at marine service stations are appropriately located apart from other structures to allow for safe ingress and egress of watercraft for fueling.

(3) **Tight fill connection requirements.** The Fuel Specialist will ensure that tight fill connection requirements at marinas are met, including appropriate valves on tanks filled through remote piping.

(4) **Attendants at marinas.** Each marine service station ~~must~~may have an attendant or supervisor on duty when the station is open for business. The attendant's primary function is to supervise, observe, and control the dispensing of fuels to ensure that all safety requirements are met, and that the waters of the state are not contaminated by fuel.

(5) **Miscellaneous safety requirements.** The Fuel Specialist will ensure that required signs and appropriately located fire extinguishers are in place. There must also be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

165:15-3-24.3. ~~Farm~~UST inspections at farms

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to farm ~~petroleum~~underground storage tank systems.

(1) **Leak detection.** Because the primary purpose of the Commission's regulation of farm tanks over 1,100 gallons is to prevent leaks, the farmer must select some form of leak detection. Any leak detection method referenced in Chapter 25 of Commission rules may be used. Fuel Specialists will check manual tank gauging records to ensure the monthly standards are not exceeded. If the standards are exceeded, there is most likely a leak in the tank which ~~should have been~~shall be reported to a Commission ~~hydrologist~~Project Environmental Analyst at ~~405-521-6575~~(405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner or any of his or her employees knowing the gauging results.

(2) **Cathodic protection.** The Fuel Specialist must ensure, for any metal tanks or piping, that cathodic protection is installed and in proper working order.

(3) **Electrical requirements.** Fuel Specialists will ensure that all electrical equipment meets the requirements of NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions, or other approved local code, and is suitable for the locations in which it is installed.

PART 9. LARGE VOLUME METERS

165:15-3-25. Testing and inspection of large volume meters

(a) All large meters at refinery terminals and pipeline terminals used to deliver a petroleum product for sale to another party must be calibrated for accuracy every six (6) months or every ten (10) million gallons, whichever comes first. The tolerances in Appendix A apply.

(b) The owner, operator or lessor must have a certified source calibrate all meters.

(c) A certified source must complete all calibrations when maintenance or recalibration is required. If calibration is performed more than twice a year, the next calibration is due six (6) months from last calibration.

(d) The owner, operator or lessor of meters is responsible for notifying the ~~Fuel Inspection and~~ Compliance and Inspection Department in advance of the calibration so a Fuel Specialist can witness it, and for mailing a copy of test results to the ~~Fuel Inspection and~~ Compliance and Inspection Department within ten (10) working days of completion of the test.

SUBCHAPTER 7. SPECIFICATIONS, STANDARDS, AND LABELING FOR MOTOR FUELS

165:15-7-5. Diesel fuel

The standard classification of diesel fuel ~~oil~~, as described in ASTM D 975 and biodiesel as described in 52 O.S. §325, must be used.~~with the exceptions as noted in the following paragraphs:~~

~~(1) **Characteristics.** Diesel fuel must be a hydrocarbon fuel, essentially free from suspended water and sediment, and must be suitable for use as a fuel in a diesel engine.~~

~~(2) **Classification.** Diesel fuel is classed as follows:~~

~~(A) Grade No. 1-D. This fuel comprises the class of volatile fuel oils from kerosene to the intermediate distillates. Fuel within this classification is applicable for use in high-speed engines in service involving frequent and relatively wide variations in loads and speeds. This fuel is used where low fuel temperatures are encountered.~~

~~(B) Grade No. 2-D. This fuel covers the class of distillate gas oil of lower volatility. These fuels are applicable for use in high-speed engines in service involving relatively high loads and uniform speeds.~~

~~(3) **Flash point.** The following limits for flash point shall apply:~~

~~(A) 1-D minimum flash point of 120°F using D-56.~~

~~(B) 2-D minimum flash point of 125°F using D-56.~~

~~(4) **Distillation test.** The limits of the distillation test must be as specified in Appendix C of this Chapter.~~

~~(5) **Viscosity test.** The test used to determine the viscosity will be ASTM D-445. The limits at 104°F, in centistrokes, must be as follows:~~

~~(A) For 1-D, the minimum kinematic viscosity is 1.3 and the maximum is 2.4.~~

~~(B) For 2-D, the minimum kinematic viscosity is 1.9 and the maximum is 4.1.~~

SUBCHAPTER 9. DESCRIPTION OF MOTOR FUEL

165:15-9-1. General representation; lettering

Whenever the description of any motor fuel subject to the rules of this Chapter is displayed on any receptacle, pump, or other delivery device used in its sale to the public, the type, grade, and quality of the motor fuel must be equal to or greater than the representation on the measuring device. The sign must be in 1/4 to 1/2 inch text letters that are easily legible ~~for~~from at least 5 feet.

SUBCHAPTER 13. LABELING OF TANKS AND PRODUCT LINES

165:15-13-1. General identification and color coding requirements

(a) All storage tanks subject to the rules of this Chapter must be marked with a tag, lettering, or other permanent marking on the fill neck and color coded on the overfill sump lids to identify the type, grade, or quality of motor fuel they contain ~~in accordance with API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals"~~.

(b) East of 99 degrees west longitude, color coded markings must be:

(1) Unleaded motor fuel, 91 octane or above: red.
(2) Unleaded motor fuel, 89 or 90 octane: blue.
(3) Unleaded motor fuel, 86 through 88 octane: white.
(4) Diesel motor fuel: yellow.
(5) Kerosene motor fuel: brown.
(6) Dyed diesel: half yellow, half red.
(7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
(8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
(9) Biodiesel: bronze with yellow and black border around lid.

(c) West of 99 degrees west longitude, color coded markings must be:

(1) Unleaded motor fuel, 90 octane or above: red.
(2) Unleaded motor fuel, 88 or 89 octane: blue.
(3) Unleaded motor fuel, 86 or 87 octane: white.
(4) Diesel motor fuel: yellow.
(5) Kerosene motor fuel: brown.
(6) Dyed diesel: half yellow, half red.
(7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
(8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
(9) Biodiesel: bronze with yellow and black border around lid.

(d) Products containing extenders (oxygenates) such as ethanol shall be designated by the addition of a black border around ~~white symbols and a white border around other colored symbols~~a black "X".

(e) Vapor-recovery connections and manholes shall be marked with orange circles.

(f) Observation and monitoring wells shall be marked with a black triangle on a white background.

(g) At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend beyond the edge of the cap or cover onto adjacent concrete or pavement.

(h) The tag labeling and color coding must be waterproofed and fuel-proofed material so that the type, grade, or quality of the motor fuel is readily visible to persons adding to or taking a sample from the line or storage tank.

165:15-13-2. Underground tanks [REVOKED]

~~At all service stations or bulk storage areas with underground tanks, there must be a tag, label, or color code marking on, adjacent to, or around each fill pipe. The tag, label, or color code marking must be visible to anyone adding or delivering a motor fuel to the storage tank. The colors described in this Chapter must be used when color coding is used.~~

165:15-13-3. Aboveground storage tanks [REVOKED]

~~At a bulk storage area or a service station with aboveground storage tanks, each product line used to fill the tanks must be marked with a tag, labeling, or color coded marking at~~

~~the end where the truck driver attaches his hose to transfer the motor fuel. Each outlet used to transfer motor fuel from the storage tank to a delivery truck or other container must have a tag, label, or color code marking identifying the type or grade of product. This tag, labeling, or color code marking must be at the valve device, switch, or hose at the final point of selection for the grade of product to be dispensed. The color code marking described in this Chapter must be used if color coding is used.~~

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 9. EQUIPMENT AND OPERATIONS

165:15-15-54. Wholesale devices

(a) Wholesale devices must be calibrated by a certified source. The result must be mailed to the ~~Commission Fuel Inspection and~~ Compliance and Inspection Department with a pass or fail rating. Upon receipt of documentation, a Fuel Specialist from the ~~Fuel Inspection and~~ Compliance and Inspection Department will deliver a sticker on the next routine visit.

(b) These guidelines are required for wholesale meter calibrations:

(1) **Discharge rates.** A wholesale measuring device must be marked to show its designed maximum and minimum discharge rates. However, such minimum discharge rates must not exceed 20 percent of such maximum discharge rates.

(2) **Temperature compensation.** If a measuring device is equipped with an automatic temperature compensator, the primary indicating elements, recording elements and recorded representation must be clearly and conspicuously marked to show that the volume delivered has been adjusted to the volume at 60°F.

(3) **Test liquid.** A liquid measuring device must be tested with the liquid to be commercially measured or with a liquid of the same general physical characteristics.

(4) **Evaporation and volume change.** Care must be exercised to minimize evaporation losses and volume changes resulting from changes in temperature of the test liquid.

(5) **Normal tests.** The "normal" test of a measuring device must be made at the maximum discharge rate that may be anticipated under the conditions of installation. If a wholesale device is equipped with an automatic temperature compensator, this test should be conducted with the temperature compensator deactivated.

(6) **Automatic temperature compensation on wholesale devices.** If a measuring device is equipped with an automatic temperature compensator, it must be tested by comparing the volume indicated or recorded by the device with the compensator connected and operating, with the actual delivered volume corrected to 60°F.

(7) **Temperature correction on wholesale devices.** Corrections must be made for any changes in volume resulting from the differences in liquid temperatures between time of passage through the meter and time of volumetric determination in the test measure. When adjustments are necessary, appropriate petroleum measurement tables should be used. The temperature used to make the volumetric adjustment must be recorded on the invoice.

(8) **Sticker and seal.** Upon receipt of documentation of calibration, a Fuel Specialist will place a Commission sticker upon the meter. The Fuel Specialist will ensure that the meter is sealed, so that entry to the meter is prevented. At the time the seal is broken, the ~~Fuel Inspection and~~ Compliance and Inspection Department must be notified within one (1) day and recalibration must be completed within ten (10) days. If after ten (10) days recalibration is not completed, that device must be taken out of service until calibration is completed.

SUBCHAPTER 19. VIOLATIONS AND CONTEMPT

165:15-19-1. Penalty; violations and contempt

(a) The Commission, after notice and hearing, may fine or hold in contempt any person for each of the following violations:

(1) Any person using a measuring device which does not meet the required tests, standards, and specifications.

(2) Any person who offers motor fuel for sale or resale within the State of Oklahoma and does not comply with the rules of this Chapter.

(3) Any person who tampers with,~~or molests~~defaces or destroys any sign, label, lock, or seal placed by the Fuel Specialist upon any pump, delivery device, receptacle, container, tank, or service station used in the sale of any motor fuel.

(4) Any person who aids any person in the violation of any rule of this Chapter.

(5) Any person who interferes in any way with the Fuel Specialists in the performance of their duties as provided by law of the State of Oklahoma and the rules of the Commission.

(6) Any person otherwise failing to comply with the rules, regulations, specifications, ~~or~~ standards, or requirements of the Commission.

(b) Each day on which violation occurs will be deemed a separate and distinct offense.

165:15-19-2. Enforcement procedure

In addition to the contempt procedures described in Chapter 5 of Commission rules, the following procedure for violations may be followed:

(1) ~~A Fuel Specialist~~The PSTD Director or designee may issue ~~in the field~~ a ~~Complaint for Contempt~~Field Citation for any violation or violations of the rules of

this Chapter, and/or 17 O.S. §301 et seq., and/or 52 O.S. §321 et seq., and/or 83 O.S. §111 et seq., and amendments thereto.

(2) A copy of the ~~Complaint for Contempt~~Field Citation must be furnished to the owner or operator.

(3) The ~~Complaint for Contempt~~Field Citation must be ~~in the form specified~~authorized by the ~~Commission~~PSTD Director.

~~(4) After the Complaint for Contempt is verified, it must be filed with the Court Clerk of the Oklahoma Corporation Commission, and a citation directed to the person against whom the complaint is made must be issued and served upon that person, setting the date for hearing on the complaint.~~

(~~5~~4) Prior to ~~the delivery by the Fuel Specialist of~~issuing a ~~Complaint for Contempt~~Field Citation to an owner or operator, the approval of the Director of the Petroleum Storage Tank Division must be obtained.

165:15-19-3. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any statute, rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(b) Each violation that can have an NOV issued is listed in this Chapter, Chapter 16, Chapter 25 and Chapter 26 of Commission rules.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and act as a notification that a ~~Warning or Fine~~ Field Citation ~~will~~may be issued or further Commission enforcement action ~~will~~shall occur if the violation is not corrected.

(2) ~~There are some violations that are not eligible for a Warning Citation. For these violations, a Fine Citation will be issued to the tank owner or operator.~~ At PSTD's discretion, egregious violations can be immediately turned over to the Commission's General Counsel's office for formal enforcement action.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(c) A Notice of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) A date by which to request a hearing.

(4) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(d) Fuel Specialist will give the NOV(s) to the owner or operator of the storage tank facility, if they are at the facility. If the owner or operator is not present, managers at the storage tank facility can be given NOVs, but the Commission must also ~~mail~~send a copy of the NOV to the owner or operator at the last known address shown by Commission records. The NOVs will be faxed rather than mailed at any company's request.

[OAR Docket #16-526; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #16-527]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
Part 3. Definitions
165:25-1-11. Definitions [AMENDED]
Part 5. Scope of Rules
165:25-1-23.1. Specified applications [AMENDED]
Part 6. Administrative Provisions
165:25-1-26.2. Public participation [NEW]
Part 9. Notification and Reporting Requirements
165:25-1-41. General reporting requirements [AMENDED]
165:25-1-42. New tank systems [AMENDED]
Part 11. Recordkeeping
165:25-1-53. Availability of records [AMENDED]
165:25-1-54. Repair records [AMENDED]
165:25-1-57. Spill and overfill records [AMENDED]
165:25-1-60. Walkthrough inspection records [NEW]
Part 13. Fees
165:25-1-64. Fees [AMENDED]
Part 15. Shutdown of Operations
165:25-1-67. Shutdown of operations [AMENDED]
Part 19. Operator Training
165:25-1-122. Operator Class designations [AMENDED]
Subchapter 2. General Requirements for Underground Storage Tank Systems
Part 1. Codes and Standards
165:25-2-2. Incorporated codes and standards [AMENDED]
Part 3. Design and Installation
165:25-2-32. Compatibility [AMENDED]
165:25-2-39. Spill and overfill protection [AMENDED]
Part 5. Protection Against Corrosion
165:25-2-53.1. Underground storage tank internal lining requirements [AMENDED]
Part 7. Dispensers
165:25-2-75. Required signs [AMENDED]
Part 11. Repairs to Underground Storage Tank Systems
165:25-2-111. Repairs to underground storage tank systems [AMENDED]
Part 13. Removal and Closures of Underground Storage Tank Systems
165:25-2-131. Tank removal and closure [AMENDED]
165:25-2-133. Temporary removal from service [AMENDED]
165:25-2-135. Permanent closure [AMENDED]
Subchapter 3. Release Prevention and Detection Requirements
Part 2. Release Detection Requirements and Methods
165:25-3-6.22. Tank system tightness testing with monthly inventory control [AMENDED]
165:25-3-6.25. Interstitial monitoring [AMENDED]
Part 3. Release Investigation Requirements
165:25-3-7.1. Release reporting [AMENDED]
Subchapter 18. Inspections, Notices of Violation, and Citations
Part 3. Notices of Violation and Citations
165:25-18-10. Notice of Violation and Citations [AMENDED]
165:25-18-12. Re-inspection and Fine Citation [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321, 47 O.S. §466.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

COMMENT PERIOD:

October 22, 2015 to January 15, 2016

PUBLIC HEARING:

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ADOPTION:

February 3, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:

June 9, 2016

EFFECTIVE:

August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

165:25-1-11. Definitions: "Financial responsibility", "Financial security", "Lender liability". (EPA)

165:25-1-23.1. Specified applications. (EPA)

165:25-1-60. Walkthrough inspections and records. (EPA)

165:25-2-2.

Incorporated codes and standards (various codes and standards - updated to most current version:

(1) National Fire Protection Association Standards:Standard Number 329, ~~2010~~ 2015, "~~Underground Leakage~~ Handling Releases of Flammable and Combustible Liquids and Gases~~"~~." Standard Number ~~327~~ 326, ~~1993~~ 2015, "~~Cleaning or~~ Safeguarding ~~Small~~ Tanks and Containers for Entry, Cleaning and Repair~~"~~."

(2) American Petroleum Institute Standards: ASTM E1739-95 ~~(2010) el~~ (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites~~"~~."

(3) Code of Federal Regulations: 40 CFR 280

Incorporating rules:

165:25-1-11; 165:25-1-23.1; 165:25-1-60; 165:25-2-2.

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Corporation Commission Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, 73105, (405) 521-2211.

ANALYSIS:

The evolution of underground storage tank regulation and use present new problems including meeting new EPA requirements; impermissible activities; and defining limits on what underground storage tanks the Commission regulates. Past rulemakings have overlooked some elements of legislation that needed to be addressed; certain vocabulary/punctuation/statutory/regulatory citations refined. Experience has shown that certain rules need to be clarified to fully set forth achievable time frames for submitting required documents. Codes and standards incorporated in the underground storage tank rules need to be updated to reflect current editions. Experience also brings practical and uniform regulation where none previously existed.

CONTACT PERSON:

Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Airport hydrant system" means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

"ATG" means automatic tank gauge.

"Ball float functionality" means the ball float is operational as designed.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"Construction tank" means a fuel tank used for twelve months or less at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Field constructed tank" means a tank constructed in the field such as a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

"Financial responsibility" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart H.

"Financial security" means holding financial security in a tank system or facility site and is not considered ownership of a tank system unless certain criteria of 40 CFR 280 Subpart H is met.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Lender liability" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart I.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's integrity.

"Temporary out of use" or **"TOU"** means the status of an underground storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or **"UST "** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground. Piping is also included in this definition when referring to an airport hydrant system tank.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, containment sump, if any, and ancillary equipment or transport truck connected to the storage tank system.

"Used Motor Oil" is any spent oil removed from a motor vehicle.

PART 5. SCOPE OF RULES

165:25-1-23.1. Specified applications

The following classes of underground storage tanks or systems are subject to specific regulations of this Chapter as follows:

(1) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks are subject to ~~release reporting, investigation, response and corrective action requirements only~~ all of the EPA requirements in 40 CFR 280 Subpart K.

(2) Emergency power generator tank owners and operators are subject to all requirements of this Chapter.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-26.2. Public participation

PSTD shall provide for public participation in the enforcement process by:

(1) Providing notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) Investigating and providing responses to citizen complaints about violations; and

(3) Not opposing citizen intervention when permissive intervention is allowed by statute, rule or regulation.

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

PSTD ~~may require~~requires owners or operators of underground storage tank systems to provide information it deems necessary for the protection of human health, safety, property and the environment. Use of the designated PSTD form(s) is required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators of underground petroleum storage tank systems must notify PSTD at least thirty (30) days prior to switching to regulated substances containing greater than ten (10) percent ethanol or regulated substances containing greater than twenty (20) percent biodiesel using the PSTD notification form. These forms are available at the OCC website, PSTD webpage: www.occeweb.com, follow link to Petroleum Storage Tank Division and link to PSTD Compliance Forms.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling notification form and receiving confirmation of the installation from PSTD. If events require a change in the date of installation, PSTD shall be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank for testing purposes only will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted to PSTD with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within 30 days. The registration form must be approved and tank fees paid in order to receive a tank permit to dispense fuel. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and Commission-licensed UST Installers must certify on the registration form that the installation of tanks and piping meet the requirements of this Chapter.

PART 11. RECORDKEEPING

165:25-1-53. Availability of records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must cooperate with PSTD requests for submission of records.

(b) Each owner/operator must provide written notice of any address change within 30 days to the PSTD office.

(c) All leak detection records, including but not limited to, sampling, testing, inventory and monitoring records, must be available on site for each tank for the preceding 12 months. Emergency generator tanks at unmanned locations are not ~~subject~~required to keep leak detection records~~requirements~~at the facility, and may forward any required records to the PSTD office or upon request to the PSTD Fuel Specialist.

(d) Copies of the following records must be readily available to the PSTD Fuel Specialist:

(1) Tank tightness tests, monthly inventory reconciliation, statistical inventory reconciliation, vapor or groundwater monitoring, automatic tank gauge tests, and interstitial monitoring results that demonstrate compliance with release detection for tanks. Statistical inventory reconciliation (SIR) records must demonstrate the following:

(A) Report a quantitative result with a calculated leak rate;

(B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty (150) gallons within thirty (30) days; and

(C) Use a threshold that does not exceed one-half the minimum detectible leak rate.

(2) Line tightness tests, electronic line tests, all sensor and alarm history results, and line leak detector function tests that demonstrate compliance with release detection for lines.

(3) Installation and repair records for spill containment, overfill prevention, tank and piping construction must be maintained for three (3) years and readily available to PSTD.

(4) Cathodic protection records specified in 25-1-56, tank lining certificates, and any other records that demonstrate compliance with corrosion protection for the tank system must be maintained and readily available to PSTD.

(5) Current owner and tank system registration and current permit for all tanks located at the facility.

(6) Certificate(s) of training for all classes of operators.

(7) Records that document compatibility with underground petroleum storage tank systems storing regulated substances containing greater than ten (10) percent ethanol or twenty (20) percent biodiesel. These records must be maintained at the facility for as long as the tank system is used to store these substances. Additionally, the documents that prove compatibility must be submitted to PSTD within thirty (30) days of the owner or operator receiving the records.

(8) Beginning October 13, 2018, owners and operators must maintain records of annual operation and maintenance tests on the electronic and mechanical components of release detection equipment. Records must be maintained for three (3) years and at a minimum must list each component tested, indicate whether each component needed to have action taken and describe any action taken to correct an issue.

(9) A copy of the site assessment for groundwater or vapor monitoring must be kept at the facility for as long as this method is used as release detection.

(e) Failure to have the required records available upon request by PSTD may result in enforcement action.

(f) Release detection records must be maintained on forms specified by the Commission.

165:25-1-54. Repair records

Owners and operators of underground storage tank systems regulated by this Chapter must maintain documentation that identifies the location and nature of all repairs as follows:

(1) Tank system repairs meant to restore a tank, pipe, secondary containment, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release or a suspected release of product from the UST system or has failed to function properly must be scheduled using the OCC scheduling form.

(2) These records shall include a complete description of all repairs made, photographs before and after repair, sample results if required, an updated site map, and testing following repairs.

(3) The records must be readily available at the facility or submitted to PSTD and kept for the remaining operating life of the storage tank system.

(4) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system or dispensers.

165:25-1-57. Spill and overfill records

(a) Owners and operators of underground storage tank systems must keep records of spills and overfills for review and inspection by PSTD for a period of 3 years from date of such spill or overfill.

(b) On new installations, records must be maintained that document overfill prevention inspections and records that document spill prevention equipment testing were performed at installation and at least once every three (3) years thereafter. Existing tank systems must maintain records documenting overfill prevention inspections and records documenting spill prevention equipment testing by October 13, 2018 and at least once every three (3) years thereafter.

(c) Records demonstrating compliance with overfill inspections and spill prevention equipment testing, including double walled spill buckets that are interstitially monitored at least every thirty (30) days, must be maintained for a minimum of three (3) years.

165:25-1-60. Walkthrough inspections and records

Owners and operators must conduct walkthrough inspections according to the requirements in 40 CFR 280.36. Owners and operators of underground storage tank systems must maintain a record of 30-day and annual walkthrough inspections according to EPA requirements with the first inspection due by October 13, 2018. In addition, airport hydrant systems must meet the additional walkthrough inspection requirement in 40 CFR 280.252(c). All walkthrough inspection records must be maintained for three (3) years.

PART 13. FEES

165:25-1-64. Fees

This Chapter requires the following fees according to the schedule set out in Chapter 5 of Commission rules.

(1) Owners or operators of all underground storage tank systems in use during the fiscal year. Tank permit fees are exclusive to the tank(s) being permitted.

(2) Licensed UST Installers, UST Removers, Environmental Consultants, and Monitor Well Technicians who become licensed pursuant to the provisions of this Chapter.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) PSTD may close (shut down) a UST system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.

(7) Failure to have a Class A, B, or C operator on premises during business hours.

(8) Tampering with equipment.

(b) PSTD must close (shut down) a UST system:

(1) If required spill prevention equipment is not installed.

(2) If required overfill protection equipment is not installed.

(3) If required leak detection equipment is not installed.

(4) If required corrosion equipment is not installed.

(5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2" or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.

(6) If a meter is found to be off in calibration by more than -15 cubic inches per every 5 gallons.

(7) If a Fuel Specialist makes two (2) scheduled visits to a facility and the violation(s) is/are not corrected.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the UST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the

tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) Written permission from the PSTD employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Compliance and Inspection; or

(3) Application to and order of the Commission.

(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 19. OPERATOR TRAINING

165:25-1-122. Operator Class designations

(a) A Class A operator has primary responsibility to operate and maintain the underground storage tank system in the broader aspects of the statutory and regulatory requirements to achieve and maintain compliance.

(b) A Class B operator implements applicable requirements and standards for one or more facilities to monitor day-to-day aspects of operation and recordkeeping.

(c) A Class C operator is an onsite employee responsible for responding to alarms or emergencies caused by spills or release from underground storage tank systems. An operator with at least a Class C Certification must be onsite during fueling operations at attended facilities.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-2. Incorporated codes and standards

Specific references to documents are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code~~"~~."

(B) Standard Number 329, ~~2010~~2015, "~~Underground Leakage~~Handling Releases of Flammable and Combustible Liquids and Gases~~"~~."

(C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids~~"~~."

~~(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".~~

(~~E~~D) Standard Number ~~327~~326, ~~1993~~2015, "~~Cleaning or~~ Safeguarding ~~Small~~ Tanks and Containers for Entry, Cleaning and Repair~~"~~."

(~~F~~E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages~~"~~."

(2) American Petroleum Institute Standards:

(A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems, Sixth Edition~~"~~."

(B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems~~"~~."

(C) Recommended Practice 1604, (R2010), "Closure of Underground Petroleum Storage Tanks, Third Edition~~"~~."

(D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks~~"~~."

(E) Recommended Practice 1621, (R2001), "Bulk Liquid Stock Control at Retail Outlets~~"~~."

(F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations~~"~~."

(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations~~"~~."

(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases~~"~~."

(I) Publication 2200, 2010, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines, Fourth Edition~~"~~."

(J) Publication 2015, 2001, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks~~"~~."

(K) Recommended Practice 1637, (R2012), "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals, Third Edition~~"~~."

(3) National Association of Corrosion Engineers:

(A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems~~"~~."

~~(B) Standard Number RP-0184-94, "Repair of Lining Systems".~~

(~~C~~B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection~~"~~."

(~~D~~C) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines~~"~~."

(4) Underwriter's Laboratory Standards:

(A) Standard UL58, 9th Edition, 1996, "Steel Underground Tanks for Flammable and Combustible Liquids~~"~~."

(B) Standard UL1316 Bulletin 2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures~~"~~."

(C) Standard UL1746 Bulletin 2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks~~"~~."

(D) Standard UL567 Bulletin-2012, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas~~"~~."

(E) Standard UL971 Bulletin 2011, "Nonmetallic Underground Piping for Flammable Liquids~~"~~."

(5) American Society for Testing Materials:

(A) ASTM E1739-95 ~~(2010) el~~(2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites~~"~~."

(B) ASTM G158-98 (2010), "Three Methods of Assessing Buried Steel Tanks~~"~~."

(6) Petroleum Equipment Institute:

(A) PEI/RP 100 (2011 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems~~"~~."

(B) PEI/RP 400-02 (2012 Edition), "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment~~"~~."

(C) PEI/RP 500-05 (2011 Edition), "Recommended Practice for Inspection and Maintenance of Motor Fuel Dispensing Equipment~~"~~."

(D) PEI/RP 900-07 (2008 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems~~"~~."

(7) Steel Tank Institute:

(A) STIP3, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks~~"~~."

(B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems~~"~~."

(C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks~~"~~."

(D) RP-972-10, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs~~"~~."

(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks~~"~~."

(9) Factory Mutual 1920, "Flexible Pipe Couplings~~"~~."

(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection~~"~~."

(11) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)~~"~~."

(12) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)~~"~~."

(13) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera~~"~~."

PART 3. DESIGN AND INSTALLATION

165:25-2-32. Compatibility

(a) Owners and operators of all underground storage tank systems must use an underground storage tank system that is made of or lined with materials that are compatible with the substance stored in the system.

(b) Owners and operators of underground storage tanks that contain regulated substances greater than ten (10) percent ethanol or twenty (20) percent biodiesel must demonstrate compatibility of the tank system, piping, containment sumps, pumping equipment, release detection equipment, as well as spill and overfill equipment by using one of the following methods:

(1) Certification or listing of underground petroleum storage tank system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(2) Manufacturer's approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

165:25-2-39. Spill and overfill protection

(a) Owners and operators of underground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tight fill connections must be used on all deliveries made to underground storage tanks.

(c) Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter resulting in fines, contempt proceedings, and/or shutdown of operations as provided by law.

(d) Except as provided in (e) of this Section, in order to prevent spilling and overfilling associated with product transfer to the petroleum storage tank system, the following prevention equipment must be used:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket).

(2) Overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full.

(A) A drop tube with overfill device is required on all tank systems installed after July 1, 2001.

(B) Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless equipped with an operational ball float overfill device. Use of ball floats is prohibited with suction systems. Staff may require a ball float functionality test.

(C) Ball float valves that are inoperable cannot be repaired and instead must be replaced with a drop tube with flapper valve, or

(D) A mechanism to prevent overfilling by sounding an alarm when the liquid level in thetank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity.

~~(e) The spill and overfill prevention equipment specified in (d) of this Section is not required if the underground storage tank system is filled by transfers of no more than 25 gallons at one time.~~

(e) On new installations, overfill prevention equipment must be inspected for proper operation at installation and at least once every three (3) years thereafter. Existing systems must inspect overfill prevention equipment for proper operation by October 13, 2018 and at least once every three (3) years thereafter.

(f) On new installations, spill prevention equipment must be tested for liquid tightness at installation and at least once every three (3) years thereafter or use a double-walled spill bucket with periodic interstitial monitoring that is monitored at least every thirty (30) days. Existing systems must test spill prevention equipment for liquid tightness by October 13, 2018 and at least once every three (3) years thereafter or use a double-walled spill bucket with periodic interstitial monitoring that is monitored at least every thirty (30) days.

(g) The spill and overfill prevention equipment specified in (d) of this Section is not required if the underground storage tank system is filled by transfers of no more than twenty-five (25) gallons at one time.

PART 5. PROTECTION AGAINST CORROSION

165:25-2-53.1. Underground storage tank internal lining requirements

(a) A previously lined steel tank that fails precision tightness testing or an internal lining inspection shall not be repaired and must be removed.

(b) Tank lining may not be used as a method of repair for an unlined tank.

(c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound, with the lining still performing in accordance with original design specifications.

(d) Standards that must be referenced during the periodic inspection of lined USTs:

(1) American Petroleum Institute (API) Publication 1631.

(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera," First Edition, 1999, Methods A and D.

(3) National Leak Prevention Association Standard 631.

(4) PSTD Internal Tank Lining Guidance document and PSTD Interior Lining Inspection Form available on OCC website at www.occeweb.com.

(e) UST owners/operators must submit to PSTD a copy of the certificate of performance (Interior Lining Inspection Form) completed by the inspection provider attesting that the UST meets the performance requirements for both the UST and the lining material. Any UST failing to meet the specified performance requirements cannot be relined. Minor imperfections may be repaired and the tank must be upgraded with a cathodic protection system within six months of the lining repair, or be removed.

(f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.

(g) Tank owners or their representative must provide 48 hour notification for all lining inspections to PSTD by submitting the PSTD scheduling form.

PART 7. DISPENSERS

165:25-2-75. Required signs

(a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

(1) WARNING

(2) It is unlawful and dangerous to dispense gasoline into unapproved containers.

(3) No smoking.

(4) Stop motor.

(5) No filling of portable containers in or on a motor vehicle.

(6) Place container on ground before filling.

(7) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

(b) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed. ~~Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.~~

(c) If two different types of gasoline are being dispensed from a single hose, e.g., 100% gasoline and 10% ethanol blend gasoline, a sign must be displayed in close proximity to the 100% gasoline button advising the customer that small amounts of ethanol may be dispensed in the first five (5) gallons of purchase of 100% gasoline.

(d) Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-111. Repairs to underground storage tank systems

(a) Repairs to underground storage tank systems must prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(b) Repairs shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and any required license or certification to complete the work in accordance with provisions of this Chapter.

(c) Any repair shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(d) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system.

(e) Following completion of repairs, a tank or line tightness test must be performed by a certified tester and is required prior to returning tank or line to service.

(f) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and repairs to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness within thirty (30) days following completion of the repair. This testing must be conducted according to the manufacturer's instructions or a code or practice developed by a nationally recognized association or independent testing laboratory.

(g) A tightness test of spill prevention equipment must be performed within thirty (30) days following repairs to such spill prevention equipment. This testing must be conducted according to the manufacturer's instructions or a code or practice developed by a nationally recognized association or independent testing laboratory.

(h) Overfill prevention equipment must be inspected within thirty (30) days following repairs to it to ensure it is operating properly. This inspection must be conducted according to the manufacturer's instructions or a code or practice developed by a nationally recognized association or independent testing laboratory.

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-131. Tank removal and closure

(a) Owners/operators of all underground storage tank systems must notify PSTD at least 14 days prior to the removal or closure of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require a change in the date of removal, PSTD shall be given 48 hours notice of the new date.

(b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless a Commission order grants a variance that allows the tanks to be closed in place. Tank systems that are removed from the ground must be transported from the site and a certificate of destruction must be submitted to PSTD with the UST Closure Report. After closure activities are completed, the excavation must be backfilled no later than seven (7) days upon completion of tank removal.

(d) The licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete.

(e) Photos must be taken of tank(s), line(s) and soil at removal. In the event there is a hole in tank(s) or line(s), further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

165:25-2-133. Temporary removal from service

(a) When an underground storage tank system is taken temporarily out of service, the owner or operator must:

(1) Continue the operation, testing, and maintenance of corrosion protection as required by this Chapter~~;~~. Electricity must be maintained for an impressed current CP system to be operational.

(2) Continue release detection and release detection testing as required by this Chapter;

(3) Comply with the requirements of this Chapter concerning release reporting and corrective action; and

(4) Notify PSTD of a change in service on the prescribed form.

(b) Release detection is not required as long as the underground storage tank system is empty. The underground storage tank system is empty when all regulated substances have been removed so that no more than 1 inch (1") of residue remains in the tank.

(c) Tanks must be permanently closed if they do not meet PSTD requirements as set forth above.

165:25-2-135. Permanent closure

All systems out of service for more than 12 months must be removed or closed in place in accordance with a variance by Commission order if they do not comply with the requirements as stated in 165:25-2-133 and 165:25-2-134. A closure in place variance will be accomplished by an application for variance and an administrative review by PSTD. The variance applicant will be notified prior to a hearing whether the variance application is approved or disapproved by staff. If the application for variance is approved, no further action by applicant is necessary. If the variance application is disapproved by staff, staff will notify applicant of disapproval in sufficient time for the applicant to present evidence supporting the variance at a Commission hearing.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.22. Tank system tightness testing with monthly inventory control

When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed. This will expire June 30, 2018.

(1) **Tank tightness testing.** Tank tightness testing must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank.

(2) **Requirements for tank tightness testing.** If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(3) **Inventory control.** Monthly inventory control must be conducted to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(D) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(E) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(F) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(G) Use of PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

165:25-3-6.25. Interstitial monitoring

(a) For double-walled underground storage tank systems, the sampling or testing method must detect a release monthly through the inner wall in any portion of the tank that routinely contains product in accordance with the manufacturer instructions.

(b) On new installations, the containment sumps used for interstitial monitoring of piping must be tested at installation and at least once every three (3) years for liquid tightness or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Records demonstrating compliance must be maintained for three (3) years.

(c) Existing systems must have the containment sumps tested for liquid tightness by October 13, 2018, and at least once every three (3) years thereafter or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Records demonstrating compliance must be maintained for three (3) years.

(d) Beginning October 13, 2018, owners and operators must perform operation and maintenance tests on electronic and mechanical components of release detection equipment. This testing must be conducted according to the manufacturer's instructions or a code of practice developed by a nationally recognized association or independent testing laboratory. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(1) Automatic tank gauge and other controllers: test alarm, verify system configuration, test battery backup.

(2) Probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller.

(3) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

(4) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(e) Owners and operators must maintain records of the annual operation tests for three (3) years. At a minimum, records must list each component tested, indicate whether each component meets the criteria listed above or needed to have action taken, and describe any action taken to correct an issue.

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-7.1. Release reporting

(a) The reporting requirements of this Part do not relieve the owner/operator of the responsibility to take necessary corrective action pursuant to Chapter 29 of Commission rules, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at ~~(405) 521-6575~~(405) 521-4683 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, ~~a detailed message must be left on PSTD's answering machine~~call the PSTD emergency number at (405) 823-0994) within 24 hours of discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter.

(1) The discovery of released regulated substances at the facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water).

(2) Any unusual operating conditions observed, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, ~~or~~ an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless ~~system equipment is found to be defective but not leaking, and is immediately repaired or replaced~~the system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; for secondarily contained systems any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner/operator discovering the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD within 24 hours of the owner/operator discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator discovering the report. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor observation well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to PSTD within 24 hours of the owner/operator or any of his or her employees at the facility discovering the monitoring results. Within 10 days, the owner/operator must submit to PSTD all vapor monitoring well data for the last 12 months. Upon examination of the submitted data, PSTD will advise the owner/operator what action, if any, is needed.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring and it must be reported to PSTD within 24 hours of the owner or operator or any of his or her employees at the facility discovering the monitoring results.

(5) Monitoring results, including investigation of an alarm, from a release detection method required by this Chapter that indicate a release may have occurred unless:~~the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.~~

(A) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;

(B) The leak is contained in the secondary containment and;

(i) Any liquid in the interstitial space not used as the interstitial monitoring method is immediately removed.

(ii) Any defective system equipment or component is immediately repaired or replaced.

(C) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD by telephone within 24 hours of discovery, with a written confirmation to PSTD within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners/operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions above are not reported within 24 hours, the owner/operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, AND CITATIONS

PART 3. NOTICES OF VIOLATION AND CITATIONS

165:25-18-10. Notices of Violation and Citations

The purpose of this Section is to create a procedure that allows the PSTD Fuel Specialists to issue Notices of Violation (NOVs); and for the Manager of ~~Inspection and~~ Compliance and Inspection to issue citation(s) for any violation(s) found

during PSTD Fuel Specialists' onsite inspections of storage tank systems and facilities. The issuance of a Notice of Violation or citation will allow petroleum storage tank owners and operators to quickly address and correct storage tank violation(s).

165:25-18-12. Re-inspection and Fine Citation

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

(1) Issue a new NOV and refer the violation to the ~~Inspection and~~ Compliance and Inspection Manager for enforcement action; and/or

(2) The storage tank facility may be shut down pending a correction of the problem or a PSTD hearing on the issue.

[OAR Docket #16-527; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #16-528]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
Part 1. Purpose and Definitions
165:26-1-2. Definitions [AMENDED]
Part 3. Scope of Rules
165:26-1-21. Overview of applicability [AMENDED]
Part 4. Administrative Provisions
165:26-1-26.1. Public participation [NEW]
Part 5. Standards and Codes
165:26-1-31. Codes and standards [AMENDED]
Part 6. Financial Responsibility
165:26-1-36. Financial responsibility [AMENDED]
Part 7. Notification and Reporting Requirements
165:26-1-42. New tank systems [AMENDED]
165:26-1-44. Tank closure or change in service [AMENDED]
Part 11. Fees
165:26-1-70. Fees [AMENDED]
Part 13. Shutdown of Operations
165:26-1-90. Shutdown of operations [AMENDED]
Subchapter 2. General Requirements for Aboveground Storage Tank Systems
Part 3. Secondary Containment
165:26-2-31. Double-walled tanks [AMENDED]
Part 4. Requirements for Corrosion Protection Systems
165:26-2-40. Corrosion protection [AMENDED]
Part 13. Miscellaneous Safety Provisions
165:26-2-132. Required signs [AMENDED]
Part 21. Removal and Closure of Aboveground Storage Tank Systems
165:26-2-210. Tank removal and closure [AMENDED]
Subchapter 3. Release Prevention and Detection
Part 4. Release Detection
165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping [AMENDED]
Part 14. Release Reporting Requirements
165:26-3-77. Release reporting [AMENDED]
Subchapter 4. Inspections, Penalties, and Field Citations
Part 5. Notices of Violation, Warning Citations and Fine Citations
165:26-4-17. Re-inspection and Citation [AMENDED]
Subchapter 16. Requirements for Aboveground Storage Tank Systems Utilized by Emergency Generators
Part 1. General Application and Compliance Provisions
165:26-16-1. Application [REVOKED]
165:26-16-2. Timeframes for registration and compliance with rules [REVOKED]
Appendix J. Table Establishing Permeability Rates for Secondary Containment [REVOKED]
Appendix J. Table Establishing Permeability Rates for Secondary Containment [NEW]

AUTHORITY:

The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

COMMENT PERIOD:

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Approved by Governor's declaration on June 9, 2016

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June 9, 2016

EFFECTIVE:

August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

165:26-1-21. Overview and applicability: (New editions of National Fire Protection Association ("NFPA") 30 and NFPA 30A supersede all previous editions):

(1) National Fire Protection Association Standards: Standard Number 30, 2015, "Flammable and Combustible Liquids Code;" Standard Number 30 A, 2015 "Automotive and Marine Service Station Code."

165:26-1-31. Codes and standards (various codes and standards are updated to most current version):

(1) American Society for Testing and Materials ("ASTM") Standards: ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

(2) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169 2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(3) Underwriter's Laboratory (UL) Standards: Standard UL842, 2015, "Valves for Flammable Fluids;" Standard UL971, 2011, "Nonmetallic Underground Piping for Flammable Liquids."

165:26-2-40. Corrosion protection (various codes and standards are updated to most current version):

(1) National Association of Corrosion Engineers Standards: SP0169-2013, "Control of External Corrosion of Underground or Submerged Metallic Piping Systems;" SP0285-2011, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

Incorporating rules:

165:26-1-21; 165:26-1-31; 165:26-2-40

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Corporation Commission Office of Petroleum Stroage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, 73105, (405) 521-2211.

ANALYSIS:

Rulemaking is an evolutionary process. Unfortunately, state agencies are reactive to certain questions that arise. As a result, codes and standards must be updated to make certain the regulated community and the administering agency are operating out of the same book, so to speak. Consequently, the definitions section regarding regulated substances was expanded to reflect that liquid natural gas (LNG) and propane are NOT regulated by the Commission. Obsolete language and rules were stricken. Fuel ballasting for tank installation

was further clarified to emphasize that fuel used as a ballasting agent is for testing purposes only, and no fuel sales are allowed during installation and testing. Experience has shown that certain rules need to be clarified to fully explain what staff seeks to comply with the rules. In addition, it is important to set forth warnings within the rules to educate the regulated community with the consequences for not promptly remedying system deficiencies. Practical use also dictates that staff must change the rules to conform to safe industry practices concerning capacity of double walled tanks. It is important for the regulated community to apprise the public when two (2) types of fuel are being dispensed from a single hose. Also, when an emergency/after hours contact number changes, it must be changed in the rules so a release or other emergency situation can be promptly reported. Lastly, Appendix "J" was reenacted to provide updated topological information experienced during the time of regulation.

CONTACT PERSON:

Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in piping excavation to support and separate the piping from the natural environment.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system

"Change in service" means discontinuing use of the petroleum storage system for purposes regulated by PSTD.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for less than 12 months at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids,* or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1 X 10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance added to or withdrawn from it.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Pier" means dock, floating dock, and wharf.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from a petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank system.

"Residential tank" is a tank located on property used primarily for dwelling purposes

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"TPH" means total petroleum hydrocarbons.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare, as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing a petroleum storage tank system's integrity.

"Temporary out of use" or **"TOU"** means the status of a petroleum storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"Used Motor Oil" is any spent engine oil removed from a motor vehicle.

"Vault" means an enclosure consisting of four walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank or related equipment.

PART 3. SCOPE OF RULES

165:26-1-21. Overview of applicability

This Chapter will apply to owners, operators, their employees and agents of aboveground storage tanks which PSTD is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq., which gives PSTD the responsibility of regulating aboveground storage tanks that contain regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below, excluding tanks at refineries or at the upstream or intermediate shipment points of pipeline operations, and excluding compressed natural gas whether used as a motor fuel or not. PSTD references the National Fire Protection Association 30 and 30A, Standard Number 30, ~~2003~~2015, "Flammable and Combustible Liquids Code" and Standard Number 30A, ~~2003~~2015, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-26.1. Public participation

PSTD shall provide for public participation in the enforcement process by:

(1) Providing notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) Investigating and providing responses to citizen complaints about violations; and

(3) Not opposing citizen intervention when permissive intervention is allowed by statute, rule or regulation.

PART 5. STANDARDS AND CODES

165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):

(A) ASME B31.3-2012, "Process Piping~~"~~."

(B) ASME B31.4-2012, "Pipeline Transportation Systems for Liquids and Slurries~~"~~."

(2) American Petroleum Institute (API) Standards:

(A) API RP 652, "Lining of Aboveground Petroleum Storage Tank Bottoms~~"~~," Second Edition, April, 1997.

(B) API 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases~~"~~."

(3) American Society for Testing and Materials (ASTM) Standards: ASTM E1739-95 ~~(2010) el~~(2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites~~"~~."

(4) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169-~~2007~~2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems~~"~~."

(5) National Fire Protection Association (NFPA) Standards:

(A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code~~"~~."

(B) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages~~"~~."

(6) Underwriter's Laboratory (UL) Standards:

(A) Standard UL142, 2006, "Steel Aboveground Tanks for Flammable and Combustible Liquids~~"~~."

(B) Standard UL842, ~~2007~~2015, "Valves for Flammable Fluids~~"~~."

(C) Standard UL971, ~~2005~~2011, "Nonmetallic Underground Piping for Flammable Liquids."

(7) Petroleum Equipment Institute: Publication PEI/RP 200-13, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling~~"~~." (2013 Edition)

(8) "Spill Prevention, Control and Countermeasure Regulation~~"~~," 40 CFR 112

(b) The standards set forth in (a) of this Section are also available from the following sources:

(1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.

(2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.

(3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.

(4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.

(5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.

(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.

(7) National Groundwater Association ~~(NWWA)~~(NGWA), 601 Dempsey Road, Westeville, Ohio 43081; Telephone (614) 898-7791.

(8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.

(9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

PART 6. FINANCIAL RESPONSIBILITY

165:26-1-36. Financial responsibility

(a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.

(b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.

(c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."

(d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

(e) An owner or operator may satisfy the requirements of this Subchapter by use of the Indemnity Fund. There is a ~~deductible~~co-pay for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3. For releases that occurred before June 4, 2004 the ~~deductible~~co-pay is $5,000; for releases that occurred after June 4, 2004 the ~~deductible~~co-pay is 1% of fund expenditures not to exceed $5,000.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-42. New tank systems

(a) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form and receiving confirmation of the scheduled installation and the Temporary Authorization for Receipt of Fuel from PSTD. If events require the owner to change the date of installation, the Division should be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank for testing purposes only will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within 30 days. The registration form must be approved and tank fees paid in order to receive a tank permit to dispense fuel. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and AST Licensees must certify on the PSTD Registration form that the installation of tanks and piping meet the requirements of this Chapter.

165:26-1-44. Tank closure or change in service

Owners of aboveground storage tank systems must notify PSTD at least 14 days prior to the removal of the aboveground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require the owner to change the date of removal, the Division should be given 48 hours notice of the new date. An authorized agent of PSTD may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have an AST Licensee on the jobsite during removal. All UST's being used as AST's must be destroyed upon removal and evidence of destruction submitted to PSTD.

PART 11. FEES

165:26-1-70. Fees

This Chapter requires the following fees according to the schedule set out in Chapter 5 of Commission rules:

(1) Owners or operators of all aboveground storage tank systems in use during the fiscal year. Tank permit fees are exclusive to the tank(s) being permitted.

(2) AST Licensees and Environmental Consultants who become licensed pursuant to the provisions of this Chapter.

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

(a) PSTD may close (shut down) a system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.

(7) Tampering with equipment.

(b) PSTD must close (shut down) a system:

(1) If required spill prevention equipment is not installed.

(2) If required overfill protection equipment is not installed.

(3) If required leak detection equipment is not installed.

(4) If required corrosion equipment is not installed.

(5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2 " or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.

(6) If meter is found to be off in calibration by more than -15 cubic inches per every 5 gallons.

(7) If a Fuel Specialist makes two (2) scheduled visits to a facility and the violation(s) is not corrected.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the AST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the AST system no longer poses an imminent threat to health, safety, or the environment, permit

fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) Written permission from the PSTD employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Compliance and Inspection; or

(3) Application to and order of the Commission.

(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 3. SECONDARY CONTAINMENT

165:26-2-31. Double-walled tanks

Double-walled tanks do not require additional containment if all the following conditions are met:

(1) The capacity of the tank does not exceed ~~12,000~~50,000 gallons (~~45,420~~189,000 liters).

(2) All piping connections to the tanks are made above the normal maximum liquid level.

(3) A mechanism is provided to prevent the release of liquid from the tank by siphon flow.

(4) A mechanism is provided for determining the level of liquid in the tank, which is accessible to the delivery operator.

(5) A mechanism is provided to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity. In no case will these provisions restrict or interfere with the proper functioning of the normal vent or the emergency vent.

(6) Spacing between adjacent tanks is not less than 3 ft (0.9 meters).

(7) The tank is capable of resisting damage from the impact of a motor vehicle or suitable collision barriers are provided in locations where the tank is exposed to traffic.

(8) Where the interstitial space is enclosed, it is provided with emergency venting.

(9) A means is provided to establish the integrity of the interstitial space of the double wall tank.

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-40. Corrosion protection

(a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:

(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

(2) National Association of Corrosion Engineers Standard RP0193, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms;

(3) National Association of Corrosion Engineers Standard ~~RP-01-69 (1996 rev.), Recommended Practice~~SP0169-2013, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;

(4) National Association of Corrosion Engineers Standard ~~RP-02-85-95, Recommended Practice~~SP0285-2011, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

(c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.

PART 13. MISCELLANEOUS SAFETY PROVISIONS

165:26-2-132. Required signs

(a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

(1) WARNING.

(2) It is unlawful and dangerous to dispense gasoline into unapproved containers.

(3) No smoking.

(4) Stop motor.

(5) No filling of portable containers in or on a motor vehicle.

(6) Place container on ground before filling.

(b) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed. ~~Failure to abide with signage requirements may result in fines, and/or enforcement action.~~

(c) If two different types of gasoline are being dispensed from a single hose, e.g., 100% gasoline and 10% ethanol blend gasoline, a sign must be displayed in close proximity to the 100% gasoline button advising the customer that small amounts of ethanol may be dispensed in the first five (5) gallons of purchase of 100% gasoline.

(d) Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-210. Tank removal and closure

(a) Owners and Operators of all aboveground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of aboveground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require a change in the date of removal, the Division shall be given 48 hours notice of the new date.

(b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless PSTD grants a variance.

(d) An AST Licensee must remove aboveground storage tank systems.

(e) Photos must be taken of tank(s), line(s), and soil at removal. In the event there is a hole in a tank or line, further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 4. RELEASE DETECTION

165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping

One of the following methods must be used:

(1) **Visual Monitoring.**

(A) Visual inspection of the aboveground storage tank systems to identify cracks or other defects in the secondary containment area and product transfer area.

(B) Visual inspection of the exterior surface of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies; and identify poor maintenance, operating practices or malfunctioning equipment.

(C) Visual inspection of elevated tanks or tanks on concrete slabs.

(D) Visual inspection of the area between the tank's outer shell or the tank's floor and containment area or a vapor monitoring of the soil directly under the tank bottom or perimeter and the water table, unless the tank containment has a sound concrete floor.

(E) Visual inspections are not adequate where due to the nature of the aboveground storage tank and/or its secondary containment it cannot be determined whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to visually inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment.

(F) An annual line tightness test performed by a certified tester may be used in lieu of monthly visual monitoring for aboveground product piping.

(2) **Monthly Inventory Reconciliation.** ~~(A)~~Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(~~i~~A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(~~ii~~B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(~~iii~~C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(~~iv~~D) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(~~v~~E) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(~~vi~~F) Use of the PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

(3) **Interstitial Monitoring.** Interstitial monitoring ~~can~~must be used for double walled aboveground storage tank systems. The sampling or testing method must detect a release monthly in accordance with the manufacturer instructions through the inner wall in any portion of the tank that routinely contains product.

(4) **Automatic tank gauging systems.**

(A) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(B) Automatic tank gauging systems (ATG's) must be third party certified for the size and quantity of the tank. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to Chapter 29 of Commission rules to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at ~~(405) 521-6575~~(405) 521-4683 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, ~~a detailed message must be left on the PSTD answering machine~~ call the PSTD emergency phone number at (405) 823-0994) within 24 hours of discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner or operator discovering the inventory control results.

(4) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

SUBCHAPTER 4. INSPECTIONS, PENALTIES AND FIELD CITATIONS

PART 5. NOTICES OF VIOLATION, WARNING CITATIONS AND FINE CITATIONS

165:26-4-17. Re-inspection and Citation

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist will:

(1) Refer the violation to the PSTD ~~Inspection and~~ Compliance and Inspection Manager for formal enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard it may be shut down pending a correction of the problem or a hearing on the issue.

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-16-1. Application [REVOKED]

~~(a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel kept in aboveground storage tanks for use in emergency generators at facilities subject to SPCC rule found in Title 40 of the Code of Federal Regulations (CFR), Part 112, (Oil Pollution Prevention).~~

~~(b) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.~~

165:26-16-2. Timeframes for registration and compliance with rules [REVOKED]

~~Tanks that are greater than 110 gallons and subject to regulation and rules specified in 165:26-16-1 that contain fuel for emergency generators must be registered with PSTD. The tanks must have come into compliance with the rules of this Chapter and Subchapter before July 15, 2005.~~

APPENDIX J. TABLE ESTABLISHING PERMEABILITY RATES FOR SECONDARY CONTAINMENT [REVOKED]

APPENDIX J. TABLE ESTABLISHING PERMEABILITY RATES FOR SECONDARY CONTAINMENT [NEW]

Substance Classification	If groundwater or bedrock is **less than** 10 feet from grade or AST is within 100 feet of Class II water*	If groundwater or bedrock is **greater than** 10 feet from grade and AST is **not within** 100 feet of Class II water
Type A	At least three feet (horizontal thickness) of soil with a minimum permeability of $1x10^{-5}$ cm/sec	At least three feet (horizontal thickness) of soil with a minimum permeability of $1x10^{-4}$ cm/sec
Type B	At least three feet (horizontal thickness) of soil with a minimum permeability of $1x10^{-4}$ cm/sec	At least three feet (horizontal thickness) of soil with a minimum permeability of $1x10^{-3}$ cm/sec
Type C	At least three feet (horizontal thickness) of soil with a minimum permeability of $1x10^{-3}$ cm/sec	No minimum permeability standard.

(A) Type A substances include gasoline, diesel, aviation fuel, kerosene, antifreeze, motor oil and motor fuel.

(B) Type B substances include jet fuel, fuel oil types 1 through 4, virgin lube oil, used oils and mixtures or blends of these substances with Type C substances.

(C) Type C substances include fuel oil types 5 and 6 and other regulated Substances.

*Class II (General Use Groundwater): These are groundwaters capable of being used as a drinking water supply with no special treatment or with conventional treatment methods, which have the potential to be used for other beneficial uses and which have a mean concentration of Total Dissolved Solids of less than 3,000 milligrams per liter. [Oklahoma Water Resources Board, Oklahoma's Water Quality Standards, OAC 785:45-7-3(a)(2)]

[OAR Docket #16-528; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

[OAR Docket #16-529]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:27-1-2. Definitions [AMENDED]
Subchapter 7. Reimbursement
165:27-7-1. Reimbursable expenses [AMENDED]
Subchapter 9. Administrative Provisions
165:27-9-3. Notices [AMENDED]
AUTHORITY:
The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.
COMMENT PERIOD:
October 22, 2015 to January 15, 2016
PUBLIC HEARING:
February 3, 2016
ADOPTION:
February 3, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Due to recent litigation regarding petroleum releases, staff determined that a definition change of two elements of reimbursable expense should be made. In addition the rules were thoroughly reviewed to tighten up any vocabulary/grammatical inconsistencies and change the room number for the Indemnity fund offices.
CONTACT PERSON:
Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and in OAC 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damage" means those damages to real and personal property directly related to corrective action performed on a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Administrative Application" means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Assignment of Benefits" means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern ("COC") means chemicals that may pose a threat to human health and the environment.

"Claim or Claims" means a properly submitted request for reimbursement from the Fund for an SOR or eligible case when the co-pay is paid.

"Closed file" means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund.

"Commission or OCC" means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system. ~~The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.~~

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

"Licensed Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by corrective action performed on a release of petroleum from a Commission regulated storage tank system.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two different tank system locations, are separated by time, or both.

"Pay for Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Reimbursement" means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by Chapter 29 of Commission rules for such a report.

"Suspicion of Release" ("SOR") means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. A modified eligibility process for a SOR is required.

"Work Plan" means a proposed scope of work submitted online to implement corrective action.

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-1. Reimbursable expenses

The Fund may reimburse eligible persons for:

(1) Reasonable, integral and necessary costs directly related to the corrective action. These costs may include but are not limited to such items as waste disposal, soil and groundwater remediation techniques, laboratory analyses, professional services, drilling, sampling, coring, and transportation~~, etc~~.

(2) Backfill on active confirmed cases.

(3) Suspicion of release, and other costs deemed investigatory in nature.

(4) Costs that are reasonable, integral and necessary.

(5) Third Party property damage costs and medical costs that have been paid by the eligible person as set forth in 17 O.S. 356.

(6) Reasonable, integral and necessary costs for any county, municipality or state agency imposed permit fees, disposal fees or other such fees that may be needed to further corrective actions.

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-3. Notices

Any notices and documents required to be submitted to the Fund or PSTD shall be delivered or mailed to:

(1) Mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(2) Mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(3) Delivery address: Petroleum Storage Tank Indemnity Fund, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room ~~238~~480, Oklahoma City, Oklahoma 73105 (405) 521-4683.

(4) Delivery address: Petroleum Storage Tank Division, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room ~~238~~480, Oklahoma City, Oklahoma 73105 (405) 521-4683.

[OAR Docket #16-529; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #16-530]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 3. Definitions
165:29-1-11. Definitions [AMENDED]
Part 7. National Industry Codes
165:29-1-32. Incorporated codes and standards [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-2. Release reporting [AMENDED]
Part 5. Corrective Action Requirements
165:29-3-71. General applicability; exception [AMENDED]
165:29-3-82. Closure of a case [AMENDED]
AUTHORITY:
The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.
COMMENT PERIOD:
October 22, 2015 to January 15, 2016
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June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
165:29-1-32. Incorporated codes and standards (various codes and standards - updated to the most current version):
(1) National Fire Protection Association Standards: Standard Number 329, 2015, "Handling Releases of Flammable and Combustible Liquids and Gases;" Standard Number 326, 2015, "Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."
(2) American Petroleum Institute Standards: Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems;" Recommended Practice 1621, 2012, "Bulk Liquid Stock Control at Retail Outlets."
(3) American Society for Testing and Materials, ASTM Designation: E 1739-95, 2015, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
Incorporating rules:
165:29-1-32
Availability:
8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Corporation Commission Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, 73105, (405) 521-2211.
ANALYSIS:
The definition section was amended to further establish what the Agency does and does not regulate. Also, referenced codes and standards were updated to the current issues so staff and the regulated community are operating on the same page. It was necessary to change the after hours/emergency contact number for accurate public referral. Finally, experience has shown that in certain circumstances waste material was left onsite after a release case closed. To avoid the problem in the future the rule was amended to delay release case closure until all waste material is removed.
CONTACT PERSON:
Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:29-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Abandoned system" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, 1989.

"Aboveground release" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Backfill" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"Belowground release" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

"COC" means Chemical of Concern.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"Contaminants" or **"contamination"** means concentrations of regulated substances or dissolved compounds therefrom at levels that may cause adverse human health or environmental effects.

"Corrective action" means action taken to assess, monitor, minimize, eliminate or clean up a release from a storage tank system.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"DAF" means Dilution Attenuation Factor.

"DEQ" means the Oklahoma Department of Environmental Quality.

"DWS" means Drinking Water Standards.

"de minimis" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Dilution Attenuation Factor" or **"DAF"** means a unitless number greater than or equal to unity and represents the ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site-specific data.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a hazardous substance.

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof consisting of one or more petroleum storage tanks or systems containing regulated substances.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials

prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"FOC" means fraction organic carbon content.

"Fraction organic carbon content" or **"FOC"** means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"Groundwater" means that part of water that is below the water table.

"Half-life" means the time required for the decay or transformation of one half of the amount of a chemical.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, or could contain regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

"Inventory controls" means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Licensed Environmental Consultant" means an individual who has a current license issued by the Petroleum Storage Tank Division to perform corrective action.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"MCL" means Maximum Contaminant Level.

"MtBE" means methyl tertiary butyl ether.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Motor fuel" means any petroleum ~~or petroleum based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine~~product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"NACE" means the National Association of Corrosion Engineers.

"NFPA" means the National Fire Protection Association, Inc.

"NPDES" means the National Pollutant Discharge Elimination System.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes that the PSTD regulated substance occurred in two different tank systems locations, are separated by time, or both.

"ORBCA" or **"Oklahoma Risk-Based Corrective Action"** means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

"OSDA" means the Oklahoma State Department of Agriculture.

"OWRB" means the Oklahoma Water Resources Board.

"Observation Well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

"PEI" means the Petroleum Equipment Institute.

"POC" means Point of Compliance.

"POE" means Point of Exposure.

"PSI" means pounds per square inch.

"PSTD" means Petroleum Storage Tank Division or Division.

"Pay-for-Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled

payments are distributed only as performance-based goals are attained.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum" means antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil.

"Pipe" or **"Piping"** means a hollow cylinder or tubular conduit constructed of non-earthen materials.

"Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).

(C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.

(D) Intrastate pipeline facilities regulated under state laws.

"Point of Compliance" means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

"Point of Exposure" means a location at which an individual or population may be exposed to site-specific Chemicals of Concern through ingestion, inhalation and/or dermal contact.

"Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful to the public health, safety or welfare, or the environment.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate a release from a petroleum storage tank system may have occurred.

"Potency Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

"RBCA" means Risk-Based Corrective Action.

"RfD" means Reference Dose.

"Reasonable Maximum Exposure" or **"RME"** means the highest rate of exposure that has a small probability (5 percent) of being exceeded.

"Reference Dose" or **"RfD"** means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

"Regulated substances"~~or **"product"**~~ means ~~hazardous substances or petroleum regulated by PSTD~~antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Release" means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment or any concentrations of a regulated substance that as determined by the PSTD poses a threat to human health or the environment.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Remediation" process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.

"Reportable Quantity" or **"RQ"** means the amount of a hazardous substance release required to be reported to appropriate federal, state, and/or local officials.

"Residual Product" Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

"Risk-Based Corrective Action" means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

"SCL" means Soil Cleanup Level.

"STI" means the Steel Tank Institute.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Smear Zone" Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the

petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

"Storage Tank System" means one or a combination of tanks, including piping, hoses, dispensers and other system equipment used to contain regulated substances.

"Stormwater collection system" or **"wastewater collection system"** means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Suspected release (SOR)" means an event has occurred that establishes a reasonable basis to believe a release from a petroleum storage tank system may have occurred.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at 1E-06 (one-in-a-million) and a Hazard Quotient of less than 1.0 (one).

"Temporary out of use" or **"TOU"** means the status of a petroleum storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another.

"UL" means Underwriter's Laboratory.

"USGS" means the United States Geological Survey.

"Usable groundwater" means fresh groundwater that may be produced from an aquifer for beneficial uses.

"Unsaturated zone" or **"vadose zone"** means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

"Waters of the State" means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

PART 7. NATIONAL INDUSTRY CODES

165:29-1-32. Incorporated codes and standards

Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will supercede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code."

(B) Standard Number 329, ~~2010~~2015, "~~Underground Leakage~~Handling Releases of Flammable and Combustible Liquids and Gases."

(C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."

~~(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids."~~

(~~E~~D) Standard Number ~~327~~326, ~~1993~~2015, "~~Cleaning or Safeguarding Small Tanks and Containers~~Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."

(~~F~~E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."

(2) American Petroleum Institute Standards:

(A) Recommended Practice 1615, ~~1996~~2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems."

(B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."

(C) Recommended Practice 1604, R2010, "Closure of Underground Petroleum Storage Tanks, 3rd Edition~~"~~."

(D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks~~"~~."

(E) Recommended Practice 1621, ~~2001~~2012, "Bulk Liquid Stock Control at Retail Outlets."

(F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."

(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent

Blends at Distribution Terminals and Service Stations."

(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."

(I) Publication 2200, 2010, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines, 4th Edition~~"~~."

(J) Publication 2015, 2001, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks~~"~~."

(3) National Association of Corrosion Engineers:

(A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection~~"~~."

(C) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines~~"~~."

(4) Underwriter's Laboratory Standards:

(A) Standard UL58, 9th Edition, 1996, "Steel Underground Tanks for Flammable and Combustible Liquids."

(B) Standard UL1316, Bulletin-2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures~~"~~."

(C) Standard UL1746, Bulletin-2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."

(D) Standard UL567, Bulletin-2012, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas~~"~~."

(5) Petroleum Equipment Institute PEI/RP 100 (2011 Edition), "Recommended Practices for Installation of Underground Liquid Storage Systems."

(6) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006~~"~~."

(7) Factory Mutual 1920 (2007), "Pipe Coupling and Fitting for Aboveground Fire Protection Systems~~"~~."

(8) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."

(9) National Water Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."

(10) American Society for Testing and Materials, ASTM Designation: E 1739-95 ~~(2010) E1~~ 2015, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

(11) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE).

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-2. Release reporting

(a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.

(b) All petroleum storage tank system owners, operators, their agents and employees must report any of the following events to PSTD by telephone at 405-521-4683 or 1-888-621-5878 (~~and~~ if after hours or on weekends or holidays, ~~they must leave a message on the answering machine~~ contact the PSTD emergency number at 405-823-0994) within 24 hours of discovering the substances, conditions or monitoring results. ~~Release reports may also be made by telephone to PSTD personnel at the following numbers: 405-522-1437 or 405-522-5266.~~ Owners or operators must send written confirmation within 20 days in accordance with the release investigation and confirmation requirements of this Subchapter.

(1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including but not limited to the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water whether on-site or off-site.

(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum storage tank system, ~~or~~ an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless ~~system equipment is found to be defective but not leaking, and is immediately repaired or replaced~~the system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; for secondarily contained systems, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for diesel storage tanks, must be reported to PSTD within 24 hours of receiving the report by the owner or operator or any of his or her employees at the facility. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within 10 days, the owner or operator must submit to PSTD all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, PSTD will advise the owner or operator what action, if any, he or she needs to take.

Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.

(c) Monitoring results, including investigation of an alarm, must be reported within 24 hours of the owner or operator's receipt of them; and PSTD will advise what action should be taken to determine whether or not a release has occurred, unless:~~the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.~~

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;

(2) The leak is contained in the secondary containment and;

(A) Any liquid in the interstitial space not used as the interstitial monitoring method is immediately removed.

(B) Any defective system equipment or component is immediately repaired or replaced.

(3) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing.

(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and nonreportable events listed in 165:29-3-2 of Commission rules sufficient to permit adequate inspection and review by PSTD. These records shall be kept in permanent form for 3 years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.

(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by PSTD. These records must be kept for 3 years following the date of the event.

(f) While aboveground petroleum releases of less than 25 gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately.

(g) Any releases requiring emergency corrective action must be reported immediately to PSTD. After office hours, weekends or holidays, calls must be reported to PSTD's ~~pager 405-575-5255~~ emergency number at 405-823-0994.

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-71. General applicability; exception

(a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in Chapter 25 and Chapter 26 of Commission rules.

(b) All work associated with the assessment, characterization, investigation, remedial action, and closure from a release or suspected release of a regulated substance should be pre-approved by PSTD.

(c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:

(1) Report the release to PSTD either by telephone, electronic mail or fax. If after hours, contact the PSTD ~~pager at (405) 575-5255~~emergency number at 405-823-0994.

(2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.

(3) Identify and mitigate any fire, explosion, and vapor hazards.

(4) Remove free product to the extent practicable as determined by PSTD while continuing, as necessary, any actions required by this Subchapter.

(d) Any corrective action work performed at a release site must have prior documented verbal or written approval by a member of PSTD staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures. Additionally, field work associated with all corrective actions requires 48-hour (two working days excluding holidays and weekends) written notice to PSTD of scheduled field activities. Notice must be made to the PSTD staff member assigned to the case, his/her Supervisor and the PSTD Technical Manager.

165:29-3-82. Closure of a case

(a) Closure occurs when ~~the~~ PSTD has determined that the appropriate cleanup levels have been achieved for both BTEX and TPH and monitored as remaining below the cleanup level for a period of time as directed by PSTD, or when PSTD has determined the case is eligible for closure under Risk-Based Corrective Action.

(b) Upon approval of the request for case closure or as directed by PSTD, the owner or operator must submit a final closure report on a form specified by PSTD and certified by the Licensed ~~Remediation~~Environmental Consultant which provides evidence of proper decommissioning of equipment and corrective action materials.

(c) All residual waste soil and/or fluid drums generated during case closure activities, or that remain on-site from prior case investigation activities, must be disposed of as part of case closure work and evidence of disposal of such drums documented in the final closure report. The final closure report will not be approved until all residual wastes have been disposed of.

[OAR Docket #16-530; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 30. MOTOR CARRIERS, PRIVATE CARRIERS AND TRANSPORTATION NETWORK COMPANIES

[OAR Docket #16-531]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 30. Motor Carriers, Private Carriers and Transportation Network Companies [AMENDED]
AUTHORITY:
The Commission's statutory authority is found in Title 47 O.S. § 1120, Title 47 O.S. § 230.24, Title 47 O.S. § 230.32, Title 47 O.S. § 1013, Article IX , Sections 18 and 19 of the Oklahoma Constitution and OAC 165:5-1-7.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on December 18, 2015.
COMMENT PERIOD:
December 18, 2015 to February 16, 2016
PUBLIC HEARING:
February 23, 2016
ADOPTION:
February 23, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 3, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rules were adopted in an effort to update language and procedures appearing in OAC 165:30, as well as to address changes in regulatory authority, especially with respect to the International Registration Plan and overweight variance permits. Multiple definitional sections were updated to include new terms and commonly used acronyms. Procedural rules were updated to remove outdated forms and create new ones.

A new subchapter has been written for the implementation of the Oklahoma Transportation Network Company Service Act and the regulation of TNCs. Sections were written to provide how a TNC may obtain, keep, and operate under the new permits. Furthermore, sections were created to implement the various requirements of the Act and to create enforcement mechanisms should the Act be violated.

For the convenience of regulated entities, motor carriers have been given additional methods to verify state residency as well as clarifying the procedure for providing future effective dates on registration. Overweight variance permit rules have been revoked following an authority transfer by Senate Bill 638 in 2015 to a different agency. A new subchapter is included to allow regulated entities to begin filing required documentation online. The sections provide for filing procedures, requirements, and how to proceed should the system be temporarily unavailable. Additionally, wreckers that engage in nonconsensual towing operations will be required to display the Commission-approved nonconsensual towing rates so the public may be aware of any discrepancies being charged.
CONTACT PERSON:
Mark Willingham, Assistant General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-1638, m.willingham@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

165:30-1-1. Purpose

The public policy of this State, as declared by the Legislature, requires that motor carriers and private carriers, except as provided in this Chapter, should be regulated by the Oklahoma Corporation Commission, hereinafter referred to as the Commission, to protect the public interest, the environment and the highways of the state of Oklahoma and ensure compliance with applicable safety rules and regulations. The public policy of this State, as further declared by the Legislature, requires that motor carriers of household goods be regulated by the Commission in such manner as to establish standards for public safety, fair competitive practices, adequate and dependable service and protection of shippers from deceptive or unfair practices. The public policy of this State, as further declared by the Legislature, requires that transportation network companies be regulated by the Commission in such a manner as to implement and enforce public safety standards and insurance requirements as required by statute. The rules in this Chapter are intended to implement that public policy and to carry out the Commission's statutory duty of regulation in the public interest. In case of doubt as to the meaning of any language of the rules in this Chapter, that construction should be adopted which is consistent with the Constitution and Statutes of Oklahoma.

165:30-1-2. Definitions

In addition to terms defined in 47 O.S., Sections 161 through 180m et seq., the Oklahoma Transportation Network Company Services Act and the Motor Carrier Act of 1995, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"110% rule" means the household goods carrier must deliver the shipper's goods once the shipper pays 110% of the estimated or agreed upon charges.

"Alliance" means the Alliance for Uniform Hazardous Material Transportation Procedures, a confederation of state, local industry and environmental representatives for the purpose of administering and enforcing a uniform hazardous materials transporters program as established by HMTUSA.

"Accessorial services" means services provided by an intrastate motor carrier of household goods at the request of a shipper that may be in addition to the actual transportation of the household goods. Examples of accessorial services are packing, unpacking, appliance servicing, loading/unloading of large items (such as a piano), climbing/descending stairs, demurrage, etc.

"Authority" means a general term referring to permission issued by the Commission to a motor carrier to perform operations under the jurisdiction of the Commission. The term authority is not applicable to vehicle registrations, ~~or~~ fuel permits or TNC permits.

"Base state" means the state selected by a motor carrier according to the procedures established by a uniform program.

"Binding estimate" means a written agreement made in advance between the intrastate household goods carrier and the shipper which guarantees the total cost of the transportation of the household goods based upon the quantities and services shown on the estimate.

"CFR" means the Code of Federal Regulations.

"Consignee" means the person or place shown on the shipping documentation as the location to which a carrier is directed to deliver a shipment.

"Consignor" means the person who offers goods for shipment.

"Commission" means the Oklahoma Corporation Commission.

"Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly one hundred percent (100%) interest.

"Environmental restoration" means restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

"Exceeding authority" means a motor carrier operating outside or beyond the purview of an issued license, certificate, permit, registration or other authority issued by the Commission or a reciprocal state.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"For-hire motor carrier" means a person operating upon any public highway engaged in the transportation of property or passengers for compensation or consideration or for commercial purposes.

"Gross Combination Weight Rating" (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

"Gross Vehicle Weight" (GVW) means the registered weight of the vehicle or any lawful registered combination weight (Gross Combination Weight or GCW).

"Gross Vehicle Weight Rating" (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle (gross vehicle weight rating) and may include any lawful combination.

"Harvest permit" means a document issued by the Commission to a motor carrier engaging in the commercial transportation of farm products in a raw state. A harvest permit encompasses vehicle registration, fuel permit and intrastate operating authority requirements of the State of Oklahoma.

"Hazardous waste" means any material that is subject to the "Hazardous Waste Manifest Requirements" of the United States Environmental Protection Agency specified in Title 40, CFR, Part 262.

"Hazardous waste permit" means the document issued by a participating state which represents a specific motor carrier's registration to transport hazardous waste in states that participate in the uniform hazardous waste program.

"HMTUSA" means the Hazardous Materials Transportation Uniform Safety Act of 1990.

"Household goods" means the used personal effects and property of a dwelling.

"Hunter's permit or Unladen permit" means a permit that provides temporary registration to an apportionable vehicle at the unladen (empty) weight of the vehicle. It is commonly used by a vehicle lessor to move a vehicle, without any load, to another jurisdiction so the lessor can establish a new contractual relationship with a different motor carrier.

"Identification device" means an annual, fee-paid, non-transferable device issued by the Commission to be carried in each and every vehicle.

"Intercorporate hauling" means the transportation of property, passengers or household goods by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this Section, when said transportation for compensation is provided for other members of the corporate family.

"Interstate" means a shipment having an origin or destination into, out of or through two or more states.

"Intrastate" means a shipment having an origin and destination wholly within one state.

"IRP"means the International Registration Plan as administered by the Commission or other states.

"Letter of filing"means a document issued by the Commission to a motor carrier as evidence of temporary compliance with the hazardous waste uniform program.

"Motor carrier"means a for-hire motor carrier or a private motor carrier operating in interstate or intrastate commerce.

"NAIC" means the National Association of Insurance Commissions.

"Non-binding estimate" means the estimated total cost to transport household goods intrastate based upon the weight of the shipment, volume of the shipment, amount of time to perform the movement and/or any accessorial services requested.

"Participating state" means a state electing to participate in a uniform program by entering into a base state agreement.

"PIN" means personal identification number.

"Principal place of business" means a single location that serves as the motor carrier's headquarters and where it maintains or can make available its operational records.

"Private motor carrier" means a person who operates a commercial motor vehicle and is not a for-hire motor carrier.

"Process agent" means a representative upon whom court papers may be served in any proceeding brought against a motor carrier, broker, or freight forwarder.

"Registration" means the identification of hazardous waste transporters through a national base state system.

"Reciprocal state" means a jurisdiction with which the Commission has entered into a reciprocal agreement regarding the uniform registration, licensing or permitting of motor carriers.

"Shipper" means a person authorized to tender a shipment to a carrier and may include, but is not limited to, a consignor, consignee or beneficial owner of the shipment.

"TNC" means a Transportation Network Company.

"Trip permit" means a temporary authorization issued by the Commission granting permission to conduct operations as a motor carrier in intrastate and/or interstate commerce.

"Truck yard pit" means any pit used to store or catch fluids or wash fluids in a truck terminal or maintenance facility as the result of transportation related activities.

"UCR" means Unified Carrier Registration.

"Uniform application" means a uniform motor carrier registration, licensing or permit application form established under a uniform program.

"Uniform program" means any law, rule, policy, practice and/or all combinations thereof which pertain to the regulation of motor carriers by motor vehicle operating in interstate or intrastate commerce over the highways of Oklahoma and is recognized, adopted and enforced or administered by the Transportation Division only when in concert and reciprocal with one or more states which adopt, recognize, administer and enforce the exact same rule, law, policy, practice and/or all combinations thereof.

"Unprocessed agricultural commodities" means all products raised or produced by tillage and cultivation of the soil, pasture grasses, orchard products, trees in their raw state and products produced by livestock (such as milk, wool, eggs, honey and manure). The term also includes those products embraced within the above definition which have been processed for purposes of handling, storage, preservation or transportation (such as washing, cleaning, wrapping, packaging, boxing, baling, trimming, drying, sorting, sizing, grading, cooling, spraying and fumigating). The term does not include those products embraced within the above definition which, as a result of some treatment or processing, have been so changed that they are no longer in their natural or raw state, but possess new forms, qualities, or properties or result in combinations.

"USDOT" means the United States Department of Transportation.

SUBCHAPTER 6. TRANSPORTATION NETWORK COMPANIES

PART 1. APPLYING FOR A PERMIT

165:30-6-1. Obtaining a permit

(a) No Transportation Network Company ("TNC") shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of passengers for hire without the TNC first obtaining from the Commission a permit as provided in this Subchapter. A permit issued under this Subchapter shall not constitute authorization to conduct operations as a for-hire motor carrier or as a private carrier.

(1) An applicant for a permit shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 29), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) A permit shall be issued only to an individual, a corporation, a limited liability company, a partnership or other legally recognized entity and shall be personal to the holder thereof.

(3) The filing of an application for a permit does not authorize any TNC operations by the applicant. Such operations are prohibited until after all requirements have been met, and a permit has been issued. All requirements for compliance with this Chapter must be met within thirty (30) days from date of receipt of a TNC permit application by the Commission. The Transportation Division Director may extend the thirty (30) day period upon request by a TNC for good cause shown. Failure to comply will result in dismissal of the application for a permit. Permits issued shall be valid for a maximum of one year and may be renewed after application has been filed and all requirements met as provided by this Chapter.

(4) The application shall require the following:

(A) Name, single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors listing the addresses of each.

(C) The name and address of the TNC's process agent in Oklahoma.

(D) Name of the TNC's Digital Network and sources from which it can be accessed.

(E) Screenshots of items, or other information deemed acceptable by the Commission, that are required by the Oklahoma Transportation Network Company Services Act to be on the Digital Network.

(F) Copies of policies required by the Oklahoma Transportation Network Company Services Act.

(G) Declaration that the applicant is in full compliance with all other state laws, federal laws, rules and regulations.

(H) Any other information the Commission deems pertinent.

(5) Every TNC operating under the rules of this Commission shall possess a copy of this Chapter.

(b) The Commission may grant or deny the TNC permit application or may impose conditions, stipulations and limitations on the permit consistent with the requirements of the Oklahoma Transportation Network Company Services Act. If the Commission deems a hearing on the application to be necessary, the hearing shall be set within thirty (30) days of receipt of a complete application.
(c) No TNC permit shall be issued to an applicant until all outstanding fines or judgments due the Commission or other Oklahoma state agencies have been satisfied.
(d) All proceedings subsequent to the application, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

165:30-6-3. TNC Permit renewals

(a) Any TNC desiring to continue operations as granted in its permit shall apply for renewal by submitting the appropriate application form (TDF 29) and all supporting documentation a minimum of thirty (30) days prior to the date of the permit's expiration. Each renewal application shall be properly signed.
(b) All TNC Permits renewed by the Commission shall become effective the same date as the prior permit's expiration.
(c) Renewal applications shall be accompanied by a filing fee as prescribed by law or by Commission rule.
(d) A renewal application may be set for hearing at the discretion of the Commission.
(e) All requirements for compliance with this Chapter must be met within thirty (30) days from date of receipt of a TNC permit renewal application by the Commission. Failure to comply will result in dismissal of the renewal application for a permit.
(f) A renewal application will not be accepted if the permit has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.
(g) No TNC permit shall be renewed until all outstanding fines or judgments due the Commission or other Oklahoma state agencies have been satisfied.
(h) No TNC operations shall be performed under an expired permit.

165:30-6-5. Insurance

(a) No TNC shall conduct any operations in this State unless such operations are covered by a valid insurance policy issued by an insurer authorized or approved by the Oklahoma Insurance Department. No holder of a TNC permit shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved, by the Commission.
(b) Every TNC shall file with the Commission a certificate on form TDF 30 certifying that there is in effect insurance coverage as set forth in the Oklahoma Transportation Network Company Services Act.
(c) No certificate of insurance filed with the Commission pursuant to this Section shall be canceled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on form TDF 31, which notice shall be effective only upon actual receipt thereof by the Commission.
(d) Insurance certificates may be canceled without the thirty (30) days written notice on form TDF 31 only when the authorization to operate has previously expired or canceled.
(e) Insurance certificates not properly cancelled or expired shall be considered expired one year after the TNC's authorization to operate has been cancelled or expired.
(f) Insurance certificates approved by this Commission shall be replaced by more recent insurance certificates. The liability of the retiring insurer shall be terminated as of the effective date of the replacement insurance certificate provided the replacement is approved by this Commission.
(g) Every certificate of insurance filed with the Commission shall provide that the public is protected from damage sustained through operations of any and all vehicles operated by the TNC insured, subject to the terms and conditions provided for by the Oklahoma Transportation Network Company Services Act.
(h) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.
(i) When insurance is provided by more than one insurer in order to aggregate security limits for TNCs, a separate insurance certificate is required of each insurer.
(j) Every TNC shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force shall automatically and without notice suspend the permit of a TNC until proper insurance is filed. No TNC operations shall be conducted unless proper insurance is on file with the Commission.
(k) Whenever the permit of a TNC is suspended for failure to maintain in force insurance required by this Section, the TNC must file proper certificate(s) of insurance, as provided in this Section, within sixty (60) days after commencement of the suspension.
(l) Whenever a TNC fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the TNC's permit, shall be cancelled. A permit so cancelled shall not be reinstated or otherwise made operative except upon proper showing that the TNC was actually covered by proper insurance during the suspension or cancellation period, and that failure to file with the Commission was not due to the TNC's own negligence.
(m) Any TNC conducting operations under a suspended or cancelled permit, shall not be eligible to apply for a new permit for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.
(n) Insurance filings and cancellation notices required by this Chapter may be accepted electronically as set forth by the Transportation Division. Electronic insurance filings and cancellations shall be held to the same standard and carry the same force and effect as if accepted through traditional paper filings.

165:30-6-7. Name changes

(a) An application to change the name or business name of the holder of a TNC permit, without any change in the legal identity of the holder or any change in the ownership of the permit, except as provided in subsections (c), (d) or (e) below, shall be filed on the prescribed form (TDF 3) with such filing fee as prescribed by law or by Commission rule. No hearing shall be necessary unless the Commission so requires.

(b) Any change in legal identity of the holder of a TNC permit, except as provided in subsections (c), (d) or (e) below, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust shall require an original application for a permit.

(c) The following shall be considered a name change:

(1) Incorporation by a sole proprietor in which the sole proprietor is the majority shareholder of the corporation, limited liability company or limited liability partnership.

(2) Incorporation by a partnership in which the partners are the majority shareholders of the corporation.

(3) A change in legal entity from a corporation, limited liability company or a limited liability partnership to a sole proprietorship, a partnership, a limited liability corporation or a limited liability partnership in which the sole proprietor, partners or shareholders hold the majority of all issued and outstanding shares of the corporation.

(4) The merger of two or more corporations in which the survivor is the holder of a current permit.

(d) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation shall not be deemed a name change.

(e) The employment of incorporation, change of name or similar action directly or indirectly as a device to circumvent the rules of this Chapter is prohibited.

PART 3. CONDUCTING OPERATIONS

165:30-6-17. Current address requirement

(a) Any notice required by law, the Commission's Rules of Practice, OAC 165:5, or this Chapter to be served upon or mailed to any holder of a permit shall be delivered or mailed to the last known address as reflected by the records of the Commission. It is the duty of every holder of a permit to notify the Transportation Division by specific written request (TDF 17) of any change in the address of the principal place of business and mailing address thereof.

(b) Any TNC that has not filed a written designation of service agent with the Commission shall be deemed to have designated the Secretary of State of Oklahoma for the purpose of service of process by the Commission.

(c) Where such notice is required by law, Commission's Rules of Practice, OAC 165:5, or this Chapter is returned undeliverable, it will be grounds for revocation of the permit.

165:30-6-19. Compliance with laws and regulations

(a) All TNCs shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of this Chapter. All permits heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Chapter as fully as if those laws and rules were set forth verbatim therein.

(b) No TNC shall operate or allow to be operated any equipment that does not comply with safety criteria established by the rules of this Commission, the Oklahoma Transportation Network Company Services Act or the statutes of the State of Oklahoma on the public highways of the State of Oklahoma. No TNC shall permit any TNC driver to operate a motor vehicle in violation of any size limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. The TNC shall suspend access to its digital network to a TNC driver, pending an investigation by the TNC, if it receives notice of or has reason to believe the driver has failed to meet the safety criteria or size standards of the Commission, the Oklahoma Transportation Network Company Services Act, or the statutes of the State of Oklahoma.

(c) TNCs shall provide notice to their TNC drivers that arranging for-hire passenger transportation services in any way other than through the TNC's digital network will subject the driver to the same regulation, authority requirements, and penalties as a motor carrier under the Motor Carrier Act of 1995.

(d) TNCs shall provide, via the TNC's Digital Network, a method whereby each TNC driver can present to a requesting law enforcement officer proof that the driver is operating as a TNC driver. TNC drivers unable to present such information may be considered to be engaged in motor carrier operations.

165:30-6-21. Records

All records required by the Transportation Network Company Services Act, or this Subchapter, shall be made available upon a request by the Commission within a reasonable time, as required by the Oklahoma Transportation Network Company Services Act. Records may be produced to the Commission in electronic form unless physical copies of specific records are requested by the Commission.

PART 5. VIOLATIONS

165:30-6-33. Leasing of TNC Permit

No TNC permit, nor any part thereof, or rights thereunder shall be leased; nor shall the holder thereof sublet or in any manner allow the use thereof, or exercise any of the rights or privileges thereunder by another, except as provided in this Section. Violation of this Section shall be grounds for revocation of the permit, and shall be grounds for denial of an application for a new or renewed permit.

165:30-6-35. Operating or Advertising to Operate without a Permit

Any person or entity performing or advertising to perform TNC services without holding a proper permit granted by the Commission shall be in violation of this Section and be subject to the penalties prescribed for contempt of the Commission.

165:30-6-37. Violations

(a) Every TNC, their employees or independent contractors, or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirement of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part of provision thereof, of the Commission, or who procures, aids or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rules, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred Dollars ($500.00) per violation per day or as otherwise provided for by law.

(b) Only the Commission staff or other state or federal governmental agency may file an application for a contempt proceeding.

PART 7. SUSPENSION OR CANCELLATION OF PERMIT

165:30-6-47. Voluntary cancellation of permit

(a) A TNC may request cancellation of its permit without notice or hearing.

(b) Any TNC requesting cancellation of its permit while in good standing may reapply for a new permit at any time.

165:30-6-49. Involuntary suspension or revocation of permit

(a) Any TNC permit may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for violation of, or failure to comply with, any requirement or provision of law or of this Chapter.

(b) An application to revoke or suspend a TNC permit may be filed by a member of the staff of the Commission. It shall be in the form of an application, and proceedings thereon, including notice and hearing if required, shall be as prescribed in the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(c) After hearing, the Commission may grant or deny the application, and may suspend or revoke the permit, or the Commission may assess a fine or impose limitations or conditions upon the continuation of operations under the permit as stated in the order.

(d) Any TNC conducting operations under a suspended or cancelled permit shall not be eligible to apply for a new permit for a period of not less than one hundred eighty (180) days. Except for insurance violations as noted in 165:30-6-5, the one hundred eighty (180) day period shall begin the date a Commission order is signed suspending or canceling a TNC permit.

(e) The employment of incorporation, stock transfer, merger, change of name or similar action directly or indirectly as a device to evade subsection (d) of this Section is prohibited.

(f) Any violation of state statutes or regulations shall be cause to initiate an application for suspension or revocation by Commission staff or other state or federal governmental agency.

165:30-6-51. Reinstatement of TNC Permit

(a) A TNC whose permit has been cancelled for lack of insurance, may file with the Commission a written application for reinstatement on the appropriate form prescribed by the Commission (TDF 8), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(b) The application for reinstatement must be filed within three (3) months from the date the permit was cancelled and may be approved by the Director of Transportation for administrative reinstatement. Applications not approved for administrative reinstatement may be set for hearing.

(c) If the authority was revoked due to lack of insurance on file and the TNC cannot furnish proper proof of continuous insurance, the Commission may reinstate the permit only after a hearing has been held and notice thereof has been given as prescribed by the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(d) No reinstatement shall be issued until all requirements of the permit have been fulfilled.

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-5. Forms

The following forms of the Commission relate to this Chapter:

(1) **Intrastate license forms.**

(A) TDF 1 - Application for Intrastate Motor Carrier For-Hire or Private Carrier License

(B) TDF 2 - Application for renewal of Intrastate Motor Carrier License or Certificate

~~(C) TDF 3 - Application for Change of Name on Intrastate Carrier License or Certificate~~

(2) **Intrastate certificate forms.**

(A) MCF 1 - Application For Household Goods Certificate

(B) Form H - Uniform Motor Carrier Cargo Certificate of Insurance

(C) Form J - Uniform Motor Carrier Cargo Surety Bond

(3) **Interstate Form** - Unified Carrier Registration

(4) **Hazardous Waste forms.**

(A) UPW - Part I - Registration

(B) UPW - Part II - Permit

(C) UPW - Part III - Other Information

(D) UPW - Part IV - Certification

(E) UPW - Uniform Program Fee Worksheet (Schedules A-D and Summary)

(5) **IFTA/IRP forms.**

(A) IRP Schedule A - International Registration Plan Original Application-Schedule A

(B) IRP Schedule B - International Registration Plan- Schedule B

(C) IRP Schedule C - International Registration Plan Supplemental Application-Schedule C

(D) IRP Schedule G - International Registration Plan Declaration of Estimated Miles-Schedule G

(E) IRP Misc 1 - International Registration Plan Affidavit for Lost/Stolen Tag and Additional Cab Cards

(F) IFTA Application - International Fuel Tax Agreement Registration Application

(G) IFTA QTR - International Fuel Tax Agreement Quarterly Report

(6) **Miscellaneous forms.**

(A) TDF 3 - Application for Change of Name

(~~A~~B) TDF 8 - Application for Reinstatement

(~~B~~C) TDF 14 - Application For a Deleterious Substance Transport Permit

(~~C~~D) TDF 16 - Application for Identification Devices

(~~D~~E) TDF 17 - Application for Address Change

(~~E~~F) TDF 18 - Affidavit of No Operations

(~~F~~G) TDF 19 - Carrier Identification Update Report

(~~G~~H) Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance

(~~H~~I) Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies

(~~I~~J) Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond

(~~J~~K) Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds

(~~K~~L) TDF 25 - Application for Motor Carrier Rules and Regulations

(~~L~~M) TDF 26 - Motor Carrier Rules and Regulations Update Notification

(~~M~~N) TDF 28 - Vehicle Information Request Form

~~(N) TDF 29 - Application for Overweight Variance Permit~~

(7) **Transportation Network Company forms**

(A) TDF 29 - Application for Oklahoma Transportation Network Company Permit

(B) TDF 30 - Oklahoma Transportation Network Company Certificate of Insurance

(C) TDF 31 - Oklahoma Transportation Network Company Notice of Insurance Cancellation

165:30-7-6. Applications and requests

(a) All intrastate motor carrier, private carrier, transportation network company, deleterious, hazardous waste, registration and fuel permit applications must bear an original acceptable signature of the applicant. The applicant must be a legal entity with an optional single trade name listed that is not a legal entity. If signed by an attorney or agent in lieu of the applicant, a copy of the power of attorney must be attached to the application.

(b) Acceptable signatures on applications for authority are as follows:

(1) Sole proprietorship - sole proprietor.

(2) Partnership - one of the partners.

(3) Corporation - one of the officers or directors.

(4) Limited liability company - the manager.

(c) A name change relating to a partnership or a request to cancel a partnership must be signed by all partners.

(d) All ~~authority~~ motor carrier and commercial motor vehicle applications filed by an applicant which does not maintain a terminal in Oklahoma must file and maintain a current listing of a valid Oklahoma process agent on behalf of the applicant.

(e) All applications for authority shall contain the USDOT number of the operating motor carrier. Applications for registration shall additionally contain the USDOT number of the owner of each vehicle, and the registrant.

(f) An application for authority, commercial vehicle registration or fuel permit may not be processed when the motor carrier or the motor carrier responsible for safety has not updated its USDOT number within the prior twenty-four (24) months~~ or twelve (12) months if an apportioned license application~~. Failure to update the USDOT number may subject the authority to revocation.

(g) Failure to properly complete any application may result in delay or denial of the relief sought.

(h) Applications may be denied due to outstanding monies owed to the Commission or other state or federal agencies.

(i) Interstate authority, fuel permits and registration cannot be issued to a motor carrier whose ability to operate in interstate commerce has been denied or revoked.

(j) If a fee is required for an application, and the funds are returned unpaid, any document or privilege granted as a result of that application shall be immediately revoked without notice. The document or privilege shall be reinstated provided valid payment is received in a timely manner.

165:30-7-12. Revocation, suspension or denial of issuance of ~~motor carrier~~ license, permit, certificate or registration

(a) The Commission may revoke, suspend or deny the issuance of any Commission issued motor carrier or commercial motor vehicle license, permit, TNC permit, certificate or registration issued pursuant to the Commission's jurisdiction for any of the following reasons:

(1) Violation of applicable state law.

(2) Violation of Commission rules.

(3) Failure to observe or fulfill the conditions upon which the license, permit, certificate or registration was issued.

(4) Nonpayment of any delinquent tax, fee or penalty to the Commission or to the State of Oklahoma.

(5) Nonpayment of a uniform base state program delinquent tax, fee or penalty to a state or province participating with the Commission in that program.

(6) Placed out of service by a federal or state agency.

(b) A motor carrier, private carrier, TNC or registrant who wishes to contest a revocation, suspension or denial of issuance of motor carrier license, permit, certificate or registration is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5.

165:30-7-17. Insurance filing replacement

(a) The Transportation Division may require a new insurance filing to be placed on file when the effective date of the current filing is more than three (3) years old.

(b) Notification of the need for a new insurance filing to be placed on file shall be mailed to the official address on file for the license, certificate or permit holder, which shall be considered official notice.

(c) The new insurance filing shall be placed on file with the Transportation Division within ninety (90) days from the date of the notice.

(d) Failure of the license, certificate or permit holder to have proper insurance placed on file within ninety (90) days shall subject the license, certificate or permit to revocation.

(e) A notice to revoke shall be sent to the official address on file with the Transportation Division. The license, certificate or permit holder will be allowed an additional thirty (30) days to comply with the provisions of this section.

(f) Failure of the license, certificate or permit holder to comply with the provisions of this section shall cause the license, certificate or permit to be revoked without further notice.

165:30-7-27. Definitions

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

"Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic filing" means the usage of a computer to submit an application, insurance filing or information required using an electronic system supplied by or approved by the Corporation Commission.

"Electronic mail address" is the primary electronic mail address, commonly referred to as an "email address" provided by the registered user.

"Electronic signature" means a symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

"Electronic system" means a system supplied or used by the Corporation Commission to receive and process information, documents and payments electronically.

"Register" means the process for a person to request authority from the Corporation Commission to use an electronic system.

"Technical failure" means a malfunction of an electronic system's hardware, software, and/or telecommunications facility which results in the inability of a registered user to submit a document, supply information or make payment. It does not include the failure of a registered user's equipment, software, and/or telecommunications facility.

"User" means a registered user whose user identification and password are used to submit documents, information or payments electronically.

165:30-7-29. Registration and signatures

(a) To gain access to an electronic system, the User must make application or submit a request with the Transportation Division as specified on the appropriate Commission website.

(b) The request shall contain information as required by the specific system in which the User has requested access.

(c) In the event the electronic system is not maintained by the Corporation Commission, the User must contact the system administrator to gain access.

(d) Users of the electronic system shall comply with all applicable instructions and the User agreement for electronic system usage.

(e) Electronic signatures are required. By use of an electronic signature, the person represents that all requirements of the applicable authority requiring the person's signature have been satisfied and all duties and obligations imposed by law have been fulfilled.

(f) An electronic signature is deemed to constitute a signature on the document for purposes of all signature requirements imposed and or/any other applicable law. An electronic signature shall have the same force and effect as a handwritten signature.

165:30-7-31. Electronic system usage

(a) Electronic systems are generally available twenty-four (24) hours a day, seven (7) days a week. Filing information or a document electronically does not, however, alter the filing deadline for that information or document. The official filing time is the filing time indicated on the electronic filing.

(b) Risk of loss of transmission, of non-receipt, or of illegibility is borne by the person transmitting and filing documents electronically.

(c) All documents submitted electronically to the Transportation Division shall conform to the rules and procedures for electronic filing. Any filing not conforming to the rules and procedures for electronic filing may be rejected by the Transportation Division.

165:30-7-33. Technical failure

(a) Technical failure of an electronic system may occur. Users should provide information, documents or payments in advance of any deadline to ensure timely filing.

(b) A User whose deadline passes without appropriate information, documents or payments made as the result of a technical failure of the electronic system may seek appropriate relief from the Commission. Relief regarding enforcement actions taken by law enforcement, other than by the Commission, cannot be sought at the Commission.

(c) Failures not originating with the electronic system, such as phone line problems, problems with the user's internet service provider, or hardware or software problems, will not constitute a technical failure or excuse an untimely filing.

(d) A User may be able to make changes to information or documents after they have been electronically submitted, depending upon the application process. If a correction cannot be made, relief will have to be sought using established rules and procedures.

SUBCHAPTER 12. UNIFIED CARRIER REGISTRATION

165:30-12-1. Unified Carrier Registration

(a) The Commission shall comply with the provisions of the procedures adopted by the UCR Board.

(b) An interstate motor carrier, freight forwarder, leasing company or broker subject to UCR shall be known as a UCRant.

(c) A UCRant shall pay its applicable UCR fee to its base state, in accordance with the UCR procedures. The applicable UCR fee may include amounts owed for prior years as well as the fee for the current year.

(d) Failure of a UCRant to pay its applicable UCR fee to its base state shall subject the UCRant to contempt complaint proceedings.

(e) Interstate carriers excluding vehicles operating intrastate only from the UCR fee must comply with 165:30-10-45.

SUBCHAPTER 18. OVERWEIGHT VARIANCE PERMITS [REVOKED]

165:30-18-1. Overweight Variance Permits [REVOKED]

~~(a) Applicants for an annual special overload permit, otherwise known as an Overweight Variance Permit, must hold a current vehicle registration.~~

~~(b) Commodities that may be transported under a gross weight or an axle weight Overweight Variance Permit are listed in 47 O.S. § 14-109.~~

~~(c) Requirements for an Overweight Variance Permit include:~~

~~(1) Submission of Transportation Division Form (TDF) 29, Application for Overweight Variance Permit;~~

~~(2) Valid payment of all fees as prescribed by law;~~

~~(3) Current commercial vehicle registration (a clear unaltered copy of the current registration may be required to be submitted);~~

~~(4) Valid intrastate authority, if applicable; and,~~

~~(5) Compliance with interstate requirements, if applicable.~~

~~(d) The applicant is also required to ensure the vehicle is registered at the maximum allowable rate, as specified in 47 O.S. §14-109, prior to submitting an application.~~

~~(e) Overweight Variance Permits are issued for twelve (12) months from the date of issue.~~

~~(f) The axle or gross variance allowed by an Overweight Variance Permit can only be utilized on Oklahoma roadways that are not a part of the National System of Interstate and Defense Highways.~~

~~(g) The axle variance allowed by the Overweight Variance Permit does not allow individual axles to exceed the manufacturer's component rating.~~

~~(h) Once issued, an Overweight Variance Permit is not valid if the vehicle is not currently registered.~~

~~(i) A copy of the Overweight Variance Permit must be carried in the vehicle.~~

~~(j) A renewal notice will be emailed to the Overweight Variance Permit holder. Failure to receive such notice does not relieve the Permit holder from its responsibility to timely renew the permit.~~

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-3. Registration

(a) ~~General requirements for registration.~~ Before a vehicle can be proportionally registered in the state of Oklahoma the applicant or registrant must:

(1) Have an established place of business located in Oklahoma. Absent an established place of business in any IRP jurisdiction, an applicant must satisfy the residency requirements in 165:30-19-6, prior to being allowed to base plate in Oklahoma.

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant:

(A) The application must include the mailing address and telephone number of the applicant. In addition to providing the applicant's telephone number, the applicant may provide the telephone number of a third party who has knowledge of the applicant's whereabouts and is able to contact the applicant within a reasonable period of time upon request. An applicant or registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone number under this Section.

(B) If the application is signed by someone other than the applicant or registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) Motor vehicles operated by a motor carrier with valid liability insurance on file with FMCSA or this Commission are exempt from subsection (a) (4) of this Section;

(6) If the applicant is leased to a motor carrier, the applicant must provide a copy of the lease to satisfy Oklahoma's financial responsibility requirements (47 O.S. §

7-602). If multiple vehicles are under lease, a letter from the motor carrier listing each vehicle's year, make, model and VIN under lease to the carrier may be provided in lieu of the lease, provided a copy of any and all leases shall be made available to the Commission upon request.

(7) Provide proof of ownership;

(8) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(9) Pay all applicable fees to complete registration. Continuous registration is required, therefore registration fees shall be assessed from the last vehicle registration date or the date of sale.

(10) Provide the USDOT number and the social security number, federal employee identification number or taxpayer identification number of the carrier responsible for safety of each vehicle in the apportioned application.

(11) Be the owner,~~or~~the lessee, the motor carrier responsible for safety or an entity contracted by the owner or motor carrier responsible for safety.

(b) ~~Registration periods.~~ Application for registration may be made at any time during a registration year.

(c) ~~Where to make application.~~ Application for registration may be submitted through the mail to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, or by applying in person at 2101 N. Lincoln Blvd., in Oklahoma City. A list of other locations where application may be submitted is available from the IFTA/IRP Section or the Commission website under the Transportation Division (http://www.occeweb.com).

(d) ~~Incomplete applications.~~ No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

(e) ~~IRP Plan Compliance.~~ Since registration with the Plan can affect other jurisdictions' registration fees and tax receipts, the Transportation Division must be diligent in ensuring that those registrants with Oklahoma as their base jurisdiction are indeed entitled to base in Oklahoma.

(1) If after approval of the application and during the registration year, the Transportation Division has reason to believe that critical account information submitted on an application has changed, the Transportation Division shall allow the registrant 30 days to provide the updated information. If the information is not provided within that time or is deemed insufficient, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

(2) If after approval of the application and during the registration year the Transportation Division has evidence that critical account information submitted on an application was submitted erroneously or falsely, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

165:30-19-6. Registration as a resident

(a) ~~General requirements.~~ Applicants who have no established place of business in any IRP jurisdiction may register in Oklahoma once they prove to the satisfaction of the Commission that they are residents of the State of Oklahoma. Such applicants may register in Oklahoma, provided that they furnish a street address, and a telephone number, and satisfactorily demonstrate that the applicant is indeed a resident of the State of Oklahoma and can be located in Oklahoma for purposes of audit.

(b) ~~Street address.~~ The street address in Oklahoma must be the street address where the applicant's records are maintained or where the records will be delivered for the purpose of audit. An applicant may not utilize the address of a registration agent to satisfy the requirement of an address in Oklahoma.

(c) ~~Applicant can be located.~~ The applicant must submit ~~documentation~~ at least three (3) current documents that ~~indicates~~indicate the applicant can be located in Oklahoma for purposes of audit. Documentation acceptable for meeting the requirements of this subsection includes:

(1) ~~Proof of Oklahoma residency, such as an~~An Oklahoma-issued driver's license~~, current Oklahoma Income Tax filing, proof of an Oklahoma homestead exemption, or other evidence of bona fide residency~~;

~~(2) Ownership of real property in Oklahoma.~~

(2) An income tax filing from an Oklahoma address;

(3) Documentation of ownership of real property in Oklahoma;

(4) An Oklahoma utility bill in the name of the registrant;

(5) An Oklahoma vehicle title in the name of the registrant;

(6) Oklahoma incorporation documents;

(7) Documentation showing registration to conduct business as a foreign corporation in Oklahoma;

(8) Documentation showing the principle owner of the corporation is a resident of Oklahoma; or,

(9) Other evidence of bona fide residency.

(d) ~~Qualifying determination.~~ The Transportation Division shall make its decision on whether the applicant has met its burden of proof based on the totality of the evidence presented.

165:30-19-12. Supplemental application

(a) After an original application has been filed, vehicles can be added, deleted, or registration weight increased by filing a supplemental application form.

(b) Registration fees for supplemental applications are calculated from the date of purchase or lease, unless the vehicle was previously registered in the fleet, then the fees shall be calculated upon an annual rate. For registrants who do not have possession of equipment on the date they purchased it, fees may be calculated from the date the equipment came into possession of the registrant. Registrants who wish to avail themselves of this provision must provide documentation of the receipt date of the equipment to the Transportation Division. In no case should the effective date of the registration be after equipment is placed in service.

(c) When a supplemental application is filed to add a unit and delete a similar unit, a credit of the registration fees paid on the deleted unit will be given toward registration of the added unit for those states that allow credit. Credit is only available for vehicles subsequently added to the fleet in the registration year in which the credit was created. In no event shall credit be allowed for fees beyond such registration year. Credits are not transferable between fleets. In order for credit to be given on the registration fees, the cab card and license plate for the deleted vehicle must be returned with the supplemental application, or an affidavit of destruction must be submitted with the supplemental application. Under no circumstances can a license plate be transferred from one vehicle to another. No refund for ~~the~~ unused ~~portion~~deletion credits will be given for a deleted vehicle.

(d) Supplemental applications may be filed with a future effective date to add a unit before the unit is placed in service. In no case shall the registration effective date be more than sixty (60) days in advance of the filing date of the supplemental application. When a unit is added with a future effective date but the unit does not become part of the fleet, no refund of the fees will be allowed. The unit may be deleted and the resulting deletion credits may be used toward the addition of subsequent unit.

(~~d~~e) If the license plate is lost, an affidavit may be submitted in lieu of the plate.

(f) If the motor carrier is responsible for safety changes during a registration year, the registrant is required to file for a cab card change for each vehicle. The cab card change application shall include the new motor carrier responsible for safety's USDOT number and taxpayer identification number (social security or federal employee).

165:30-19-17. Temporary registration~~.~~

New fleet vehicles, or vehicles being added to any existing fleet, must have some form of temporary registration prior to operation if permanent IRP credentials have not been issued. All forms of temporary registration are valid for the period shown and will be honored by all IRP jurisdictions when properly completed and validated.

(1) ~~Temporary registration.~~ Temporary registration may be obtained directly from the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948 by filing a supplemental application with all required documents. ~~The temporary registration shall be completed in full by the applicant and validated by the IFTA/IRP Section at the time the application and appropriate fees are presented to the section. The temporary registration should be completed as follows:~~

~~(A) Enter the assigned Oklahoma IRP account number or leave a blank if no previous number has been assigned.~~

~~(B) Mark the appropriate section indicating the type of application on which the vehicle(s) is listed for registration and the date application was filed.~~

~~(C) List the vehicles being authorized by license plate number (leave blank if not assigned), equipment number, year model, make and the vehicle identification number. Unused vehicle listing spaces must be lined out.~~

~~(D) List jurisdictional weights for the vehicles. A separate form must be completed for vehicles which are not to be qualified at identical weights in the same jurisdiction. State with no entry must be lined out.~~

~~(E) Enter the registrant's name and business address as reported on schedule A or C application.~~

~~(F) Jurisdiction and weight information entered on the form must be consistent with those reported on the Schedule A or C form.~~

~~(G) Temporary registration for established accounts may also be obtained directly from any person that has entered into an agreement with Commission for distribution and issuance of temporary registration. This registration must be completed in the same manner described in paragraph (1) of this subsection. Misuse of any temporary registration may result in denial of temporary registration privileges.~~

(2) ~~Required payment of fees.~~ Temporary registration or credentials may only be issued to new accounts after all required registration fees are paid.

(3) ~~Self issue temporary registration.~~ Self-issue temporary registrations are available only to established Oklahoma-based IRP registrants, and may be used for vehicle(s) added to the fleet, duplicate cab cards, substitute license plates~~, state add~~ and weight increase applications to the registrant's account. Self-issued temporary registrations may not be used for renewal vehicles. ~~Self issued temporary registrations may not be issued by a registrant to another registrant or to an applicant or potential applicant for Oklahoma proportional registration.~~

(A) ~~Self issue temporary registration. Self issue temporary registrations or authorizations may be issued up to a maximum of twenty five percent (25%) of the registrant's fleet. Any registrant with a fleet of less than six (6) vehicles may be assigned one (1) self issue temporary registration.~~Registrants with self-issue temporary authority are allowed to acquire temporary registration prior to the submission of a supplemental application. To be eligible to self-issue temporary registration, a registrant must:

(i) Have no delinquencies;

(ii) Be base plated in Oklahoma for the past two full registration years;

(iii) Be the motor carrier responsible for safety;

(iv) Be base plated in accordance with OAC 165:30-19-5 requirements; and,

(v) Have over 100 power units in the apportioned fleet.

(B) ~~Application procedure~~. Properly completed temporary registrations allow for immediate temporary registration for vehicles added to the fleet, duplicate cab cards, substitute license plates~~, state add~~ and weight increase applications. Upon issuance, a copy of the temporary registration should be placed in the vehicle, and one copy mailed immediately to

the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948. Within fifteen (15) days of issuance, ~~another copy of the temporary registration must be submitted, along with~~ a completed ~~Schedule C~~supplemental application with all required documentation must be submitted for processing

(C) ~~Violations.~~ Misuse of the temporary registration or failure to maintain proper accountability may result in the Prorate Section's refusal to issue the registrant self-issue temporary registrations.

(4) ~~Issuance of temporary registration.~~

~~(A)~~ The issuance of temporary registration creates a debt to the State of Oklahoma who is then indebted to the participating jurisdictions of the International Registration Plan. Registrants must pay registration fees for the remainder of the registration year for which a temporary registration is issued.

(A) ~~The fees~~Fees shall be calculated beginning with the effective date of the temporary registration, or the date determined by the Transportation Division, if earlier, and continue through the end of the registration year.

(B) In addition to collection actions, failure to pay the fees described in (A) above will cause the loss of apportioned registration privileges.

(C) The Transportation Division may withhold issuance of future temporary registration, to those registrants who have failed to timely file a registration application, or pay the registration fees associated with any vehicle, for which a temporary registration authorized by 47 O.S. § 1124.1 has been issued.

(D) The Transportation Division may revoke previously issued registration credentials and/or deny future registration privileges to registrants who use temporary registration issued under 47 O.S. § 1124.1 without paying registration fees.

165:30-19-18. Compliance confirmation

(a) New registrants may be contacted within six (6) months of registration to determine if required records are being maintained and give guidance on maintaining proper records. Initial contact will be by telephone or in writing. If the initial contact is unsuccessful, contact will be made by visiting the registrant's established place of business or residence.

(b) New registrants who are not maintaining proper records at the time of initial contact will be provided guidance on maintaining proper records.

(c) The Commission will then notify the registrant who has received guidance pursuant to subsection (b), in writing, of the date on which proper second-year operational records must be made available by the registrant for inspection.

(d) If at that time, the registrant is unable to provide proper second-year operational records, the registrant will not be allowed to apportionally register in Oklahoma for the third year without a complete pre-registration audit of the renewal application.

(e) The Administrator of the IRP Section may deny or revoke the issuance of a registrant's IRP credentials based upon the registrants' motor carrier being placed out of service by the Federal Motor Carrier Safety Administration.

(f) A registrant who wishes to contest a denial, or revocation, of registrants' credentials is entitled to a hearing under the procedures contained in Subchapter 25 of the Commission's Rules of Practice, OAC 165:5.

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-4. ~~Trip~~Fuel permits

(a) In lieu of motor fuel tax licensing under ~~thisAgreement~~IFTA, persons may elect to satisfy motor fuels use tax obligations ~~on a trip-by-trip basis~~for up to one hundred twenty (120) consecutive hours by purchasing a Fuel Permit.

(b) ~~Trip~~Fuel permits are valid for a period of one-hundred twenty (120) hours from the time ~~of issuance~~the permit is effective, and may be obtained from the Commission or one of the authorized ~~trip~~fuel permitting services. Once a fuel permit is issued, no refunds will be allowed.

(c) A fuel ~~trip~~ permit effective date shall not be more than ~~72~~ seventy-two (72) hours from the time it is issued.

165:30-21-9. Bond requirement

To protect the interests of the State of Oklahoma and the member jurisdictions of the International Fuel Tax Agreement, the ~~Corporation~~Commission may, for cause, require licensees to file a surety bond payable to the State of Oklahoma for motor fuel taxes accruing against the licensee as a result of the IFTA program. Bonds ~~shall~~may be required for failure to file timely returns, or remittances, or when an audit indicates problems severe enough that, in the Commission's discretion, a bond is required to protect the interests of Oklahoma and the member jurisdictions.

(1) Bonds ~~shall~~may be required from licensees who have filed two or more delinquent IFTA tax returns, made two or more delinquent remittances, or made two or more payments drawn on accounts with insufficient funds, within the most recent 12 calendar months.

(2) A surety bond required for one of the above reasons must be in place before a licensee's suspended account can be reinstated.

SUBCHAPTER 23. MOTOR LICENSE AGENTS

165:30-23-5. Motor license agent conduct

(a) All transactions must be paid by the registrant at the time of processing. A motor license agent shall not process any transaction or release any item on credit before the taxpayer pays the tax and/or fee owed.

(b) A motor license agent shall not engage in any activity that will result in an actual or perceived conflict of interest.

SUBCHAPTER 26. NONCONSENSUAL WRECKER AND TOWING SERVICES

PART 3. RESPONSE TO NONCONSENSUAL TOWING RATE COMPLAINTS

165:30-26-18. Display of nonconsensual towing rates

(a) Each wrecker service licensed by the Department of Public Safety and placed upon an official rotation log to perform nonconsensual tows shall be required to conspicuously display a copy of the current Oklahoma Corporation Commission Nonconsensual Towing Maximum Wrecker Rate Chart at each location where a person will be paying for a vehicle release.

(b) The Maximum Wrecker Rate Chart size and text must be large enough to be easily read by the person paying for the vehicle release and contain fully legible text and figures.

(c) The Maximum Wrecker Rate Chart may be download from the Agency's website.

[OAR Docket #16-531; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #16-524]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:35-1-6. Submission of distribution system mapping [NEW]
Subchapter 45. Wind Energy [NEW]
165:35-45-1. Purpose of this subchapter [NEW]
165:35-45-2. Definitions [NEW]
165:35-45-3. Annual reporting requirements [NEW]
165:35-45-4. Notification of intent to build a wind energy facility [NEW]
165:35-45-5. Commission consideration [NEW]
165:35-45-6. Determining assessment of fees [NEW]
165:35-45-7. Decommissioning of wind energy facilities [NEW]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. § 152(A), 17 O.S. § 160.22, 17 O.S. § 160.15(A), 17 O.S. § 160.21(A); and Article IX, § 18 of the Oklahoma Constitution
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rule 165:35-1-6 addresses the need for submission of distribution line location information to the Public Utility Division of the Oklahoma Corporation Commission. This rule establishes a submission date and the format of the data to be provided.

Rules 165:35-45-1 through 165:35-45-7 are applicable to wind energy facilities. The rules establish annual reporting requirements that are in addition to those found in the Oklahoma Wind Energy Development Act. The rules also include several sections impacting plans for development of wind energy facilities and also decommissioning of those facilities once they are no longer in service.
CONTACT PERSON:
Natasha Scott, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Boulevard, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, Telephone: (405) 521-3570.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

165:35-1-6. Submission of distribution system mapping

No later than one (1) year after the effective date of this rule, each utility having a distribution system within the State of Oklahoma shall endeavor to provide the locations of the distribution lines within the utility's service territory, including all lines extending more than one mile outside of the utility's service territory, to the Director of the Public Utility Division using geographic information system data or standards as prescribed by the Director of the Public Utility Division.

SUBCHAPTER 45. WIND ENERGY

165:35-45-1. Purpose of this subchapter

The purpose of this Subchapter is to implement provisions of the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 et seq., by establishing rules and procedures for an entity that builds, constructs, owns, operates, controls, manages or maintains a wind energy facility within the State of Oklahoma. This Subchapter applies to the components of wind energy facilities built, constructed, owned, operated, controlled, managed or maintained within the State of Oklahoma, provided however it does not apply to any Transmission Only Utility.

165:35-45-2. Definitions

In addition to terms defined in the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 et seq., the following word(s) or term(s), when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Project description" means a graphic depiction of a wind energy facility's outer boundary, which should adequately

demonstrate the project's outer perimeter, inclusive of all wind turbines.

165:35-45-3. Annual reporting requirements

On or before March 1 of each year, each wind energy facility owner or operator shall submit information required by the Public Utility Division. This submission shall provide to the Public Utility Division information about wind energy facilities the owner constructs, owns, operates, manages or maintains within the State of Oklahoma. Within such submission, the wind energy facility owner or operator shall provide information, which includes but is not limited to the following:

(1) The commercial generation date of each wind energy facility;

(2) If a wind energy facility fails to generate power, an explanation of the cause of the failure to generate;

(3) An attestation that the wind energy facility's insurance coverage will be made available for onsite review by the Public Utility Division as requested;

(4) For the first annual report(s) associated with a wind energy facility's first year of commercial operation, the report shall also include a final project description and a final location description for each turbine, as constructed.

(5) For those wind energy facility components that are otherwise subject to the rules applicable to the annual reports of Transmission Only Utilities, this Subchapter does not require duplicative reporting.

(6) Electronic submission is preferred; however, all forms of submission will be accepted.

165:35-45-4. Notification of intent to build a wind energy facility

(a) The owner of a wind energy facility shall submit notification of intent to build a facility to the Corporation Commission within six (6) months of the initial filing pertaining to commencement of construction with the Federal Aviation Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or any subsequent form required by the FAA for evaluating the impact a proposed wind energy facility will have on air commerce safety and the preservation of navigable airspace. Such notification shall be submitted to the Director of the Public Utility Division of the Corporation Commission.

(b) The Public Utility Division shall provide the owner of a wind energy facility with affirmation of submission of the notification of intent to build by either providing proof of receipt stamp or confirmation of receipt if submission is made electronically.

(c) In the event that an owner of a wind energy facility submits notification of intent to build a facility with the Corporation Commission and files subsequent forms with the FAA, the owner is not required to submit amended or additional notification of intent to build a wind energy facility unless the project layout is expanded beyond the original project description.

(d) The owner of the wind energy facility shall submit copies of the notification with the board of county commissioners of every county in which all or a portion of the wind energy facility is to be located within twenty-four (24) hours of filing with the Commission. If all or a portion of the wind energy facility is to be located within the incorporated area of a municipality, copies of the notification shall also be submitted to the governing body of the municipality within twenty-four (24) hours of filing with the Commission.

(e) Within six (6) months of submitting the notification with the Commission as provided for in subsection (a) of this section, the owner of the wind energy facility shall cause a copy of the notification to be published in a newspaper of general circulation in the county or counties in which all or a portion of the wind energy facility is to be located. Proof of publication shall be submitted to the Director of the Public Utility Division of the Corporation Commission.

(f) Within sixty (60) days of publishing the notification in a newspaper as provided for in subsection (e) of this section, the owner of the wind energy facility shall hold a public meeting. Notice of the public meeting shall be published in a newspaper of general circulation and submitted to the board of county commissioners in the county or counties in which all or a portion of the wind energy facility is to be located. The notice shall contain the place, date and time of the public meeting. Proof of publication of the notice shall be submitted to the Director of the Public Utility Division of the Corporation Commission. The public meeting shall be held in one of the counties in which all or a portion of the wind energy facility is to be located.

(g) The owner of a wind energy facility shall not commence construction on the facility until the notification and public meeting requirements of this section have been met. If an owner of a wind energy facility fails to submit the information with the Commission as required in this section, the owner shall be subject to an administrative penalty not to exceed One Thousand Five Hundred Dollars ($1,500) per day following hearing and issuance of a final order of the Commission.

(h) Electronic submission is preferred; however, all forms of submission will be accepted.

165:35-45-5. Commission consideration

(a) The Public Utility Division shall review and may investigate all wind energy facility information reported or submitted for compliance with the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or with the notice requirements in this Subchapter or in 17 O.S. § 160.21.

(b) After receiving a report or submission from a wind energy facility pursuant to the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or the notice requirements in this Subchapter or in 17 O.S. § 160.21, the Public Utility Division:

(1) Will determine whether the report or submission is compliant with the annual reporting or notice requirements; and

(2) Will inform the wind energy facility owner or operator of the Public Utility Division's determination within thirty (30) calendar days of receipt of the report or submission. In the event the Public Utility Division determines the wind energy facility's report or submission is not in compliance, the Public Utility Division shall contact the

owner or operator to require additional information, and such information shall be provided within fifteen (15) calendar days of such notice. If the facility owner fails to correct such non-compliance, the Public Utility Division may reject the report or submission and may open an investigation to inquire further into the reported or submitted information.

165:35-45-6. Determining assessment of fees

(a) In wind energy facility causes initiated on the Public Utility Docket for alleged violation(s) of any provision of this Subchapter, fees shall be assessed upon motion of the Staff of the Public Utility Division in wind energy facility causes.

(b) The Commission shall make a determination of the estimated costs of the Public Utility Division required to process, analyze and review wind energy facility causes initiated on the Public Utility Docket. These estimated costs shall be the basis of the fee assessed to a wind energy facility subject to this Subchapter.

(c) After notice to the wind energy facility to be assessed and hearing, the Commission shall issue an order which shall include the following:

(1) Whether or not the wind energy facility will be assessed a fee(s);

(2) The amount of the fee(s) to be assessed; and

(3) The date payment(s) of the fee(s) shall be made.

(d) In causes wherein the wind energy facility owner is also a public utility, as defined in 17 O.S. § 151, required to pay the public utility assessment fee pursuant to 17 O.S. § 180.11 and OAC 165:5-3-20, the above assessment of fees shall not apply.

165:35-45-7. Decommissioning of wind energy facilities

(a) The owner of a wind energy facility shall be responsible, at its expense, for the proper decommissioning of the facility upon abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility. Decommissioning shall be in a manner consistent with 17 O.S. § 160.14 and 17 O.S. § 160.15.

(b) Evidence of financial security to cover the anticipated costs of decommissioning may be in the form of a surety bond, collateral bond, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or irrevocable letter of credit.

(c) The owner of a wind energy facility shall submit to the Director of the Public Utility Division of the Corporation Commission, a notice of decommissioning for the proper retirement of the facility upon abandonment or the end of the useful life of the commercial wind energy facility. Such notice of decommissioning shall be submitted not less than sixty (60) calendar days prior to commencement of decommissioning in a manner consistent with 17 O.S. § 160.15.

[OAR Docket #16-524; filed 6-15-16]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #16-525]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
165:55-1-4. Definitions [AMENDED]
Subchapter 3. Certificates, Reports, and Records
Part 1. Certificates of Convenience and Necessity
165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
165:55-3-2. Notice requirements when filing an Application for Certificate of Convenience and Necessity [AMENDED]
165:55-3-3. Approval of initial tariffs [AMENDED]
Part 5. Record Requirements
165:55-3-22. Records to be provided to the Commission [AMENDED]
Subchapter 5. Rates and Tariffs
Part 1. Tariff Filing
165:55-5-1. Tariffs and/or Terms of Service required [AMENDED]
Part 3. Approval and Notice Requirements
165:55-5-10. Tariff approval and revisions to tariffs [AMENDED]
165:55-5-11. Types of notices [AMENDED]
165:55-5-14. Objections [AMENDED]
Subchapter 9. Customer Billing and Deposits
Part 1. Billing and Payment Requirements
165:55-9-5. Billing disputes [AMENDED]
Part 3. Credit Requirements
165:55-9-14. Deposits and interest [AMENDED]
Subchapter 15. Notification of Transactions Affecting Customers or Business Operations
165:55-15-1. Notification of certain transactions affecting the customers or operations of a telecommunications service provider or IXC [AMENDED]
Subchapter 17. Facilitation of Local Exchange Competition
165:55-17-3. Designation of service territory [AMENDED]
165:55-17-7. Procedures for negotiation, arbitration and approval of agreements [AMENDED]
165:55-17-13. Interconnection of networks [AMENDED]
Subchapter 23. Eligible Telecommunications Carriers
Part 1. General Provisions
165:55-23-2. ETC Designation [AMENDED]

AUTHORITY:
Okla. Const. Art. IX, § 18, and 17 O.S. § 131, et seq.; Oklahoma Corporation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 21, 2016

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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016

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June 9, 2016

EFFECTIVE:
August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The adopted rules change the rule cited, in the definition of Carrier of Last Resort, from OAC 165:55-17-29 to OAC 165:55-13-12; add "Non-regulated" to the definition of "Not regulated service" to ensure the same meaning is given to both phrases; give Staff the authority to dismiss grossly deficient applications seeking a Certificate of Convenience and Necessity ("CCN") which require an unfeasible amount of time and resources for Staff to attempt to rehabilitate along with reducing the amount of data requests issued; codify routine data requests; conform rules to the Oklahoma Statutes; correct spelling and grammatical errors; point Applicants to appropriate notice requirements; correct a citation in a rule; clarify that filed tariffs are required for initial tariffs, switched access services, payphone access services, and E911/911 access services and that changes to tariffs other than these four may be accomplished by posting to the company's website if the company has elected to maintain their tariffs on the website; reduce the amount of copies required for making a tariff submission; remove conflicting filing requirements for interconnection agreements and clarify notice requirements for filing an initial tariff; renumber rules; clarify the rights of an objecting party to a proposed tariff or tariff revision and reduce the amount of time to object; clarify the rights of the parties in a billing dispute; ensure that new CCN's or tariffs shall be filed as separate causes when the parties to an agreement file a Notification of Transaction; give more time for the Commission to act when receiving Notifications of Transactions; give Staff more time to file a Continuance of Review after a party files a Notification of Transaction; allow an applicant to file an initial tariff as part of changing CCN service territory; provide and clarify existing notice requirements for filing Interconnection Agreement ("ICA") related causes; ensure Applicants provide a list of exchanges when seeking an Eligible Telecommunications Carrier ("ETC") designation; align Commission ETC rules with Federal ETC rules.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

165:55-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. These definitions shall be supplemented by the definitions contained in 17 O.S. §139.102. To the extent there is a conflict between a definition contained in 17 O.S. §139.102 and a definition in this Section, the definition in this Section shall be applicable to this Chapter:

"Access service" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"Applicant for telecommunications service" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

"Authorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Base rate area" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"Basic local service" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"Billing agent" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"Billing and collection service" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to ~~OAC 165:55-17-29~~ OAC 165:55-13-12.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or "Channel" means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or "Customer class" means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based

Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Data-only provider" means a company exclusively providing non-voice services, which, pursuant to OAC 165:55-3-1, has obtained a Certificate of Convenience and Necessity.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible Telecommunications Carrier" ("ETC") means a common carrier designated by the Commission pursuant to OAC 165:55-23-2 and 47 U.S.C. §§ 254 and 214(e).

"End-user" means the customer to whom a telephone number is assigned.

"Executing carrier" means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Filed" means to present a document to and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

"ILEC" means an Incumbent Local Exchange Company.

"Individual Case Basis" ("ICB") means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for Internet service that is in addition to the access connection charge.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company or telecommunications carrier.

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. § 251), as amended, the Federal Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing service, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" or **"Non-regulated service"** means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any interstate services offered FCC tariffs or rules, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services that are not regulated by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

"Rates" means all charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submit" means to present a document to the Director of the Public Utility Division.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks

to provide retail services to the end-user. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Supported Services" means services identified in 47 CFR part 54, or OAC 165:59, as amended from time to time, for which an ETC receives support from the federal USF, OUSF or OLF, or as otherwise may be ordered by the Commission.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications carrier or Company" means a telecommunications service provider ("TSP") or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" ("TSP") means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or "Company" means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a TSP or IXC elects to post, in a searchable format, on a publicly availability website.

"Tribal Land" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), Indian allotments; Hawaiian Home Lands-areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et.seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in 47 CFR §54.412.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" ("UNE") means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

"Wireless Provider" means provider of radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.

"Zone" means a service territory described as such by an incumbent LEC.

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:55-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person, firm, association, corporation or cooperative shall furnish telecommunications service to any end-user or customer in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Requirement for Certificate of Convenience and Necessity prior to receiving funding from the Oklahoma Universal Service Fund.** Any provider requesting funding from the Oklahoma Universal Service Fund for the provision of Special Universal Services shall first obtain a Certificate of Convenience and Necessity in the exchange where service is to be provided.

(c) **Application for Certificate of Convenience and Necessity.** Every provider of telecommunications services making application to the Commission for a Certificate of Convenience and Necessity in accordance with 17 O.S. §131 *et seq.* shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma. An application for a certificate to provide telecommunications service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and five (5) copies of the application for Certificate of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(d) **Application requirements for Certificate of Convenience and Necessity.** An application for a Certificate of Convenience and Necessity shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant. The Commission reserves the right to deny or dismiss, without prejudice, any application found not to be in compliance with this subchapter. If an applicant is unable to produce any information required in this subsection, the applicant must provide a statement explaining why the information is not included.

(1) The application shall contain the following information:

(A) The complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. § 1140, corporate or other headquarters street address and names/addresses of principal or corporate officers of the entity proposing to sell telecommunications service to the public in the State of Oklahoma. The telephone number and, if applicable, the toll-free number will also be included.

(B) If different from those provided pursuant to subparagraph (1)(A) of this Section, the names and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(C) A description of any facilities that will be used to provide services in Oklahoma, and whether applicant intends to add additional facilities that will be used to provide services in Oklahoma.

(~~C~~D) A written affirmation, signed before a Notary Public by someone with authority to bind the corporation or entity, containing the following statements:

(i) That the information contained in the application is true and correct;

(ii) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission;

(iii) That for each area or exchange(s) an applicant proposes to serve, the applicant agrees to offer the provisioning of service to all end-users within that area or exchange(s) on a nondiscriminatory basis;

(iv) That the applicant understands the Commission's contempt authority;

(v) That the applicant will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the applicant will comply with the provisions of 165:55-13-10.1 and will include a statement to this effect in its tariffs;

(vii) That the applicant either provides only data service, or that prior to commencing to provide local exchange service the applicant will notify each Public Safety Answering Point ("PSAP") within their service area that they will be providing service within the area served by the PSAP, and provide each PSAP with contact information in case there are issues with the completion of calls by the customers of the Applicant. The attachment shall also state that the Applicant will comply with the requirements of 17 O.S. § 131 and will collect and disburse the E911/911 fee as required by 63 O.S. § 2814. Such affirmation should also include a statement that applicant will provide proof to the Commission of such compliance within thirty (30) days following Applicant's initial provisioning of local service;

(viii) That the applicant understands that before it ceases, discontinues, or curtails operations and/or service, it must file with the Commission and provide each affected customer, in the manner required by the Commission, notice of the intended action, and must also provide notice to any E911/911 Database Management Service Provider, pursuant to OAC 165:55-15-5;

(ix) A statement that the applicant ~~is~~, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers and senior management, are not currently under investigation or involved in any pending or concluded investigations or litigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation related to the operation of a regulated industry, if that is the case;

(x) A statement that the applicant ~~has~~, or its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers and senior management, have~~,~~ not been fined, found guilty, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation or any consumer protection law or regulation related to the operation of a regulated industry, if that is the case; and

(xi) If either of the statements required in (ix) and (x) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(xii) A statement as to whether applicant currently seeks state or federal universal service funding of any kind for services provided in the state(s) in which applicant is currently authorized to provide service, and whether applicant intends to seek Oklahoma Universal Service Fund funding in Oklahoma.

(2) The attachments to the application shall include the following:

(A) Copies of the applicable Articles of Incorporation, Articles of Organization, and/or partnership agreement, and/or Joint Venture agreement and,

where they exist, by-laws or operating agreement of the applicant for a Certificate of Convenience and Necessity and any entity or individual owning a whole or controlling interest in the applicant for a Certificate of Convenience and Necessity.

(B) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma, and evidence that applicant is in good standing with the Oklahoma Secretary of State.

(C) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name utilized by the telecommunications service provider or IXC, i.e. a "d/b/a".

(D) Proof that the third-party surety bond, surety bond or letter of credit required in subsection (g) of this Section has been obtained, if applicable.

(E) Documentation indicating the applicant's organizational structure and ownership such as:

(i) For corporations, limited liability companies, partnerships and/or joint ventures, the applicant's stockholders annual reports and SEC 10Ks for the last three (3) years, if applicable, or, if the company is not publicly traded, its financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(ii) A sole proprietor, as well as a limited liability company, shall provide financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(F) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(G) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(H) The name, address and toll-free telephone number that an end-user may contact concerning repairs and maintenance, complaints, billing questions, refunds and any other customer service-related inquiries.

(I) The contact name, address, and telephone number of the individual with overall responsibility for repairs and maintenance, complaints, billing questions, refunds, and any other customer service-related inquiries. This will be the principal contact for the Commission's Consumer Services Division regarding complaints involving the telecommunications service provider.

(J) The contact name, address and telephone number of the principal contact to be utilized by the Commission's Public Utility Division regarding any questions which are not related to customer service.

(K) A list of all other states, if any, where:

(i) The applicant is authorized to operate;

(ii) Authorization to operate is pending;

(iii) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,

(iv) Authorization has been revoked, with a certified copy of the revocation document attached.

(L) A complete set of proposed initial tariffs which include the terms and conditions of service and all rates and charges for each service classification shall be in a format consistent with Subchapter 5 of this Chapter or a statement that the applicant will file tariffs pursuant to OAC 165:55-3-3. A company may elect to post Terms of Service on a publicly available website, subsequent to the approval of their initial tariffs.

(M) A description of the applicant's proposed service territory.

(N) A description of the deposit, if the applicant intends to collect deposits, and disconnection rules to be applied to end-users by the applicant, all of which shall conform to Subchapters 9 and 11 of this Chapter.

(O) A statement setting forth the accounting system to be utilized by the applicant (the FCC-approved Uniform System of Accounts or another accounting system) and a Chart of Accounts.

(P) A listing of the complete name(s), including any trade name(s), corporate or primary headquarters street address(es) and names/addresses of principal officers of any affiliates, individuals or investors holding more than five (5) percent ownership, and/or subsidiaries providing telecommunications and/or other services to the entity making the application proposing to sell the requested telecommunications service to the public in the State of Oklahoma, unless otherwise ordered by the Commission.

(Q) An affirmation that the Applicant will maintain a record of complaints in a manner consistent with OAC 165:55-3-23.

(R) A copy of the applicant's proposed letter of authorization to be used by the telecommunications

service provider to obtain written authorization from an end-user to switch telecommunications service providers or a copy of the text of the proposed script of the verification, which must be approved by the Director of the Public Utility Division, consistent with OAC 165:55-19-1.

(S) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(T) A description of applicant's parameters for determining creditworthiness if applicant intends to perform credit checks prior to providing service to a potential end-user.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) Agreements in accordance with OAC 165:55-17-7, if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such agreement(s) become available. Protective relief may be sought pursuant to 51 O.S. § 24A.22.

(e) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:55-3-1(c) and 165:55-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an application shall be filed pursuant to OAC 165:55-17-3.

(f) **Approval requirement.** No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing, if any, as directed by the Commission or unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma. ~~An application for Certificate of Convenience and Necessity filed pursuant to this Section will be deemed granted thirty (30) days after the posting of the notice on the OCC website required by OAC 165:55-3-1(e) or the first day of publication required by 17 O.S. §132 whichever is later, unless an objection is filed in advance of the thirtieth day alleging that a hearing is required. In the event that the application for Certificate of Convenience and Necessity is deemed approved, the Commission shall issue an Order granting the Certificate of Convenience and Necessity within a reasonable time.~~

(g) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To ~~insure~~ ensure the protection of the applicant's end-users, the applicant that intends to collect deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars ($1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

(h) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

(i) Prior to providing service in Oklahoma, the Applicant shall jointly test interoperability with the 911/E911 PSAPs in their service area and provide verification of interoperability to the Commission and the PSAP.

165:55-3-2. Notice requirements when filing an Application for Certificate of Convenience and Necessity

Applicants seeking a Certificate of Convenience and Necessity shall meet all notice requirements as set forth in this Section.

(1) **Requirements for filing an Application of a Certificate of Convenience and Necessity.** An Application of a Certificate of Convenience and Necessity shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

(A) The Attorney General of the State of Oklahoma;

(B) The Director of the Public Utility Division of the Oklahoma Corporation Commission;

(i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Oklahoma Corporation Commission Court Clerk's Office and shall be delivered to the Director of the Public Utility Division in electronic copy form only.

(ii) The Director of the Public Utility Division shall place the Application of Certificate of Convenience and Necessity on the Commission's

website, http://www.occeweb.com, within five (5) business days of receipt.

(C) The governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant.

(D) The ILEC in the proposed service territory.

(2) **Publication of a Notice of Application of a Certificate of Convenience and Necessity.** The Notice required by 17 O.S. §132 shall be published as follows:

(A) In a newspaper of general circulation once a week for two (2) consecutive weeks with at least seven (7) days apart in ~~every proposed service territory of the Applicant.~~ each service territory affected.

(B) Publication shall be at the expense of the applicant.

(C) A "Proof of Publication" document shall be filed with the Oklahoma Corporation Commission Court Clerk's Office within fifteen (15) days of the last publication date.

(3) **Requirements for a Notice of Hearing on an Objection to a Certificate of Convenience and Necessity.**

(A) When an objection is made in a cause of an Application of a Certificate of Convenience and Necessity, the Applicant shall promptly file a Notice of Hearing at the Oklahoma Corporation Commission Court Clerk's office requesting a date for a hearing on the merits of the application.

(B) Within ten business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:

(i) The Attorney General of the State of Oklahoma;

(ii) The Director of the Public Utility Division of the Oklahoma Corporation Commission; and

(iii) Any Interveners, including the person or entity filing the objection.

165:55-3-3. Approval of initial tariffs

(a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:55-3-1, a telecommunications service provider, or IXC shall file an application requesting approval of its initial tariffs, unless filed pursuant to OAC 165:55-3-1(d)(2)(L), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 5 of this Chapter. Notice of such filings shall comply with OAC 165:55-5-11(c).

(b) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by Commission.

(c) Not later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(d) With the application requesting approval of a complete set of proposed initial tariffs, the telecommunications service provider, or IXC, shall file proof that the third-party surety bond, surety bond or letter of credit required in ~~OAC 165:55-3-1(f)~~OAC 165:55-3-1(g) has been obtained, if applicable.

PART 5. RECORD REQUIREMENTS

165:55-3-22. Records to be provided to the Commission

(a) **Annual report of operations.** Each telecommunications service provider and IXC shall provide to the Director of the Public Utility Division an annual report, in a format developed by the Director of the Public Utility Division, no later than May 1 of the year following the reporting year. Proposed revisions to the Annual Report format will be posted to the OCC website at least ninety (90) days prior to their effective date. All carriers will be notified of the posting via e-mail, based on addresses supplied by carriers. Any carrier that objects to the proposed revisions to the Annual Report format may file an Application with the Commission requesting relief from the applicability of the format changes. The filing of an Application will suspend the applicability of the proposed format revisions until an Order is issued by the Commission. Unless an Order revising the Annual Report format is entered at least 90 days prior to the May 1 filing deadline, carriers will not be required to file an Annual Report in the revised format until the following year.

(b) **Confidentiality of annual report.** All non-publicly available information included in the annual report or an ETC's FCC Form 481 or FCC Form 555 will be considered confidential by the OCC.

(c) **Proof of third-party surety bond, surety bond or irrevocable letter of credit.** Where applicable, not later than May 1 of each year, each telecommunications service provider and IXC which does not have at least one million dollars ($1,000,000) net book value invested in telecommunications plant and/or telecommunications facilities located in the State of Oklahoma, shall provide annually, to the Director of the Public Utility Division, proof of the continuing existence and sufficiency of the required third-party surety bond, surety bond or irrevocable letter of credit providing coverage at a level of at least one hundred and ten percent (110%) of customer deposits. Such proof shall be in a format developed by the Director of the Public Utility Division and approved by the Commission.

(d) **Exchange maps.** Each telecommunications service provider shall provide the Director of the Public Utility Division two (2) copies of updated exchange maps when the boundaries of an exchange(s) are changed. The maps and descriptions shall be in sufficient detail to permit the location of exchange boundaries on the ground, and be consistent with the format set forth in this subsection.

(1) Each exchange map provided after the effective date of this Chapter shall conform to the following:

(A) One exchange service area per sheet.

(B) Each map shall be on eight and one-half by eleven inches (8.5" x 11") (or larger sheet which folds

down to eight and one-half by eleven inches (8.5" x 11"), twenty pounds (20 lbs.) or heavier, white paper.

(C) Each township and range will be specified along the side of the map and, ~~as~~ at a minimum, each corner section will be numbered.

(D) The outline of the exchange service area will be a heavy black line with an "E" every one inch (1") or two inches (2") along the boundary.

(E) The name of adjacent incumbent LEC exchanges will be indicated on the exchange map to identify their relative location.

(2) When said boundary map changes involve more than one telephone exchange and more than one incumbent LEC, the changes involved shall be coordinated between the incumbent LECs concerned and a "Joint Application" submitted. After an order is issued by the Commission the incumbent LECs shall submit revised exchange maps containing the revised territory, the new certificate number, the cause number, the order number, and the date of the order approving the change. A copy of each current exchange map shall be made available for review to any interested person upon reasonable notice containing:

(A) Application number.

(B) Maps showing the changes in contrasting colors.

(C) Metes and bounds of changes.

(D) Proposed orders (one for each exchange) with complete metes and bounds of the revised exchange(s).

(e) **Competitive LEC service territories maps.** Each competitive LEC shall either identify the LEC exchanges of their service territory or maintain up-to-date maps showing its service territory. The maps and descriptions shall be in sufficient detail to establish the location of incumbent LEC exchange boundaries on the ground. Each map provided shall conform to the format set out in OAC 165:55-3-22(c)(1). Two (2) copies of each map shall be provided to the Director of the Public Utility Division.

(f) **Contracts and agreements.** Upon request by the Director of the Public Utility Division, a TSP or IXC shall provide a copy of a contract entered into by the TSP or IXC for regulated services.

(g) **Contact names.** Each telecommunications service provider and IXC shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues.

(1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers; and,

(E) Tariff issues.

(h) **Other information.** Each telecommunications service provider and IXC shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

SUBCHAPTER 5. RATES AND TARIFFS

PART 1. TARIFF FILING

165:55-5-1. Tariffs and/or Terms of Service required

(a) Except as provided in this Subchapter, a telecommunications service provider or IXC shall charge for the provisioning of regulated telecommunications services to its end-users only the rates and charges contained in its tariffs on file with and approved by the Commission or Terms of Service. No deviation from a tariff or Terms of Service shall be permitted, except as permitted by OAC 165:55-5-10.3 or unless otherwise authorized by the Commission. The provisions of each telecommunications service provider's or IXC's filed tariff and/or Terms of Service are binding upon the telecommunications service provider, IXC and the end-user as to the rates and charges for service and the terms and conditions of service. Notwithstanding the foregoing and OAC 165:55-3-3, neither a telecommunications service provider nor an IXC shall be required to file a written tariff with the Commission for any service except payphone access services, E911/911 access services, or switched access services.

(b) A telecommunications service provider or an IXC which has a written tariff on file with the Commission may withdraw the tariff, except for payphone access services, E911/911 services, or switched access services if the telecommunications service provider or IXC:

(1) provides written notice to the Director of Public Utility Division and the Attorney General, that it is withdrawing the tariff,

(2) posts the Terms of Service, and

(3) provides the Commission with the web page information where the language is posted.

(c) The Commission maintains the same authority to review the Terms of Service, of a telecommunications service provider or IXC, as permitted by OAC 165:55-5-10.

(d) All tariff revisions shall be deemed approved by the Commission on the day following the day the tariff revision is submitted to the Commission. Revisions to the Terms of Service on a telecommunications service provider's or IXC's website will become effective on the day following the day the revision is posted on the website, or as otherwise indicated on the website.

PART 3. APPROVAL AND NOTICE REQUIREMENTS

165:55-5-10. Tariff approval and revisions to tariffs

(a) Except as provided in OAC 165:55-5-1, no new or revised tariff shall be effective without Commission order after notice and hearing, if any, as directed by the Commission unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma. Tariffs filed under this section will be deemed lawful and effective thirty (30) days after filing unless an objection is filed in advance of the thirtieth day that a hearing is required.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) New or revised tariffs describing a regulated service may be submitted in accordance with subsection (c) of this section unless otherwise prohibited by this Chapter, including but not limited to, subsection (b)(2) of this section or by the laws of the State of Oklahoma.

(2) No new or revised tariff describing a switched access service, E911/911 service, or payphone access service, shall become effective without Commission order after notice and hearing, if any, as directed by the Commission.

(3) A packaged service may include any combination of basic local services, regulated services and non-regulated services. A packaged service shall be treated as a single optional service by the Commission. A packaged service may be submitted in accordance with subsection (c) of this section unless otherwise prohibited by this Chapter or by the laws of the State of Oklahoma.

(4) Any tariffed service utilizing ICB pricing, or amendment thereto, shall become effective without Commission order according to the terms of the agreement with the customer and/or the provider's tariffs.

(c) To the extent that this Chapter allows the submission of new or revised tariffs, new or revised tariffs shall have an effective date on or after the day following the day the submission is delivered to the Director of the Public Utility Division, subject to the following conditions:

(1) The submission delivered to the Public Utility Division shall include a cover letter, ~~three (3)~~one (1) mark-up ~~copies~~copy of the new or revised tariff pages in legislative format, and ~~three~~one (1) final ~~copies~~copy of the new or revised tariff pages.

(2) The effective date of the new or revised tariff submitted to the Commission shall be stated on the face of the new or revised tariff pages.

(3) A new or revised tariff submitted to the Commission shall comply with the notice requirements of OAC 165:55-5-11. A copy of the notice shall accompany the submission. The submission shall clearly identify the date of notice and the method used to provide notice.

(4) The Commission may permit electronic submission of new or revised tariffs when technically feasible.

(d) The Public Utility Division may, after an informal investigation, file an application with the Commission seeking to revoke or modify any tariff. After notice and hearing, the Commission may issue an order prospectively revoking or modifying any tariff for good cause.

(e) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(f) The Commission shall protect against anti-competitive behavior and the abuse of monopoly power by rejecting, revoking or modifying tariffs that are predatory, anti-competitive or discriminatory. In its review, the Commission may consider the incremental cost of the service, the potential impact on competition, the potential impact on end-users generally, and such other factors as the Commission may deem necessary. The Commission maintains the same authority to review the Terms of Service that are posted on the publicly available website, of a telecommunications service provider or IXC, as permitted by OAC 165:55-5-10. This retention of authority shall not be interpreted to mean that the Commission has approved the Terms of Service.

(g) Unless otherwise ordered by the Commission, all proposed rates must cover the long-run incremental cost of the service, including imputation where ordered by the Commission.

(h) For purposes of this Section, the Commission shall allow an ILEC or CLEC that serves less than seventy-five thousand (75,000) access lines as of July 1, 1997, at the option of the company, to adopt the cost studies approved by the Commission for an ILEC or CLEC that serves seventy-five thousand (75,000) or more access lines or to adopt the surrogate cost studies approved by the FCC.

(i) Nothing in these rules is intended to modify, affect or nullify the responsibilities of the Commission or providers of telecommunications services as required by state or federal antitrust laws or the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

165:55-5-11. Type of notices

(a) **Notice.** Except with respect to tariffs filed pursuant to OAC 165:55-5-10(b) or where the Commission, by order, directs otherwise, any notice of hearing on an application for approval or amendment of rates or charges for service shall be published once a week for two consecutive weeks in a newspaper(s) of general circulation within the territory served by the telecommunications service provider.

(b) **Notice of tariff revisions and new service offerings by telecommunications service providers.** Telecommunications service providers shall serve proposed tariff revisions for switched access, payphone access, or E911/911 services on the Office of the Attorney General at the time of their filing with the Commission, and shall provide a copy of their proposed tariff revisions pursuant to OAC 165:55-5-10 to each IXC and telecommunications service provider that has previously requested in writing to receive such filings. Notice of tariff revisions to E911/911 services shall also be provided to the governing body of each E911/911 Public Safety Answering Point operating in the service territory of the TSP.

(c) **Notice requirements.** All entities seeking to interconnect with the ILEC, including CLECs and Wireless providers, shall provide Notice of the Application to be given by mail, electronic mail or personal service to the Attorney General of

the State of Oklahoma and each E911 Public Safety Answering Point within the territory of the service area affected by the proposed Agreement. Each governmental entity operating an E911 Public Safety Answering Point that wishes to receive notice of interconnection agreement approvals shall register its contact persons with the Commission.

(d) **Notice of proposed initial tariff.** All entities seeking approval of an initial tariff shall serve the file-stamped Application by mail, electronic mail, or personal service to the Oklahoma Attorney General and the Director of the Public Utility Division.

(~~d~~e) **End-user notice of rate increase.** Prior to or concurrent with the effective date of any increased rate to an end-user, each telecommunications service provider or IXC shall provide notice to the Director of the Public Utility Division, the Office of the Attorney General and the affected end-users of the rate increase. The notice shall be provided by any of the following:

(1) Prominent display on the end-user's bill;

(2) Direct mailing;

(3) Prominent display on an insert in the end-user's bill; or

(4) Any other method approved by the Director of the Public Utility Division.

(~~e~~ f) **Notice of rate increase to the OCC and Attorney General.** The notice required by Subsection (d) above to be given to the Director of the Public Utility Division and the Office of the Attorney General shall be given by any of the following:

(1) Direct mailing or email;

(2) Through a website posting of all customer notifications and Terms of Service changes; or

(3) Identification on the website posting of the effective date of the Terms of Service.

(~~f~~g) **End-user notice of service offering restrictions/limitations.** Any restrictions/limitations imposed for "non-voice" minutes of use beyond a maximum identified in the provider's tariff shall be noticed under the following conditions:

(1) Written notice of the restriction/limitation and clear and concise explanation of when the penalty is imposed will be given to the end-user(s) prior to or concurrent with the initial bill for the service offering which contains the restriction/limitation. The notice will advise the end-users of the exact restriction/limitation and the penalty assessed.

(2) The notice shall be provided by any of the following:

(A) Prominent display on the end-user's bill;

(B) Direct mailing;

(C) Fulfillment and/or welcome packages;

(D) Prominent display on an insert in the end-user's bill; or

(E) Any other method approved by the Director of the Public Utility Division.

(~~g~~h) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

165:55-5-14. Objections

(a) Any person may file an objection to a proposed tariff or proposed tariff revision or Terms of Service or proposed Terms of Service amendment within ~~forty-five (45)~~thirty (30) days after the proposed tariff or proposed tariff revision is filed or Terms of Service ~~revisions~~ are posted on the telecommunication service provider's or IXC's publicly available ~~web-site~~ website.

(b) Any such objection shall comply with the requirements of OAC 165:5-9-2 and must contain a specific description of the basis for the objection and all information necessary to allow evaluation of the objection. The objecting person shall promptly serve its objections on the IXC or telecommunications service provider that filed the proposed changes, new service offering, or revised Terms of Service; and upon the Director of the Public Utility Division and the Attorney General.

SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:55-9-5. Billing disputes

(a) In the event of a dispute between an end-user and a telecommunications service provider, the telecommunications service provider shall make such investigation as is required by the particular case, and report the results thereof to the end-user. A TSP shall not make any attempt to collect disputed amounts or disconnect service over the disputed portion of a bill for sixty (60) calendar days from the date the dispute is received.

(b) In the event the dispute is not resolved, the telecommunications service provider shall inform the end-user that the end-user may utilize the complaint procedures of Commission's Consumer Services Division. The information to be provided to consumers shall be:

(1) The street address of the Consumer Services Division, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 580W, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is P. O. Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday.

(c) When a complaint has been made with the Commission's Consumer Services Division, the telecommunications service provider shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed

charges pending investigation by the Commission's Consumer Services Division. The end-user shall be required to pay the undisputed part of the bill, and if not paid, the telecommunications service provider may discontinue service.

PART 3. CREDIT REQUIREMENTS

165:55-9-14. Deposits and interest

(a) Each telecommunications service provider shall prepare and submit a plan containing the criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each telecommunications service provider's tariffs.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except for (b), (c), (d), and ~~(1)~~e(1).

(b) No telecommunications service provider shall require a deposit of a residential end-user who has received the same or similar type of classification of service for twelve (12) consecutive months and to whom service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment of a telecommunications service account dishonored. The twelve (12) months service period shall have been within eighteen (18) months prior to the application for new service. The telecommunications service provider's plan may establish other relevant criteria which will qualify the end-user for nonpayment of a deposit.

(c) The amount of the deposit shall not exceed an amount equal to two (2) months local exchange charges and/or two (2) months toll charges determined by actual or anticipated usage. Where local exchange charges are billed in advance, the deposit shall include only one (1) month's such charges. The telecommunications service provider's plan may allow customers to pay deposits in installments. Upon request, the telecommunications service provider shall provide a written explanation of the deposit calculation. The explanation shall separately state the amount of the deposit which is related to local exchange service and the amount related to toll service.

(1) Upon written request by the customer, after a period of four (4) consecutive months during which time the average amount of toll charges is shown to have decreased by fifty percent (50%) or more, the telecommunications service provider shall re-evaluate the amount of the deposit in order to determine if the original deposit amount continues to be consistent with the guidelines set forth in this Section.

(2) The amount of the deposit shall be reduced to an amount which is consistent with the deposit guidelines set forth in this Section.

(3) Any excess amount of the deposit resulting from the reduction required in paragraph (2) of this subsection shall be refunded to the customer.

(d) A present end-user may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the end-user has had service disconnected during the last twelve (12) months pursuant to OAC 165:55-11-2 or has presented a check to the telecommunications service provider that was subsequently dishonored.

(e) Interest on cash deposits shall be paid by each telecommunications service provider at no less than the rate calculated as follows:

(1) For all consumers deposits returned more than thirty (30) days after receipt of the deposit, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in paragraphs (e)(1) results in a change in interest rate(s) that is/are greater than fifty (50) basis points.

(3) The Director of the Public Utility Division shall calculate the interest rate(s) pursuant to paragraphs (e)(1) of this Section, and shall provide notice to the telecommunications service providers via mail, e-mail or posting on the OCC's website by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (e), otherwise the current interest rate(s) will remain in effect.

(f) If a refund of the deposit is made within thirty (30) days of receipt of the deposit, no interest payment is required. If the telecommunications service provider retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(g) The telecommunications service provider shall provide payment of accrued interest for all end-users annually by negotiable instrument or by credit against current billing.

(h) The deposit shall cease to draw interest on the date it is returned or credited to the end-user's account.

(i) In determining the amount of any deposit permitted by this Chapter, no charges for estimated telephone directory advertising may be used.

(j) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of services. The balance, if any, shall be returned to the end-user within thirty (30) days after settlement of the consumer's account, either in person or by mailing it to the end-user's last known address.

(k) If service is not connected, or after disconnection of service, the telecommunications service provider shall promptly and automatically refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one (1) premise to another within the area of the telecommunications service provider shall not be deemed a disconnection within the meaning of this Part, and no additional deposit may be required unless otherwise permitted by this Subchapter.

(l) The telecommunications service provider shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check that is subsequently dishonored. If the end-user does not meet these refund criteria, the deposit and interest may be retained in accordance with subsection (d) of this Section.

(m) The telecommunications service provider may withhold refund or return of the deposit, pending the resolution of a dispute with respect to charges secured by the deposit.

(n) The telecommunications service provider shall keep records to show:

(1) The name, account number, and address of each depositor.

(2) The amount and date of the deposit.

(3) Each transaction concerning the deposit.

(o) The telecommunications service provider shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.

(p) Such records shall be retained for two (2) years after deposit and/or interest is refunded or applied.

(q) Upon the sale or transfer of any telecommunications service provider or operating units thereof, the seller shall file, with the application of transfer, a verified list of the information in subsection (n) of this Section, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(r) The deposit made by the end-user with the telecommunications service provider at the time of application for telephone service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

SUBCHAPTER 15. NOTIFICATION OF TRANSACTIONS AFFECTING CUSTOMERS OR BUSINESS OPERATIONS

165:55-15-1. Notification of certain transactions affecting the customers or operations of a telecommunications service provider or IXC

(a) The parties to an agreement, the performance of which will result in the movement of some or all of the regulated telecommunications services customers of one or more certificated telecommunications services providers or IXCs to a different legal entity, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction. Any related relief, including but not limited to new Certificates of Convenience and Necessity or tariffs, shall be filed as separate causes.

(b) The parties to an agreement, the performance of which will result in the transfer of a Certificate of Convenience and Necessity, with or without the transfer of a tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide local and/or interexchange telecommunications services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(d) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of a telecommunication service provider or IXC. Such transactions are not subject to regulation by the Commission.

(e) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

(1) The name of the acquiring entity and the acquired entity.

(2) Identification of the acquired assets.

(3) The anticipated completion date and the effective date (if different) of the transaction.

(4) The name of the entity(ies) which will be providing telecommunications services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").

(5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.

(6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.

(7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and the Consumer Services Division and will be primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers

(E) Tariff issues; and,

(F) Receiving Notices related to causes docketed at the Commission.

(8) An affidavit, including a financial statement, that states that the surviving entity possesses the financial

ability to provide telecommunications services in the State of Oklahoma.

(9) A copy of the notice which will be provided to affected customers informing them of the transaction and any change in the name of the entity which provides telecommunications services to them or in their rates, charges or terms and conditions of service as a result of the transaction.

(10) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.

(11) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.

(12) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.

(13) A statement of the approximate number of Oklahoma customers.

(14) In addition, this Section shall not apply to transactions between affiliates that have an Oklahoma Certificate of Convenience and Necessity. If the transaction is going to modify the company name on the customer's bill, forty-five (45) days advance notice must be provided to affected customers.

(f) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to the Office of the Attorney General of the State of Oklahoma.

(g) The Commission Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any existing Certificate of Convenience and Necessity. The Commission shall act on a notification within ~~thirty (30) business days~~ forty-five (45) days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Office of the Court Clerk no later than fifteen (15) days after the proposed filing. The Attorney General of the State of Oklahoma shall be granted intervention in such proceeding, if requested.

(h) Within ~~thirty (30)business days~~forty-five (45) days of the filing of the Notification of Transaction, the Commission Staff may file a Continuance of Review in the Cause stating that the Commission Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Commission Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(i) The Commission Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Commission Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Commission Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction, unless otherwise ordered by the Commission. If such a Notice is filed by the Commission Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(j) After approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, if necessary, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

SUBCHAPTER 17. FACILITATION OF LOCAL EXCHANGE COMPETITION

165:55-17-3. Designation of service territory

(a) The Commission shall determine whether a telecommunications service provider's service territory is in the public interest at the time the competitive LEC seeks certification or proposes changes to its service territory. In determining whether the proposed service territory meets the public interest, the Commission shall consider factors, including but not limited to, the existence and location of the competitive LEC's facilities, the number of potential customers to be served and the potential impact on universal service.

(b) No service territory shall be changed except by Order of the Commission after such notice and hearing, if any, as directed by the Commission. Applications for change to an existing service territory shall be accompanied by revised tariff pages or an initial tariff reflecting the proposed new service territory.

165:55-17-7. Procedures for negotiation, arbitration and approval of agreements

(a) **Agreements arrived at through voluntary negotiations.** Upon receiving a request for interconnection, services, or network elements pursuant to OAC 165:55-17-5, an incumbent LEC may negotiate and enter into a binding agreement with the requesting telecommunications service provider or providers without regard to the standards set forth in OAC 165:55-17-5 (b) and (c). The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996 (February 8, 1996), shall be filed with the Commission under subsection (e) of this Section.

(b) **Mediation.** Any party negotiating an agreement under this Section may, at any point in the negotiations, ask the Commission to participate in the negotiations and mediate any

differences arising in the course of the negotiations. The Public Utility Division shall provide the mediator, unless otherwise directed by the Commission.

(c) **Agreements arrived at through compulsory arbitration.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent LEC receives a request for negotiation under this Section, the incumbent LEC or any other party to the negotiation may seek arbitration at the Commission of any open issues. Nothing in this subsection shall preclude negotiating parties from filing a joint application.

(1) **Responsibilities of the applicant with regard to the Commission.** A party that seeks arbitration from the Commission pursuant to this subsection shall, contemporaneously with the filing of its application, provide the Commission all relevant documentation concerning:

(A) The unresolved issues and the position of each of the parties with respect to those issues; and,

(B) Any other issue discussed and resolved by the parties.

(2) **Responsibility of the applicant with regard to other parties.** A party that seeks arbitration from the Commission pursuant to this subsection shall, provide a copy of the application and any documentation to the other party or parties not later than the day on which the application is filed.

(3) **Opportunity to respond.** A nonpetitioning party to a negotiation under this Section may respond to the other party's petition and provide such additional information as it wishes within twenty-five (25) days after the Commission receives the petition.

(4) **Action by the Commission.** When an application for arbitration is filed, the Commission will utilize the following procedures.

(A) The Commission will limit its consideration of any petition under this subsection, and any response thereto, to the issues set forth in the petition and in the response, if any, filed under paragraph (3) of this subsection.

(B) The Commission may require the petitioning party and the responding party to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or unreasonably fails to respond on a timely basis to any request from the Commission, then the Commission may proceed on the basis of the best information available to it, from whatever source derived.

(C) The Commission will resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (d) of this Section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the telecommunications service provider received the request under this Section.

(5) **Refusal to negotiate.** The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the Commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith.

(d) **Standards for Arbitration.** In resolving by arbitration, under subsection (c) of this Section, any open issues and imposing conditions upon the parties to the agreement, the Commission will:

(1) Ensure that such resolution and conditions meet the requirements of OAC 165:55-17-5 and applicable FCC requirements;

(2) Establish rates for interconnection, services, or network elements consistent with OAC 165:55-17-27; and,

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(e) **Approval by the Commission and grounds for rejection.** Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by filing an application with the Commission's Office of the Court Clerk and comply with OAC 165:55-17-13(e). After review of the application, the Commission will approve or reject the agreement, with written findings as to any deficiencies. The Commission will only reject an agreement, or any portion thereof, if it finds that:

(1) The agreement, adopted by negotiation under subsection (a) of this Section, either:

(A) Discriminates against a telecommunications service provider that is not a party to the agreement; or,

(B) The implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(2) The agreement adopted by compulsory arbitration under this Section does not meet the requirements of OAC 165:55-17-5 or the agreement does not meet the standards in OAC 165:55-17-27.

(3) **Notice requirements.** Applicants seeking approval of an Interconnection Agreement shall provide Notice of the Application to be given by mail, electronic mail or personal service to the Attorney General of the State of Oklahoma.

(f) **Reservation of authority.** Notwithstanding subsection (e), the Commission, consistent with the requirements of 47 § 253, shall enforce other requirements of State law in its review of an agreement, including requiring compliance with Subchapter 13 of this Chapter.

(g) **Statement of generally available terms.** In conformance with 47 U.S.C. § 252(f), SWBT may prepare and file with the Commission a statement of the terms and conditions that SWBT generally offers within Oklahoma to comply with the requirements of 47 U.S.C. § 251, and the regulations thereunder and the standards applicable under this Section. In the event SWBT files such a statement, the Commission will:

(1) Approve the statement provided the statement complies with Subchapter 13 of this Chapter, OAC

165:55-17-5 and OAC 165:55-17-27 and is consistent with 47 U.S.C. § 253;

(2) Complete the Commission's review of SWBT's statement not later than 60 days after the date of such submission, (including any reconsideration thereof), unless SWBT agrees to an extension of the period for such review; or permit such statement to take effect.

(h) **Continued review of SWBT's statement of generally available terms.** In the event the Commission has permitted the statement of SWBT to take effect pursuant to paragraph (2) of subsection (g), the Commission may continue to review said statement after it is effective and the Commission may approve or disapprove said statement if it does not meet the requirements of paragraph (1) of subsection (g).

(i) **Duty to negotiate not affected.** The submission or approval of a statement under subsection (g) shall not relieve SWBT of its duty to negotiate the terms and conditions of an agreement pursuant to OAC 165:55-17-5.

(j) **Consolidation of proceedings.** Where not inconsistent with the requirements of the Federal Telecommunications Act of 1996, the Commission may, to the extent practical, consolidate proceedings under OAC 165:55-17-5 and OAC 165:55-17-7, in order to reduce administrative burdens on telecommunications service providers, other parties to the proceedings, and the Commission in carrying out its responsibilities under the Telecommunications Act of 1996.

(k) **Availability for public inspection.** The Commission will make a copy of each agreement approved under subsection (e) and each statement approved under subsection (g) available for public inspection and copying within 10 days after the agreement or statement is approved. The Commission will charge the fees set forth in OAC 165:5-3-1 to cover the costs of processing an application and copying.

(l) **Availability to other telecommunications service providers.** A telecommunications service provider shall make available any interconnection, service, or network element provided under an agreement approved under this Section to which it is a party, to any other requesting telecommunications service provider; upon the same terms and conditions as those provided in the agreement.

(m) Each TSP shall have the duty to comply with 47 U.S.C. §252 and 17 O.S. §139.101 *et seq.*

165:55-17-13. Interconnection of networks

(a) Local exchange telecommunications networks shall be interconnected, where technically feasible, so that end-users of any telecommunications service provider can seamlessly send and/or receive calls without any diminution in service quality regardless of the telecommunications service provider selected by the end-user or the called party. Such interconnection shall be made available, when requested by a competing telecommunications service provider, on an unbundled basis equally and on a nondiscriminatory basis.

(b) A telecommunications service provider shall make available any interconnection, service, or network element, provided under an agreement to which it is a party and which has been approved by the Commission pursuant to OAC 165:55-17-7, to any other requesting telecommunications service provider upon the same terms and conditions as those provided in the agreement.

(c) Interconnection issues not addressed or resolved by these rules, shall be addressed and resolved through the negotiation and arbitration process provided for in a manner consistent with the Federal Telecommunications Act of 1996 and FCC regulations prescribed thereto.

(d) When filing an amendment to an interconnection agreement, the effective date, order number and cause number of the original interconnection agreement or the subsequent amendment that is being modified must be included.

(e) When filing an application for approval of an agreement or an amendment to an existing interconnection agreement, a ~~processed~~ file-stamped copy will be provided to the ~~Court Clerk, the~~ Director of the Public Utility Division, the Oklahoma Attorney General, each E911 public safety answering point within the territory of the service area affected by the proposed agreement and any other party to the agreement. The copy to the Director of the Public Utility Division may be contained on compact disk, formatted in an IBM compatible form using Microsoft Word for Windows, or compatible software.

SUBCHAPTER 23. ELIGIBLE TELECOMMUNICATIONS CARRIERS

PART 1. GENERAL PROVISIONS

165:55-23-2. ETC Designation

(a) No person shall receive federal Lifeline funds for Oklahoma customers or Connect America Funds for investment in Oklahoma without first being designated an Eligible Telecommunications Carrier ("ETC") by the Commission. A person seeking to be designated an ETC by the Commission shall file an Application with the Commission, meeting the requirements of the Commission's Rules of Practice, OAC 165:5, and shall provide the following additional information in support of the Application:

(1) A description of whether the applicant intends to offer the Supported Services over its own facilities, by resale of another carrier's facilities and/or services, or through a combination of its own facilities and resale of third party facilities and/or services;

(2) A description of the service area for which ETC designation is sought, to include a list of exchanges;

(3) A description of the applicant's proposed Supported Services;

(4) A description of the applicant's plans to advertise the availability of Supported Services within the service area sought;

(5) A complete description of the terms, conditions and rates applicable to the applicant's offering of Supported Services.

(6) Submit a two-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will

be served as a result of the improvements. Except, a common carrier seeking designation as an ETC in order to provide supported services only under 47 C.F.R. Part 54 Subpart E does not need to submit such a five-year plan.

(7) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(8) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(9) For common carriers seeking designation as an ETC for purposes of receiving support only under 47 C.F.R. Part 54 Subpart E, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with 47 C.F.R. Part 54 Subpart E.

(b) Each incumbent LEC is designated as an ETC for the territory for which it was certified on the date of the adoption of the Federal Telecommunications Act of 1996.

(c) For the purpose of eligibility to receive federal universal service support under 47 U.S.C. §214(e), an ETC shall, throughout its service territory:

(1) Offer the telecommunications services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale of another telecommunications service provider's services, including the services offered by another eligible telecommunications service provider; and,

(2) Advertise the availability of such telecommunications services and the charges thereof using media of general distribution.

[OAR Docket #16-525; filed 6-15-16]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #16-442]

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PERMANENT final adoption
RULES:
Subchapter 5. Rules of Practice
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175:1-5-15 [AMENDED]
AUTHORITY:
59 O.S. § 199.3 (A); State Board of Cosmetology and Barbering
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September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Board is clarifying the procedures for citation and fines as well as deleting specific fines in order to remove subjectivity in the fine process.
CONTACT PERSON:
Jennifer McRee, Principal Assistant, Oklahoma State Board of Cosmetology and Barbering, 2401 NW 23rd Street, Oklahoma City, OK 73107, 405-522-7616, jmcree@cosmo.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. RULES OF PRACTICE

175:1-5-4. Board sanctions

(a) If it is proven that violations of the Oklahoma Cosmetology Act and Board rules and regulations have occurred, sanctions available to the Board are:

(1) Revocation of license; or

(2) Suspension of license; or

(3) Refusal to issue license; or

(4) Placing licensee on probation.

(5) Fines for citations for violations of the Cosmetology and Barber Act or Board rules as in Rule 175:1-5-15. Citations may be issued by the Executive Director or an inspector on forms approved by the Board. The citation shall be served personally or by certified mail return receipt requested. The citation shall state the nature of the violation and the fine assessed. The person or establishment receiving the citation may pay the fine or contest it in a hearing before the Board conducted in accordance with the Oklahoma Administrative Procedures Act. The citation shall state the date and location of the hearing. The citation shall serve as sufficient notice of the hearing. If the fine is paid prior to the date of the hearing then the matter shall be deemed final and not subject to further review.

(b) Such matters of violation may be referred to the District Attorney or to the Attorney General for injunctive or other relief.

175:1-5-15. Schedule of fines

(a) The fine schedule for citations issued by the Board for violations of the Cosmetology and Barber Act or rules promulgated there under shall be subject to the fines as follows providing each day a violation continues shall be a separate offense:

(1) Engaging in cosmetology or barbering in any of the licensed practices without a license

(A) First: $250

(B) Subsequent: $500

(2) Employing an unlicensed person to perform cosmetology or barbering (per person):

(A) First: $250

(B) Subsequent: $500

~~(3) Allowing a barbering student or barber apprentice to work without direct supervision:~~

~~(A) First: $50~~

~~(B) Subsequent: $50~~

~~(4) Training more than one apprentice per Establishment (fine per apprentice):~~

~~(A) First: $50~~

~~(B) Subsequent: $50~~

~~(5) Operating a barber work station in violation of any general disinfection requirement as required by Board rule:~~

~~(A) First: $50~~

~~(B) Subsequent: $50~~

~~(6) Failure to comply with a specific provision of the Cosmetology and Barber Act or Board rules by a person practicing on a work permit, apprentice, or any licensee of the Board:~~

~~(A) First: $50~~

~~(B) Subsequent: $50~~

(3~~7~~) Failure to comply with a specific provision of the Cosmetology and Barber Act or rules by an individual not licensed under the Act:

(A) First: $250

(B) Subsequent: $500

(4~~8~~) Operate a cosmetology or barber school without first obtaining a license from the Board:

(A) First: $250

(B) Subsequent: $500

~~(9) Operating a barber school that is not in compliance with Board rules for disinfection and safety:~~

~~(A) First: $50~~

~~(B) Subsequent: $50~~

~~(10) Operating a barber school without the appropriate number of licensed instructors:~~

~~(A) First: $50~~

~~(B) Subsequent: $50~~

(b) If the citation is paid prior to hearing date, the citation is still considered part of the licensee's permanent record but dismissed. After three fines, the Board may consider revocation of license after full Board hearing.

[OAR Docket #16-442; filed 6-14-16]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 10. LICENSURE OF COSMETOLOGISTS, BARBERS, SCHOOLS AND RELATED ESTABLISIHMENTS

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Subchapter 3. Licensure of Schools
Part 1. Initial School Licensing
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Part 7. General Operations and Licensing Requirements
175:10-3-60 [AMENDED]
175:10-3-61 [AMENDED]
175:10-3-67 [AMENDED]
Subchapter 7. Sanitation, Disinfection and Safety Standards for Establishments and Schools
175:10-7-17 [AMENDED]
175:10-7-29 [AMENDED]
175:10-7-32 [NEW]

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January 25, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2016

APPROVED BY GOVERNOR'S DECLARTION:
Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:
June 9, 2016

EFFECTIVE:
September 1, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed amendments to Subchapter 10 eliminate the unnecessary requirement for initial school licensing of 23 students registered to open. The amendments require that students pay tuition owed to schools when transferring or completing hours and being eligible to register for the State Board examinations as is the same with any university or college. Amendments also clarify that invasive procedures cannot be performed by Board licensees. A new rule allows for licensing of kiosks and limits the types of cosmetology and barbering services that may be performed in them. Amendment also requires licensees to carry photo ID while practicing and to be able to present the ID to the Inspector for proper identification.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AND EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. LICENSURE OF SCHOOLS

PART 1. INITIAL SCHOOL LICENSING

175:10-3-1. Application for initial and renewal of school license

In order to be in compliance with current Cosmetology and Barbering Act as pertains to public and privately owned cosmetology and barber school and license issuance to cosmetology and barber schools, the application procedures for an initial (new) cosmetology and barber school are as follows:

(1) **Privately owned schools.** Any person, corporation or company, who proposes to provide cosmetology or barber training courses designed to qualify persons who complete courses for a professional license to practice cosmetology or barbering, shall be required to obtain a license for the private post secondary school from the Board.

(A) **Letter of intent.** The applicant shall first submit a letter of intent to the Board of Cosmetology and Barbering and shall request Cosmetology or Barber School license application forms from the Board. The letter of intent shall state at least the full name, address and phone number of the applicant and the city where the proposed school is to be located. If the applicant proposes to assume ownership of an existing school, the letter of intent shall specify the name and address of the existing school.

(B) **Application form.** The license application form shall be completed in full making note whether the school intends to operate as a secondary/post secondary establishment and returned to the Board and shall contain the following information:

~~(i) A bona fide list of the names and addresses of no less than twenty-three (23) students who fully intend to enroll and attend cosmetology classes in the proposed cosmetology or barbering school at such time as school is appropriately licensed. The Board may require that the list be accompanied by a signed and notarized affidavit stating that the prospective student fully intends to enroll in, sign student contract with and regularly attend classes in the proposed school. The affidavit shall also state that the student fully intends to appropriately register with the State Board of Cosmetology and Barbering prior to attending classes and that the student fully intends to complete the course requirements. Any advertisement for recruitment of students must state school is proposed to be open and shall not contain deceptive or misleading language and shall state that school has applied for licensure.~~

(i~~ii~~) Proposed name and location (city, street and number), and a brief description of the building.

(ii~~iii~~) Name, address and phone number of the proposed owner(s). If a corporation, the name, address and phone number(s) of the officers and principal stockholders are required to be submitted.

(iii~~iv~~) Names of Oklahoma license held and the file numbers of the persons to be the instructors of the proposed school and that of the manager, if other the owner.

(C) **Initial license fee; expiration date.** Each initial public and privately owned cosmetology or barber school shall be required to pay to the Board, the initial license fee of $400.00. Each public and privately owned school shall also pay the annual license renewal fee of $125.00. Each school license shall expire annually on June 30th. No provision is made for pro rata of any license fee.

(D) **Surety bond.** A surety bond in the amount of two thousand dollars ($2,000.00) for the first instructor and one thousand dollars ($1,000.00) for each additional instructor is required to be submitted for cosmetology or barber school license. The bond shall be in an amount sufficient to meet bonding requirements for all staff instructors and for each substitute instructor for the specific school in which license application is made.

(E) **Financial statement.** A current financial statement of the license applicant, prepared by a Public Accountant or a Certified Public Accountant, is required to be submitted to the Board. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall reflect the applicant's total property inventory, assets and liabilities which shall show a net worth of at least one hundred thousand dollars ($100,000.00) for each school owned. ~~This amount must be sufficient to insure the safe and adequate training of the minimum number of twenty-three (23) students.~~ Intangible assets will not be considered in net worth.

(F) **Proof of building lease or ownership.** Applicant must obtain a lease of at least one year or be owner of building in which school is proposed to operate. Month to Month lease is not acceptable. Applicant must submit a copy of lease agreement.

(2) **Public schools.** Any public school wherein administrator or other authorized person proposed to provided course(s) in training and education designed to qualify a person who shall complete the public post secondary course(s) for examination and licensure, shall follow instructions for license application procedures in (1) of this Section as may be applicable in requesting school license application and approval from the Board.

(A) Names, address and phone number(s) of Public School Administrator and other supervisory person (Principal, Assistant Principal, Coordinator or Counselor), of school/department and of each instructor proposed to teach in the school shall be submitted to the Board. File number of the instructor(s) shall be submitted.

(B) Applicant shall provide to the Board a notarized affidavit stating source of sufficient bond

coverage and that building wherein the school is proposed to be conducted is publicly owned.

(C) Applicant shall provide phone numbers of public school main campus and school facility and a brief general description of the facility location within campus and other building training sections and parking areas.

(3) **Privately owned school license renewal.** A privately owned school license shall expire annually on June 30th. Renewal must be received by June 30th each year.

(A) Private school license renewal application, forms and instructions are mailed annually to schools by the Board. Forms include a surety bond renewal form, power-of-attorney and verification form.

(4) **Public school license renewal.** A public school license shall expire annually on June 30th. Renewal must be received by June 30th each year.

(A) Public school license renewal application and invoice is mailed annually to schools.

(B) Fee of $125.00 is required for school license renewal.

(5) Any advertisement for recruitment of students must state school is proposed to be open and shall not contain deceptive or misleading language and shall state that school has applied for licensure.

PART 7. GENERAL OPERATIONS AND LICENSING REQUIREMENTS

175:10-3-60. Attendance and other records and requirements

(a) **Minimum attendance per week.** A part time schedule shall be submitted and approved by the Board. Student shall attend a clock hour school at least three (3) hours per day, five (5) days per week or a total of fifteen (15) hours per week.

(b) **Daily sign-in/time clock or other records maintained in a clock hour school.** In addition to maintaining a current record of student hours, clock hour schools shall keep a record of daily attendance Students registered in a clock hour school shall sign or clock in and out of each class daily.

(c) **Credit hour records maintained in a credit hour school.** Credit hour schools shall maintain a current record of credit hours earned by each student.

(d) **Practical practice records.** Clock and credit hour schools shall maintain a record of clinic practical practices and theory credit or clock hours earned by each student.

(e) **Student hour retention.** School shall retain records of students for three (3) years.

(f) **Record availability.** All attendance and educational records shall be available during inspection or upon request of the Board as allowed under the Cosmetology and Barbering Act.

(g) **Quarterly submission of hour reports.** All schools shall be required to submit a report of student hours earned to the Board quarterly no later than January 10th, May 10th, September 10th and November 10th.

175:10-3-61. School Affidavit; hours accumulated

(a) **School Affidavit upon completion, withdrawal or termination.** School Affidavit shall be submitted within five (5) days upon completion of a course (provided tuition is paid in full according to contractual agreement), withdrawal, or other termination of a student for any reason (excused absence is an exception). The School Affidavit shall reflect the total number of clock or credit hours accumulated.

(b) **School Affidavit or hours completed to be submitted with examination registration.** The School Affidavit of completed hours of training must be submitted with examination registration.

(c) **Hours submitted upon course completion.** Accumulated student hours shall be submitted to the Board within five (5) days of the completion of course hours by a student if tuition is paid in full to the school according to contractual agreement. The school owner or instructor shall submit accumulated hours to the Board on Board approved School Affidavit to allow the student to be registered for examination and be issued a student work permit by the Board.

(d) **Refusal to submit student hours.** No school owner or instructor shall ever refuse to submit accumulated student hours if hours are completed and tuition is paid in full according to contractual agreement.

(e) **Hours not to be adjusted as penalty for absence or rule infraction.** No school owner or instructor shall penalize a student by deducting hours from accumulated hours earned, nor shall hours be added to the total hours required for course completion as penalty for excessive student absence or other school infraction.

(f) **Student copies of School Affidavit of completion.** A student who completes a specific course must be provided the School Affidavit of completion dated on the day of completion provided the tuition is paid in full according to contractual agreement.

175:10-3-67. Student re-registration fee and transfer process

(a) **Student re-registration.** Each time a student registers, re-registers, or transfers, in addition to other requirements, the registration fee of $5.00 must be submitted to the Board with registration application.

(b) **Student transfer.** An affidavit,~~A student shall not be allowed to transfer from one school to another for a period of at least thirty (30) days from the date of withdrawal or other termination unless a notarized release agreement,~~ signed by official of transferring school must be~~is~~ received by the Board~~. Withdrawal/termination date on school affidavit is required to be submitted~~ within five (5) days of termination provided tuition is paid in full according to contractual agreement. A notarized affidavit submission is notification to the Board that tuition has been paid in full to the school the student is transferring from.

(c) **Out-of-state student transfer.** A student may transfer out-of-state hours provided the student submits the necessary proof of training to the Board for evaluation. Necessary papers will be forwarded upon request. The reciprocity processing fee for transfer of out-of-state hours is $30.00.

SUBCHAPTER 7. SANITATION, DISINFECTION AND SAFETY STANDARDS FOR ESTABLISHMENTS AND SCHOOLS

175:10-7-17. License and other posting requirements

(a) Licenses shall be posted in a place easily viewed by the public.

(1) Current 2" X 3" photo of licensee is required to be posted with each license or work permit.

(2) Student and apprentice registration receipts and student permits to work shall be posted conspicuously.

(3) Posting at individual work/styling station in an Establishment may be required for inspection and identification purposes.

(b) Board Sanitation and Disinfection Rules shall be posted in each Establishment.

(c) Code of Ethics shall be posted in each school.

(d) Current inspection reports shall be posted in a place easily viewed by the public.

(e) All persons practicing in a salon shall be required to have a current form of photo ID on their person and be prepared to produce it to the Inspector at time of inspection.

175:10-7-29. Facial procedures, devices and equipment

(a) Licensees are prohibited from performing facial procedures using cosmetic exfoliating substances or devices that effect more than the top layer (stratum conium) or outer most layer of dead cells on the skin. Procedures which use any cosmetic exfoliation substance or device to remove viable (living) skin below the stratum conium are deemed beyond the scope of practice of persons and Establishments licensed by the Board of Cosmetology and Barbering.

(b) Cosmetic exfoliating substances may include alpha hydroxyl acids (glycolic and lactic acids), beta hydroxyl acids, salicylic acid, Jessner's solutions, resorcinol and other substances intended to affect no more than the stratum conium.

(c) Cosmetic exfoliating devices may include FDA (U.S. Food and Drug Administration) registered and/or approved devices, provided that such devices affect no more than the stratum conium.

(d) Invasive procedures which result in the removal, destruction, incision or piercing of the skin beyond the stratum cornium is prohibited.

175:10-7-32. Kiosk style establishment

A kiosk style cosmetology or barbering establishment maybe approve to operate within an enclosed building such as a mall or airport lounge. The operation of a kiosk style establishment shall require an Establishment license. The establishment must have a hand washing lavatory with hot and cold water under pressure. Only non-chemical hair services, demonstrations, make-up applications, styling tool demonstrations or threading may be performed at the kiosk style establishment. All sanitation and safety procedures required for cosmetology and barbering establishments must be followed by the kiosk style establishment.

[OAR Docket #16-443; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #16-447]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Departmental Precepts
210:1-3-8.1. Student Data Accessibility, Transparency and Accountability Act [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-168; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2015
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Superseded rules:
Subchapter 3. Departmental Precepts
210:1-3-8.1. Student Data Accessibility, Transparency and Accountability Act [AMENDED]
Gubernatorial approval:
September 14, 2015
Register publication:
33 Ok Reg 61
Docket number:
15-803
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to 210:1-3-8.1 eliminates language in the Student Data Act rule that required the State Department of Education to redact aggregate (group level) student data reports for all data cells showing a number lower than ten (10). This change strikes the language that associated a specific number with the definition of "personally identifiable information" (PII), and leaves the rule's incorporation of the *Family Educational Rights and Privacy Act* (FERPA) definition of PII intact. This protects student privacy while providing more flexibility and transparency in the presentation of public data reports.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. DEPARTMENTAL PRECEPTS

210:1-3-8.1. Student Data Accessibility, Transparency and Accountability Act

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) **"Personally Identifiable Information"** shall have the meaning set forth in 34 C.F.R. § 99.3;

(2) **"School official"** shall mean the officials within an educational agency or institution, including, but not limited to teachers, who are determined by the agency or institution to have legitimate educational interests in Personally Identifiable Information pursuant to the provisions of 34 C.F.R. § 99.31(a)(1);

(3) **"Student data"** shall have the meaning set forth in 70 O.S. § 3-168(A)(7).

(b) **Annual inventory of student data collection.** The State Board of Education shall create and/or update and publish a data inventory and dictionary or an index of individual student data elements with definitions of individual student data fields currently collected by the State Department of Education in its student data system.

(1) The inventory or index required to be created and published by this subsection shall include:

(A) Any student data required to be reported by state and federal education mandates;

(B) Any student data, if any, which have been proposed for inclusion in the student data system with a statement regarding the purpose or reason for the proposed collection; and

(C) Any student data, if any, that the State Department of Education collects or maintains with no current purpose or reason.

(2) The inventory or index required to be created and published by this subsection shall identify which student data elements were collected by the State Department of Education on or before July 1, 2013. All data elements identified as a student data element collected by the State Department of Education on or before July 1, 2013 shall be considered an "existing collection of student data" exempt from the provisions of (c) of this Section pertaining to collection of "new student data."

(c) **Collection of new student data - limits.** New collections of student data shall be subject to the following procedures:

(1) For purposes of this subsection, a "new collection of student data" shall mean any new data object (i.e., category of student data) added to the student information system.

(2) Any new collection of student data proposed for addition to the State Department of Education student data system shall be identified and submitted to the State Board of Education for approval no later than December 1 of the year prior to the school year for which the new data collection is proposed to be added.

(3) Any new collection of student data proposed for addition to the State Department of Education student data system shall be submitted to the Governor and the Legislature within one year from the date of approval by the State Board of Education, in accordance with the provisions of 70 O.S. § 3-168(C)(7). Until approved by the Governor and the Legislature, any proposed new data collection shall be considered provisional, provided that any proposed new data collection not approved by the Governor and the Legislature by the end of the next legislative session shall be deemed to expire and shall no longer be required by the State Department of Education.

(d) **Disclosure or transfer of student data - limits.** All requests for disclosure and/or transfer of student data collected and maintained by the State Department of Education, including, but not limited to Open Records Act requests and research requests, are subject to the following procedures:

(1) **Confidentiality of student data.** All data which falls within the definition of "student data" set forth in 70 O.S. § 3-168(A)(7) is hereby deemed confidential pursuant to 70 O.S. § 3-168(C). Accordingly, "student data" are not subject to disclosure by the State Department of Education unless:

(A) The student data are aggregated and any Personally Identifiable Information has been removed in accordance with the procedures set forth in (3) of this subsection;

(B) The student data are otherwise approved for release, sharing, and/or disclosure by the State Board of Education in accordance with the procedures set forth in (4) of this subsection; or

(C) The student data does not have prior approval of the State Board of Education for release, sharing, and/or disclosure, but the release of requested data to the requester does not violate provisions of the Family Education Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. or accompanying regulations at 34 C.F.R. Part 99, and the release is limited to one of the following purposes:

(i) Facilitating a student transfer out of state, or assisting a school or school district with locating an out-of-state transfer;

(ii) Facilitating a student's application to an out-of-state institution of higher education or professional training program;

(iii) Registration for a national or multistate assessment taken by a student;

(iv) Facilitating a student's voluntary participation in a program for which transfer of that student's data are a condition and/or requirement of the student's participation;

(v) The Department enters into a contract that governs databases, assessments, special education, or instruction supports with an out-of-state vendor;

(vi) Compliance with federal reporting requirements for students classified as "migrants."

(2) **Authorized access to confidential student data.** Access to confidential student data in the State Department of Education student information system shall be restricted to:

(A) Employees of the State Department of Education who have been authorized by the Superintendent of Public Instruction to access confidential student data;

(B) Contractors of the State Department of Education who require such access to perform their assigned duties, including staff and contractors from the Information Services Division of the Office of Management and Enterprise Services (OMES) who have been assigned to the State Department of Education, provided that all such individuals shall comply with the terms set forth in the contract governing use and handling of student data;

(C) District administrators, teachers, personnel or other "school officials" under direct control of a school in which the student has been enrolled or in which the student has applied for transfer or enrollment and who require access to confidential student data in order to perform their assigned duties;

(D) A student and/or parents or legal guardians of the student with rights to inspect a student's own records in accordance with rights afforded by state or federal law;

(E) The authorized staff of any other State of Oklahoma agencies as authorized by law and in accordance with the terms of interagency data sharing agreements; and

(F) The authorized staff of any other entity as necessary to fulfill the purposes set forth in 70 O.S. § 3-168(C)(3) or as otherwise approved by the State Board of Education to access or share student data in accordance with terms of interagency data-sharing agreements.

(3) **Requests for release of student data.** ~~All requests for release, disclosure, or transfer of confidential student data shall be reviewed in accordance with the following procedures:~~

~~(A) **Step one.** Prior to disclosure and/or transfer of information collected and maintained by the State Department of Education, any student data identified for potential disclosure and/or transfer in response to a request shall be screened for all information that meets the definition of "Personally Identifiable Information".~~

~~(i) For purposes of this subparagraph, student data shall be deemed to result in the identification of a specific student if the n-size of the dataset is fewer than ten (10) records, provided that the provisions of this paragraph shall not be interpreted to require disclosure of records of a higher n-size if the release would result in disclosure of potentially identifiable information of one or more students.~~

~~(ii) Removal, redaction, and/or suppression of Personally Identifiable Information in a dataset necessary to bring a dataset proposed for release into compliance with the requirements of (3)(D)(iii)(II) of this subsection may require suppression of additional subsets of records to ensure that the privacy of students in the fewer than 10 subgroup.~~

~~(D) **Step two.**~~ In accordance with the provisions of 70 O.S. § 3-168(C)(2)(c), all requests for release, disclosure, and/or transfer, of confidential student data shall be denied unless the data or dataset requested for release meets one of the following conditions:

(~~i~~A) The request is from an individual or entity specifically authorized to access confidential student data pursuant to 70 O.S. § 3-168(C)(2)(a) or (d)(2) of this Section;

(~~ii~~B) The requested data or dataset has been approved for release to the requester by the State Board of Education in accordance with the policies and procedures set forth in (4) of this subsection; or

(~~iii~~C) The requested data or dataset meets all of the following criteria:

(~~I~~i) The requested data meets the definition of "aggregate data" set forth in 70 O.S. § 3-168(A)(4); and

(~~II~~ii) All data that falls within the definition of "Personally Identifiable Information" set forth in 34 C.F.R. 99.3 has been removed, suppressed, and/or redacted as necessary to ensure no Personally Identifiable Information is included in the student data requested for release;

(4) **Policies and procedures governing approval of release, sharing and/or disclosure of confidential student data by the State Board of Education.** The State Department of Education shall develop a detailed data security plan that complies with the provisions of 70 O.S. §3-168(C)(4) and includes internal policies and procedures governing agency responses to requests for release and/or sharing of confidential student data to persons not authorized to access confidential student data in accordance with (2) of this subsection. Such internal policies and procedures shall meet all of the following requirements:

(A) The policies and procedures shall prohibit release of all data or datasets containing Personally Identifiable Information of one or more students unless all of the following conditions are met:

(i) The release complies with the provisions of the Family Education Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. and accompanying regulations at 34 C.F.R. Part 99; and

(ii) Approval for the release has been obtained from the State Board of Education.

(B) The policies and procedures shall set forth the requirements of all written agreements necessary to comply with the requirements of 34 C.F.R. § 99.31.

[OAR Docket #16-447; filed 6-14-16]

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

[OAR Docket #16-448]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-13. Educational services for children in residential care, treatment, or emergency shelter facilities [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. §1-113; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a
ANALYSIS:
The amendments to 210:10-1-13 update the rule in accordance with statutory changes. House Bill 2069 (2015) amended the school district 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".
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

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

(a) **Purpose.** These policies are for the purpose of establishing standards for the educational services for children placed in facilities which exist for the purpose of providing residential care, treatment (24-hour residential) or emergency shelter care.

(b) **Facilities licensing/approval.** The facilities should be licensed or approved by the appropriate oversight state agency (i.e., Department of Human Services, Office of Juvenile Affairs, Department of Health, and Department of Mental Health and Substance Abuse Services). Such residential care or treatment facilities as juvenile detention centers, group homes, and emergency youth shelters will be included for these programs.

(c) **Residency.** Student residency shall be determined by application of 70 O.S. § 1-113:

(1) Children placed in facilities such as an orphanage, eleemosynary (charitable) child care facility, in which a child is placed by the parent or guardian for full time residential care and attend a district school by joint agreement of the district or facility and are not placed in a facility through a state contract, are residents for school purposes of the school district where the facility is located. ~~[70 O.S. Supp. 1998, 1-113]~~

(2) Children placed in facilities which are state operated institutions or who are temporarily in state-licensed or operated emergency shelters are residents for school purposes of the school district where the facility is located. ~~[70 O.S. Supp. 1998, 1-113]~~

(3) Children placed in a foster home, as defined at 10 O.S. §402, except a therapeutic foster home or a specialized foster home voluntary placement, by the person or agency having legal custody pursuant to court order or by a state agency having legal custody are residents for school purposes of the school district where the foster home is located. If the foster parent has requested that the residence of the foster child for school purposes be the school district in which the child resided prior to being placed in foster care, or the school district in which the child's previous foster family home is located, the district selected by the foster parent shall be the child's district of residence. ~~[70 O.S. Supp. 1998, 1-113]~~

(4) For youth who are placed in juvenile detention facilities~~—~~, the district of residence for school purposes shall be the school district in which the parents, guardians, or person having legal custody holds legal residence. ~~[70 O.S. Supp. 1998, 1-113]~~

(5) When a child does not meet the criteria for residency provided in 70 O.S. ~~Supp. 1998,~~§ 1-113, subsection A, and is placed in a residential care facility or treatment program or center, including J.D. McCarty Center (63 O.S. §485.1), which is out of the child's home and not in the school district in which the child legally resides, the facility or program shall, if the child contends he or she resides in a district other than the district where the facility or program is located, within ~~seven (7)~~eleven (11) days of admittance, notify the district in which the out-of-home placement or treatment is located of the admittance.

(d) **Contractual agreement for educational services.** A contractual agreement for the provision of educational services will be developed and signed by the chief executive officer of each agency or organization, or by the chairman of the governing board or board of directors of each licensed public or

private agency, operating or supervision of residential care, treatment, or emergency shelter facilities.

(1) Each individual or entity operating a residential facility or treatment program which requires provision of educational services from the school district, shall notify the local board of education of its anticipated educational needs, prior to location in a school district. No school district shall be required to provide educational services for residents of the facility or participants in the program until at least sixty (60) calendar days have elapsed from the time in which the local board of education was initially notified of the need unless the school district so agrees to provide the educational services sooner. ~~[70 O.S. Supp. 1998, 1-113]~~

(2) Pursuant to 10A O.S. § 2-7-305, ~~Any~~any state agency~~,~~ letting grants or contracts for residential care or treatment facilities for children shall require, as a condition of grants or contracts, documented assurance of appropriate provision of educational services. ~~[10 O.S. § 607 (C)]~~

(3) The contractual agreement for educational services shall include the following as a minimum:

(A) **Teacher certification requirements~~:~~.** Teachers shall be appropriately certified by the Oklahoma State Department of Education. ~~For teacher certification purposes~~Pursuant to 70 O.S. § 1210.567, a certified teacher who is qualified to teach in an accredited school district's educational services for a residential care or treatment facility may teach subjects in which the teacher does not hold certification. This shall only be valid upon application of a school district, offering on-site educational services in a residential or treatment facility, and approved by the State Department of Education, only for those purposes. ~~[70 O.S. Supp. 1996, 1210.567]~~ The application for Accreditation or amended application shall serve as the district's application for these purposes. Original copies of the application and teacher certificates shall be on file at the school district administration office and copies maintained at the building site level.

(B) **Number of hours taught~~:~~.** The State Department of Education shall authorize, upon application by a school district, an abbreviated day schedule for the education provided for students in a residential care or treatment facility located within the district. ~~[70 O.S. Supp. 1996, 1210.567]~~ The Application for Accreditation or amended application shall serve as the district's application for these purposes. Education services available shall be provided to children/youth no later than the tenth school day of admittance. Exception will be for cause in the interest of the child and documentation by recommendations of the attending licensed psychologists, psychiatrists, or physicians on the residential care or treatment staff.

(C) **Adequacy of facilities~~:~~.** The residential care, treatment, or emergency shelter facilities shall provide and maintain areas appropriate for the school district to conduct the educational program pursuant to contractual agreement and shall be responsible for all services and costs associated with such services which are not directly related to education. Relevant safety and health standards shall be followed. Such facilities shall meet the accreditation standards of the State Board of Education for educational services and shall meet other existing standards which apply to facilities of residential care, treatment, or emergency shelter programs.

(D) **Educational plans, including plans for transition in to regular school setting~~:~~.** Education plans for students shall describe the appropriate curriculum, instructional time, and setting for each child. The child should receive instruction in an appropriate setting based on the individual educational needs of the child and should progress toward a full school day (six hours) program.

(4) The State Department of Education shall provide a sample contract with standard or uniform provisions for use by school districts which provide education to students in such facilities or programs. Provision in the contract shall be designed to ensure an appropriate education to which a student is entitled in the most cost-efficient manner to the responsible school district and shall allow for local flexibility in funding and education arrangements. The cost for related services, therapies, treatments, or support services for eligible students shall be the responsibility of the facility unless otherwise agreed by the contractual parties or as otherwise specified in the IEP. Otherwise valid obligations to provide or pay for such services, such as Medicaid, shall remain in effect for children who are eligible from sources other than the school district. ~~[70 O.S. Supp. 1998, 1-113]~~

(e) **Educational plans for residential care, treatment facilities, or emergency shelter facilities.**

(1) Each child/youth shall have his/her educational needs reviewed within five school days by a team of professionals to determine the educational needs of the student and to develop an educational plan which is consistent with state and federal laws and regulations. The education plan shall work toward integration of the student into the receiving school district.

(2) The professional team for the educational plan shall include a teacher or an appropriately qualified educator representative and be under the direction of personnel of the school district. A procedure must exist to permit team members to communicate their recommendations and other relevant information to the facility staff on a regular basis.

(3) The educational plan shall be periodically reviewed and adjustments by the professional team made to ensure that the child is receiving appropriate educational opportunities at all times.

(4) The educational plan shall describe the appropriate curriculum, instructional time, and setting for the child/youth. The child should receive instruction in an appropriate educational setting based on individual educational needs and should progress toward a full school

day (six hours) program. The student's current grade level and/or ability should be considered.

(5) The educational plan shall be implemented within ten days of enrollment.

(6) The educational plans and educational services shall be provided under the supervision of a school district administrator.

(7) The educational plan and individual student records for the educational services shall be maintained by the school district with proper protections for disclosure, including a procedure for expeditious exchange of education records to properly authorized persons, in accordance with the Family Education Rights and Privacy Act, and other relevant state and federal laws.

(8) The educational plan shall be implemented in accordance with any procedural safeguards for eligible children with disabilities who require Individualized Education Programs (IEPs) under the Individuals with Disabilities Education Act (IDEA). The eligible student's school district of residence shall be notified immediately by the providing district upon finding that the eligible student requires special education and related services and notified as to the time, date and location of meetings for the purpose of planning the student's IEP and subsequent reviews. The facility may have a representative present at the IEP conference to advise the IEP team of any concerns or information the facility has to offer regarding the eligible student's educational needs and eligibility for related services. The facility and the providing district shall coordinate with the eligible student's school district of residence as necessary for the development of the IEP. ~~[70 O.S. Supp. 1998, 1-113]~~

(9) Teachers shall be assigned for provision of educational services in accordance with the appropriate class size and teacher/student ratio.

(10) The facility shall provide assistance in severe, disruptive situations and will provide supervision of out-of-classroom suspension, time-out, and detention during school and, when requested by the assigned education personnel, will intervene in matters of discipline, unless otherwise agreed to in the contract.

(f) **State licensed or operated emergency shelters.** The local school district is not required to enter into a contract with a residential care, treatment, or emergency shelter unless it is state licensed or state operated.

(g) **Education to Students in Jail.**

(1) Each school district in the state with a city, county, or state jail within the district's boundaries shall designate an employee or employees of the school district who will be responsible for overseeing the educational services to eligible juveniles identified by the facility. While incarcerated in a jail, the student shall be considered a resident of the school district where the jail is located.

(2) Once an employee is designated by the school district that person shall immediately contact the individual in charge of the operation of the jail or jails within the boundaries of the school district and provide them with information regarding the requirements of this rule.

(3) When a school district receives notification of the need for educational services from a facility incarcerating a juvenile, the school district shall provide the juvenile with an appropriate education plan designed for the possible reintegration of the student into school, which must include the core subjects. The education plan contemplated by this rule corresponds to the education plan referenced in the Oklahoma School Laws at 70 O.S. § 24-101.3(D) for students suspended from school. A copy of the education plan developed by the school district shall be provided to the facility and to the juvenile and a copy shall be kept on file by the school district. For purposes of this rule the core units shall consist of English, Math, Science, Social Studies, and Art units required by the State Board of Education.

(4) The education plan shall set out the procedure the school district and the facility will utilize for the provision of educational services to the juvenile and will address academic credit for work satisfactorily completed. These procedures and requirements apply to facilities which do not have in place, on the effective date of this rule, a plan for educational services of incarcerated juveniles.

(5) The provisions of residency law at 70 O.S. § 1-113 addressing responsibility for educational services to juveniles in facilities located within the boundaries of the school district prevail over the requirements set forth in this rule.

(h) **Accreditation standards monitoring.** The educational program of each school district providing educational services for students placed in a facility located in the school district shall be monitored by the State Department of Education. The department shall determine if the educational program is in compliance with State Board of Education regulations. The recommended accreditation status shall be reported to the State Board of Education.

[OAR Docket #16-448; filed 6-14-16]

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

[OAR Docket #16-449]

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PERMANENT final adoption
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Subchapter 13. Student Assessment
210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration [AMENDED]
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210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration [AMENDED]
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ANALYSIS:
The amendments to 210:10-13-2 make changes to the definition of "Full Academic Year (FAY) student", and eliminate language that established a different accountability reporting status for residential facilities and juvenile detention facilities that have a site code versus those facilities that do not. Under the FAY definition in (e), a student shall be considered a FAY student if they are enrolled within the first 20 instructional days of the school's instructional year through and including the date of the exam, without an enrollment lapse of 10 or more days. This is a change from the previous language that classified a student as an FAY student if they are enrolled from October 1 through the date of the exam without a lapse of 10 or more days. In (f), language is eliminated that established a different reporting status for the very limited number of juvenile and residential facilities that have their own site codes.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration

(a) **Definitions.** In this Section, the words and terms shall have the following meaning: **"Proficient/Satisfactory"** means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) All public school districts shall administer the state mandated academic achievement tests of the OSTP to all students enrolled in the designated grades. The series of tests shall be field-tested/implemented by the amended schedule in 70 O.S. § 1210.508, or federal law.

(1) Students with Individualized Education Programs (IEPs) shall have an appropriate statement on the IEP with regard to the type of assessment in which the student will participate (e.g., Oklahoma Core Curriculum Test (OCCT) with or without accommodations, or the Oklahoma Alternate Assessment Program (OAAP) Portfolio). The OCCT and OAAP Portfolio are all a part of the Oklahoma School Testing Program (OSTP). Any state approved accommodations must be documented in the student's current IEP. Current documentation for each student shall be on file in the local school prior to test administration.

(2) All students who have been determined to be limited English proficient (LEP) as the term is defined at 20 U.S.C. § 7801, also known as English language learners (ELL), shall be included in all of the state-mandated academic achievement tests of the OSTP. ELL students are those who have been appropriately identified, through English proficiency screening by the local school districts, as requiring specialized instructional services designed to increase their English proficiency and academic performance. For every student identified as ELL, the local district shall have on file verification that the student is receiving special instruction designed for the specific purpose of improving the ELL student's English proficiency. Any State Department of Education approved and adopted English proficiency assessment shall be considered an official assessment of the OSTP, and will be subject to the same security, privacy, and administration measures accorded to all other OSTP assessments.

(A) Students identified as ELL shall be assessed in a valid and reliable manner with the state academic assessments with acceptable accommodations as necessary and, to the extent practicable, with alternate assessments aligned to the state assessment provided by the local school district in the language and form most likely to yield accurate data on what such students know and can do in these content areas; these alternate assessments will continue until such students have achieved English language proficiency with the exception noted in paragraph (2)(B) of this subsection.

(B) If ELL students are administered the state-mandated reading and language arts achievement tests in a language other than English, this will be allowed only during their first three consecutive years of school attendance in the United States (not including Puerto Rico). After these first three years these tests must be administered in English, except that if the local school district determines on a case-by-case basis, that a student has not yet reached a level of English language proficiency that will allow valid and reliable information to be obtained, even with testing accommodations, in which case individual waivers will be allowed by the local district for up to two additional consecutive years, according to federal law.

(3) All End-of-Instruction assessments must be taken once the corresponding course of instruction has been

completed. In order to meet the Federal No Child Left Behind (NCLB) legislation requirements, all students prior to graduating from high school must take the Algebra I, Biology I, and English II assessments regardless of whether instruction has been taken, unless otherwise exempt.

(c) On an annual basis, school superintendents or their designees shall provide a copy of the State Board of Education Rules, OAC 210:10-13, for all school personnel responsible for receipt, inventory, distribution, or return of tests documents, and/or for administration of tests within the Oklahoma School Testing Program.

(d) Districts may request special reports beyond those provided by state contract with the testing company at their own cost (i.e., individual student records on CD or disk, District Title I Report, District Alpha Order Report, etc.).

(e) Test results of all students not enrolled in a district for a full academic year shall be disaggregated and shall not be used to determine the progress of the district, according to federal law. Test results of all students not enrolled in a school site for a full academic year shall be disaggregated and shall not be used to determine the progress of the school site, according to federal law. For purposes of the OSTP, a student shall be considered a "Full Academic Year" (FAY) student if the student is enrolled within the first twenty (20) instructional days of the~~shall be defined as continuous enrollment from October 1 of the school~~school's instructional year through and including the date of administration of the exam, without an enrollment lapse of ten (10) or more consecutive instructional days.

(f) For purposes of the annual reports of the OSTP, test results of all students who have been placed in a state juvenile facility by state law or court order, or students placed in a full time residential facility providing educational services to students by joint agreement with one or more school districts shall not be used to determine the progress of the site or the district of residence of the students~~ unless the facility has been specifically designated as a separate site within a school district and has been assigned a separate site code within the school district by the State Department of Education at the request of the school district~~. Instead their scores will be used in accountability calculations in one statewide "virtual" district.

(g) Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's seventh grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the eighth-grade criterion-referenced tests in reading and mathematics. Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's eighth grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the end-of-instruction tests administered in high school. Each public school student who does not attain at least a satisfactory or proficient score on the state end-of-instruction tests shall be provided remediation for the purpose of assisting the student in attaining at least a satisfactory or proficient score on the Algebra I, English II, and two of the remaining five end-of-instruction tests, in order to graduate from an Oklahoma accredited public high school.

(1) Districts and/or schools may provide remediation through extended instructional time during the school day, a summer academy, tutoring, online coursework, or other supplementary services. Remediation is not limited to these practices.

(2) Remediation provided shall be under the supervision of a highly qualified teacher in the appropriate content area.

(3) The State Department of Education shall provide information about best practices for remediation and interventions on the State Department of Education website.

(4) Each district shall submit an annual remediation plan to its local board of education at a regularly scheduled meeting prior to November 15 of each school year. The remediation plan shall be for those students who do not attain at least a satisfactory or proficient score on the tests listed in this section. The plan should include how remediation funds will be spent, when and where remediation will be provided, what content will be addressed, how instruction will be delivered, and who will provide the instruction, including the highly qualified status of the instructor.

(5) Funds for remediation shall be disbursed by the State Department of Education to the local school districts by September 1 of each year in accordance with the requirements of 70 O.S. § 1210.526. Funds for each fiscal year shall be based on the most recent OSTP test results available for each student from the previous school year or summer test administration.

(6) Funds for remediation shall be utilized to provide intervention and remediation for qualifying students as described in this section. Allowable expenditures include salaries and stipends for highly qualified teachers and tutors under the supervision of highly qualified teachers; instructional materials such as textbooks, workbooks, teacher-made materials, computer assisted instructional software, manipulatives, and classroom instructional tools necessary to provide remediation; assessments designed to monitor the progress of students in remediation programs; transportation to and from tutoring sessions held outside of the school day; and training in best practices for providing remediation. Funds for remediation may not be used for salaries, materials, or administrative services not directly related to remediation or for students who do not qualify for remediation as described in this section.

(7) School districts shall report the use of remediation funds and the results of the remediation, as measured by periodic progress assessments and district student performance on state assessments. Districts shall submit an online report annually to the State Department of Education through the Oklahoma School District Reporting Site (SDRS). The district shall also submit the annual report to its local board of education at a regularly scheduled

meeting. Remediation results shall be presented by a designated public school principal for each site.

[OAR Docket #16-449; filed 6-14-16]

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

[OAR Docket #16-450]

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The definition of "Full Academic Year (FAY) student" in the rule governing the A-F school accountability system is updated to reflect that most Oklahoma school districts begin the academic year in August rather than September. Under the amendment, a student shall be considered a FAY student if they are enrolled within the first 20 instructional days of the school's academic year through and including the date of the exam, without an enrollment lapse of 10 or more days. The previous version of the rule classified a student as FAY based on an October 1 enrollment date, and did not account for districts' varying academic calendars.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-22. Implementation of a system of school improvement and accountability

(a) **Purpose.** Accountability for student learning is the key focus of school improvement. Results from the statewide assessment program shall form the basis of the system of school improvement and accountability. Student achievement data from the State's annual standardized assessments in grades three (3) through eight (8) and end-of-instruction tests administered under Section 1210.508 of Title 70 shall be used to establish both proficiency levels and annual progress for individual students, school sites, school districts, and the State. Results shall further be used as the primary criteria in calculating school performance grades as specified in subsection (f) of this rule and shall be annually reported. Results may further be used by the Legislature in calculating any performance-based funding policy that is provided to public school districts. The statewide assessment program shall be used to measure the annual learning gains of each student toward achievement of the State standards appropriate for the student's grade level and to inform parents of the educational progress of their public school children.

(b) **Overview and implementation.** The A-F school accountability system will be implemented in the year 2012, based on data from the 2011-2012 school year, and shall be reported annually thereafter. The school accountability system will be considered to be fully implemented with the following accountability elements:

(1) Designation of overall school performance grades shall be based on a combination of the following:

(A) Fifty percent (50%) on whole school performance, as measured by allocating one (1) point for each student who scores proficient or advanced on the criterion-referenced tests and end-of-instruction tests administered to students pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. §§ 1210.508 and 1210.523, summing the points, and dividing the points by the total number of students taking the tests;

(B) Twenty-five percent (25%) on whole school growth, measured by allocating one (1) point for each student tested who maintains a score of "Proficient" or above, improves proficiency levels, or improves substantially within a proficiency level on the State's annual standardized assessments in reading and mathematics in grades three (3) through eight (8) and Algebra I and English II end-of-instruction tests administered to students pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. § 1210.508, summing the points, and dividing the points by the total number of students taking the tests;

(C) Twenty-five percent (25%) on growth of the lowest twenty-five percent (25%) of students in the

school, measured by allocating one (1) point for each student tested in the bottom twenty-five percent (25%) who maintains a score of "Proficient" or above, improves proficiency levels, or improves substantially within a proficiency level on the State's annual standardized assessments in reading and mathematics in grades three (3) through eight (8) and Algebra I and English II end-of-instruction tests administered pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. § 1210.508, summing the points, and dividing the points by the total number of students taking the tests.

(2) In addition to the three criteria listed in (b)(1) of this Section, bonus points shall be calculated in accordance with the criteria set forth in (g) of this Section and added to the subtotal of component points to create a final report card index of points used to calculate the overall school performance grade of each school site.

(3) Schools shall earn a separate performance grade for each of the three criteria listed in (b)(1) and (f) of this Section. Additionally, schools shall earn an overall performance grade based on a combination of the criteria listed in (b)(1) and (f) and the bonus points earned in accordance with (g) of this Section.

(4) To ensure that student data accurately represent school performance, schools shall be required to assess at least ninety-five percent (95%) of eligible students to earn a school performance grade. Failure to assess at least ninety-five percent (95%) of eligible students will result in a letter grade reduction in the school's overall school performance grade. Schools assessing less than ninety percent (90%) of eligible students will result in the school earning an overall performance grade of F.

(c) **School Accountability for Student Performance.** All schools shall be accountable for performance. Each school is accountable for the performance of its entire student population. Student achievement data from the State's annual standardized assessment and end-of-instruction tests administered in this State shall be used to measure a school's student performance for the subject areas of reading, mathematics, social studies, science and writing.

(d) **Reporting Student Achievement Data for School Accountability.** Student achievement data shall be reported for all students in a school. Each year, reports of achievement data for all students shall be prepared for each school, each district, and the State. District reports shall be calculated in the same manner as a school site, aggregated at the student level and calculated in accordance with the requirements of 70 O.S. §§ 1210.545(B), (D) and (J).

(1) The scores will be computed from the number of eligible students enrolled in the school. Eligible students shall include all students enrolled for the full academic year ("FAY") in the school and taking the State's annual standardized assessments or end-of-instruction tests. For end-of-instruction exams, only first opportunity students are included in the calculation of eligible students. A ~~full time~~ student shall be considered a ~~"~~FAY~~"~~ student if the student~~, has been continuously~~ is enrolled ~~from October 1 of the school~~ within the first twenty (20) instructional days of the school's instructional year through and including the date of administration of the exam, and has not experienced an enrollment lapse of ten (10) or more consecutive instructional days. The FAY determination shall be based on continuous enrollment and shall not be based on attendance determinations.

(2) All eligible students, regardless of disability or limited English proficiency classification, with valid state standardized assessment scores in reading and math in both the current school year and the previous school year are included in (f)(2) and (f)(3) of this Section regarding the determination of student learning gains. In addition, the inclusion of these students shall be applied to (b)(3) of this Section, regarding the percentage of students assessed. Current and previous school years' reading and math scores for students with disabilities assessed on the State's annual standardized alternate assessment shall be included in the determination of test scores, including achievement addressed in (f)(1) of this Section.

(3) The Superintendent of Public Instruction is authorized to designate a single school performance grade for schools that serve multiple levels: elementary and/or middle and/or high school grade levels. Designations shall be made based on the highest grade level offered by the school.

(A) If the highest grade offered by a school site is the sixth (6th) grade or below, the school shall be graded according to elementary school criteria.

(B) If the highest grade offered by a school site is the (7th) through tenth (10th) grade, the school shall be graded according to the middle school criteria. Schools in this category shall not earn advance coursework credit for ninth and tenth grade students completing high school coursework unless the course qualifies as advanced coursework pursuant to (g)(1)(B) or (g)(2)(A) of this Section.

(C) If the highest grade offered by a school site is the eleventh (11th) or twelfth (12th) grade, the school shall be graded according to high school criteria.

(4) The State Department of Education will verify that each school is appropriately classified by type before the issuance of school grades. School type is defined as the school level designation of a school based on the grade levels served: elementary, middle, high, or a combination across levels.

(5) For purposes of (f) of this Section, the determination of the proficiency level of eligible students exempted from one or more end-of-instruction exams in accordance with the requirements of 70 O.S. 1210.523 and the accompanying rule at 210:10-13-16(b)(7)-(8) shall be based upon the cut scores approved by the State Board of Education. Points shall be awarded and calculated for each "Proficient" or "Advanced" score in accordance with (f) of this Section.

(e) **School Performance Grades.** The measure of school accountability shall be the school performance grade. The

Oklahoma State Board of Education is authorized to designate a school performance grade for each school that:

(1) For purposes of calculating student achievement pursuant to (f)(1), has at least ten (10) eligible students with valid student state standardized assessment scores.

(2) For purposes of calculating student growth pursuant to (f)(2), has at least ten (10) eligible students with valid student state standardized assessment scores or end-of-instruction test scores in reading or math in both the current and the previous school years.

(3) For purposes of calculating growth of the lowest twenty-five percent (25%) of students pursuant to (f)(3), has at least ten (10) eligible students with valid student state standardized assessment scores or end-of-instruction test scores in reading or math in the current and previous school years.

(4) A school shall not earn a grade for any component or criteria unless minimum N-size requirements established pursuant to this rule are met. Performance designations shall be made using School Performance Grades A+, A, A-, B+, B, B-, C+, C, C-, D+, D, D-and F. School performance grades shall be based on the assessments and criteria as specified in (f) of this Section and bonus points as specified in (g) of this Section. The Superintendent of Public Instruction is authorized to establish and adjust appropriate achievement level criteria to the extent allowed by law for submission to the State Board of Education for final approval.

(f) **Criteria for Designating School Performance Grades.** Overall school performance grades shall be based on a combination of the bonus points calculated in accordance with (g) and the points calculated in accordance with the three criteria outlined in (b)(1) of this Section: (1) whole school performance; (2) whole school growth; and (3) growth of the lowest twenty-five percent (25%).

(1) **Whole school performance index.** Student achievement scores are represented through a performance index, aggregated for each school, calculated based on all state standardized assessments and/or end-of-instruction tests collectively, and by each subject area. A point value shall be given to each exam based on proficiency score. Points shall be summed and divided by the number of exams administered to eligible students.

(A) Points shall be assigned based on the following criteria:

(i) Unsatisfactory = 0

(ii) Limited Knowledge = 0

(iii) Proficient = 1.0

(iv) Advanced = 1.0

(B) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A

(ii) 80 - 89 points = B

(iii) 70 - 79 points = C

(iv) 60 - 69 points = D

(v) 59 points or Below = F

(2) **Whole school growth index.** Annual learning gains in reading and math are represented through a growth index, aggregated for each school. The score shall be calculated in whole and by subject-matter by assigning one point for each student who improves proficiency levels or improves substantially within a proficiency level from the previous school year to the current school year, divided by the number of students taking the tests.

(A) This calculation represents the number of eligible students who have:

(i) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level, as applicable, from the previous school year to the current school year; or

(ii) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with positive OPI change; or

(iii) Maintained their proficient or satisfactory achievement level on the state standardized assessment or state standardized alternate assessment, as applicable, from the previous school year to the current school year.

(B) The growth index shall be calculated based on improved state standardized assessment and end-of-instruction test performance from the previous school year to the current school year. The growth index shall be calculated by subject-matter and by assigning a point value to the change in proficiency score from the previous year to the next. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. Points shall be assigned based on the following criteria:

(i) Change from Unsatisfactory to Limited Knowledge = 1.0

(ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0

(iii) Change from Unsatisfactory to Advanced = 1.0

(iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0

(v) Change from Limited Knowledge to Advanced = 1.0

(vi) Change from Proficient or Satisfactory to Advanced = 1.0

(vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0

(viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0

(ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average

Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0

(x) Remained at Unsatisfactory from the previous school year to the current school year, or remained at Limited Knowledge from the previous school year to the current school year, but demonstrates substantial improvement within a proficiency level = 1.0

(C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.

(D) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A
(ii) 80 - 89 points = B
(iii) 70 - 79 points = C
(iv) 60 - 69 points = D
(v) 59 points or Below = F

(3) **Growth of the lowest twenty-five percent of students.** Improvement of the lowest twenty-five percent (25%) of students in reading and math shall be aggregated, as required by 70 O.S. § 1210.545. The score shall be calculated in whole and by subject-matter by assigning one point for each student in the bottom quartile who improves proficiency levels or improves substantially within a proficiency level from the previous school year to the current school year, divided by the number of students taking the test.

(A) The calculation of a positive change in OPI score that meets or exceeds the State's average growth represents the number of eligible students who have:

(i) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level, as applicable, from the previous school year to the current school year; or

(ii) Retained their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with positive OPI change.

(B) The score shall be based on improved state standardized assessment and end-of-instruction test performance from the previous school year to the current school year. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. The growth of the lowest twenty-five percent (25%) shall be calculated based on the following criteria:

(i) Change from Unsatisfactory to Limited Knowledge = 1.0
(ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0
(iii) Change from Unsatisfactory to Advanced = 1.0
(iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0
(v) Change from Limited Knowledge to Advanced = 1.0
(vi) Change from Proficient or Satisfactory to Advanced = 1.0
(vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0
(viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0
(ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0
(x) Demonstrates substantial improvement within a proficiency level = 1.0

(C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.

(D) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A
(ii) 80 - 89 points = B
(iii) 70 - 79 points = C
(iv) 60 - 69 points = D
(v) 59 points or Below = F

(g) **Bonus points.** Each school can earn up to a maximum of ten (10) bonus points to be added to the subtotal of component points and applied toward their final grade. The criteria listed in (1), (2) and (3) of this subsection shall be used to calculate bonus points for high schools, middle schools, and elementary grade schools. Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula and the projected availability of valid data used for computing bonus points. Technical assistance shall be published in time for school districts to make meaningful use of the information and data. A school district, charter school, or virtual charter school shall not be eligible to be awarded bonus points on its site report cards for attendance pursuant to (g)(3)(A) and (g)(2)(B) of this Section unless it has established a method for maintaining accurate records of student daily attendance and accurate reporting of student daily

attendance that ensures compliance with the provisions of 70 O.S. §§ 5-117.3, 10-103.1, 10-106, 18-111, 18-116.

(1) **High schools.** Schools comprised of high school grades may earn up to a maximum of ten (10) bonus points as follows:

(A) **Four-year adjusted cohort graduation rate.** A high school shall earn five (5) bonus points if its four-year adjusted cohort graduation rate meets or exceeds the criteria for earning an "A" for the high school graduation rate of the school. The criteria for earning an "A" for this component shall be met if a school's four-year adjusted cohort graduation rate meets or exceeds ninety percent (90%). The calculation of the four-year adjusted cohort graduation rate shall only include students counted as on-time graduates as defined by federal regulations.

(B) **Participation or performance in accelerated coursework.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" in either student participation or student performance in accelerated coursework. The criteria for earning an "A" for this component shall be met if the school achieves either a student participation rate of seventy percent (70%) or higher in accelerated coursework or a student performance rate of ninety percent (90%) or higher in accelerated coursework. Student participation and performance rates shall be calculated as follows:

(i) **Participation in accelerated coursework.** Participation in accelerated coursework, is defined as participation in Advanced Placement (AP) courses, International Baccalaureate (IB) programs, concurrent enrollment, Advanced International Certificate of Education (AICE) courses, and industry certification courses. For this component, participation shall be calculated for the school year by dividing a count of accelerated coursework participants in grades nine (9) through twelve (12) (numerator) by the count of all students enrolled in grades eleven (11) and twelve (12) (denominator). For this component, a student must earn a passing grade in the course in order to be counted as a participant. Schools shall earn credit for every accelerated course in which a student is enrolled. Students enrolled in multiple accelerated courses shall be counted once for each course in which they are enrolled. In calculating a percentage for this component, participation rate shall include all enrollment data regardless of whether the course was taught at the high school, at a career technology center, an accredited college or university, or at a regional site of the Oklahoma School of Science and Mathematics.

(ii) **Performance in accelerated coursework.** Performance in concurrent enrollment, Advanced International Certificate of Education (AICE) courses, Advanced Placement (AP), International Baccalaureate (IB), and industry certification courses. For this component, the numerator of the performance calculation shall include all students in grades nine (9) through twelve (12) who took an accelerated course or subject area examination during the academic year. AICE successful completion is defined as earning a "C" or higher and being awarded credit for specific postsecondary course(s). For concurrent enrollment, successful completion is defined as a passing grade of "C" or higher in a concurrent enrollment course for college credit. For industry certification, successful completion is defined as earning a "C" or better in the course leading to industry certification. Schools can earn additional successful completions for students who achieve industry certifications that result in credit for more than one (1) college course through statewide articulation agreements. For AP and IB performance, credit shall be earned based for each student scoring a three (3) or better on the AP exams, or a four (4) or better on IB exams. For purposes of this component, a school shall earn credit for every course in which a student demonstrates the required level of performance. In calculating a percentage for this component, performance shall include all coursework regardless of whether the course was taught at the high school, at a career technology center, an accredited college or university, or at a regional site of the Oklahoma School of Science and Mathematics.

(C) **ACT and SAT participation or performance.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" in either student participation or performance on ACT or SAT college entrance exams. The criteria for earning an "A" for this component shall be met if a school achieves a rate of seventy-five percent (75%) or higher percentage of either student participation or performance on college entrance exams. Student participation and performance rates shall be calculated as follows:

(i) **ACT and SAT participation.** High schools may earn one (1) bonus point based on the calculated percent of students taking the ACT and/or SAT. The percent is calculated by dividing the number of twelfth (12th) grade students who have taken the ACT and/or SAT tests, divided by the number of students enrolled in grade twelve (12). Students will be counted once for the ACT and/or once for the SAT, regardless of the number of times or at which grade levels the test(s) are taken. The high school will earn credit for the most recent test score reported at the time the test is administered.

(ii) **ACT and SAT performance.** High schools may earn one (1) bonus point based on the percentage of students scoring an ACT composite score of 20 or greater based on 36-point

scale, and/or an SAT score of 1410 or greater based on a 2400-point scale. Students will be counted once for the ACT and/or once for the SAT, regardless of the number of times or at which grade levels the test(s) are taken. The high school will earn credit for the most recent test score reported at the time the test is administered.

(D) **High school graduation rate of eighth (8th) graders.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" for the a high school graduation rate of students who scored at limited knowledge or unsatisfactory on the eighth (8th) grade reading and mathematics criterion-referenced test administered pursuant to the Oklahoma State Testing Program (OSTP). The criteria for earning an "A" for this component shall be met if a school achieves a graduation rate of eighty-five percent (85%) or higher for its students who scored at limited knowledge or unsatisfactory on the eighth grade reading and mathematics tests. For this component, schools shall be eligible to earn the bonus point based on the calculation of the graduation rate of this population of eighth (8th) graders, regardless of where the student attended the eighth (8th grade).

(E) **Overall EOI performance.** Upon the availability of valid student assessment data, one (1) bonus point shall be awarded to a high school if eighty percent (80%) or more of its graduates from the previous school year have scored either a "Satisfactory/Proficient" or "Advanced" on six (6) out of the seven (7) secondary level EOI assessments required by the Oklahoma School Testing Program Act at 70 O.S. § 1210.508(A)(6).

(F) **Year-to-year growth.** Upon the availability of valid student data, one (1) bonus point shall be awarded to each high school which demonstrates improvement from the previous school year in at least three (3) of the five (5) components used to calculate bonus points set forth in (1)(A) through (1)(E) of this subsection. For purposes of this subparagraph, a high school will be deemed to have demonstrated improvement in a category if the school has received bonus points in that category for two consecutive years (i.e., the current report card and the previous year's report card). In the alternative, a high school can demonstrate improvement in a category by meeting the following criteria specified in the category:

(i) **Four-year adjusted cohort graduation rate.** A high school demonstrates improvement by increasing its four-year adjusted cohort graduation rate in (1)(A) of this subsection by at least ten percent (10%) of the difference between the previous year's graduation rate and one hundred percent (100%).

(ii) **Participation or performance in accelerated coursework.** A high school demonstrates improvement by increasing its rate of participation or performance in accelerated coursework in (1)(B) of this subsection by five percent (5%) or more.

(iii) **ACT and SAT participation or performance.** A high school demonstrates improvement by increasing its rate of participation or performance in ACT or SAT in (1)(C) of this subsection by at least ten percent (10%) of the difference between the previous year's rate and one hundred percent (100%).

(iv) **High school graduation rate of eighth (8th) graders.** A high school demonstrates improvement by increasing its high school graduation rate of eighth graders in (1)(D) of this subsection by at least ten percent (10%) of the difference between the previous year's graduation rate and one hundred percent (100%).

(v) **Overall EOI performance.** A high school demonstrates improvement by increasing its overall rate of EOI performance in (1)(E) of this subsection by at least ten percent (10%) of the difference between the previous year's rate and one hundred percent (100%).

(2) **Middle schools.** Schools comprised of middle school grade smay earn up to a maximum of ten (10) bonus points as follows:

(A) **The percentage of students who are taking higher level coursework at a satisfactory or higher level in middle school.** Middle schools shall earn two (2) bonus points for meeting or exceeding the criteria for earning an "A" on the rate of the school's middle school students who take accelerated coursework at a satisfactory or higher level. The criteria for earning an "A" for this component shall be met if the school achieves a participation rate of thirty percent (30%) or higher percentage of middle school students taking traditional high school courses pre-Advanced Placement courses, or honors courses in a traditional classroom or in a virtual environment who score at a satisfactory level or higher on the corresponding state standardized assessment. Schools shall earn credit for every accelerated course in which a student is enrolled. Students enrolled in multiple accelerated courses shall be counted once for each course in which they are enrolled.

(B) **Attendance.** Middle schools will earn six (6) bonus points for for meeting or exceeding the criteria for earning an "A" for middle school student attendance. The criteria for earning an "A" for this component shall be met if the school achieves a student attendance rate of ninety-four percent (94%) or higher. This rate is the Average Daily Attendance (ADA) divided by the Average Daily Membership (ADM). ADA is calculated by dividing the total number of days students were present by the number of days in the school calendar or by dividing the number of hours students were present by the number of hours

in the school calendar, whichever applicable. ADM is calculated by dividing the total number of days students were enrolled in school by the number of days in the school calendar or by dividing the number of hours students were enrolled by the number of hours in the school calendar, whichever applicable.

(C) **Dropout rate.** Middle schools shall earn two (2) bonus points for meeting or exceeding the criteria for earning an "A" for the drop-out rate of the school. The criteria for earning an "A" for this component shall be met if the school achieves a rate of zero point nine percent (0.9%) or lower of the annual number of students reported as dropouts to the Oklahoma State Department of Education on the Annual Dropout Report.

(3) **Elementary schools.** Schools comprised of elementary school grades shall earn ten (10) bonus points ~~for attendance as follows:~~

~~(A)~~ **~~Attendance.~~** ~~Elementary schools will earn ten (10) bonus points~~ for meeting or exceeding the criteria for earning an "A" on student attendance. The criteria for earning an "A" shall be met if the school achieves a student attendance rate of ninety-four percent (94%) or greater. This rate is the Average Daily Attendance (ADA) divided by the Average Daily Membership (ADM). ADA is calculated by dividing the total number of days students were present by the number of days in the school calendar or by dividing the number of hours students were present by the number of hours in the school calendar, whichever applicable. ADM is calculated by dividing the total number of days students were enrolled in school by the number of days in the school calendar or by dividing the number of hours students were enrolled by the number of hours in the school calendar, whichever applicable.

(h) **Technical assistance.** Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula used for computing bonus points. Technical assistance shall be published in time for school districts to make meaningful use of the information and data.

(i) **School Performance Grading Scale.** The School Performance Grade shall be based on a combination of the factors outlined in sub-section (b)(1) and detailed in (f) and (g) of this Section. Fifty percent (50%) shall be based on student test scores; twenty-five percent (25%) on student learning gains; and twenty-five (25%) on improvement of the lowest twenty-five percent (25%) of students in the school in reading and mathematics. Letter grades will be calculated according to the assigned weight of each criteria and by combining points earned for each component within each criteria. The school performance grade will be assigned according to the following scale:

(1) Ninety-seven percent (97%) to one-hundred and ten percent (110%) = A+

(2) Ninety-three percent (93%) to ninety-six percent (96%) = A

(3) Ninety percent (90%) to ninety-two percent (92%) = A-

(4) Eighty-seven percent (87%) to eighty-nine percent (89%) = B+

(5) Eighty-three percent (83%) to eighty-six percent (86%) = B

(6) Eighty percent (80%) to eighty-two percent (82%) = B-

(7) Seventy-seven percent (77%) to seventy-nine percent (79%) = C+

(8) Seventy-three percent (73%) to seventy-six percent (76%) = C

(9) Seventy percent (70%) to seventy-two percent (72%) = C-

(10) Sixty-seven percent (67%) to sixty-nine percent (69%) = D+

(11) Sixty-three percent (63%) to sixty-six percent (66%) = D

(12) Sixty percent (60%) to sixty-two percent (62%) = D-

(13) Fifty-nine percent (59%) and below = F

(j) **Accuracy and Representativeness of Performance Data.** The Oklahoma State Department of Education shall review all information submitted by school districts to represent the performance of schools receiving a school performance grade.

(1) Each school district superintendent shall designate a school accountability contact person to be responsible for verifying accuracy of data.

(2) The Superintendent of Public Instruction shall withhold the designation of a school's performance grade if he or she determines that the performance data does not accurately represent the progress of the school.

~~(A)~~ Circumstances under which a school's performance data may be considered to not accurately represent the progress of the school include:

(~~i~~A) Less than ninety-five percent (95%) of the school's student population eligible for inclusion in the designation of the school's performance grade was assessed.

(~~ii~~B) Circumstances identified before, during, or following the administration of any state assessment where the validity or integrity of the test results are called into question and are subject to review as determined by the State Department of Education.

(k) **Data verification by school sites/districts.** School sites shall be provided an opportunity to review all data used to calculate the school performance grade and the calculation of the school performance grade.

(1) **Initial Data Verification.** Initial data verification of the data used to calculate school performance grades shall occur throughout the school year as data becomes available to the State Department of Education. School district accountability staff shall have the opportunity to perform data verification and confirm that data being used to calculate school performance grades are accurate prior to the review period required by (k)(2) of this rule. The

school district shall have at least thirty (30) calendar days to review and request corrections to each new data component, as it becomes available. No requests for changes to data shall be made after the expiration of the respective thirty (30) calendar day review period. For purposes of this paragraph only, a "new data component" means a data component that has not been previously submitted to the State Department of Education in accordance with other state or federal reporting requirements.

(2) **Calculation Verification.** Prior to the final release of school performance grades, a school district shall have at least ten (10) calendar days to certify the calculation of the performance grade. If the school district determines that a different performance grade should be assigned because of the omission of student data, a data miscalculation, or special circumstances that might have affected the grade assigned, school districts may submit a request for a review of the data calculation to the State Department of Education. All evidence supporting the district's claim of a calculation error and documentation of all elements to be reviewed by the Department must be submitted within the time limits specified in this subsection. No request for review of the calculation shall be accepted after the expiration of the ten (10) calendar day review period. Changes to the criteria, data, or process shall not be considered as part of this review.

(3) **Data deemed certified.** To ensure timely issuance of the school report cards in accordance with the requirements of 70 O.S. § 1210.545, any data component verification or calculation verification for which a district fails to timely review and certify as accurate in accordance with the provisions of (1) or (2) of this subsection shall be deemed certified as accurate by the district and districts shall not be permitted to request further corrections to the data.

(l) **Final determination.** The Oklahoma State Board of Education's determination of a school's performance grade shall be final.

(m) **Planned System Enhancements.** As indicated in this subsection, planned enhancements will occur in the System of School Improvement and Accountability. The Superintendent of Public Instruction will periodically recommend additional changes to the system to the State Board of Education for approval as necessary to ensure that continuous improvements are made in the educational programs of the State. Performance data shall be reviewed annually to determine whether to adjust the school grading scale for the following year's school grades. Adjustments may include, but shall not be limited to grading criteria, classification of school type, point calculations, point requirements, and minimum points necessary to obtain a certain grade. Adjustments may reset the minimum required number of points for each grade.

(n) **Virtual education providers and virtual charter schools.** Any virtual provider that offers full-time online programs for students enrolled in charter schools sponsored by a school district, technology center school district, higher education institution, a federally recognized Indian tribe, or the State Board of Education, in accordance with the provisions of the Oklahoma Charter Schools Act shall be considered a "virtual charter school."

(1) Each virtual charter school and each school district which contracts with a virtual charter school or virtual education provider shall identify its full-time virtual students who do not live in the physical boundaries of the school district with which the sponsor is associated.

(A) Each virtual charter school and each school district shall report the achievement data of its full-time virtual students who are not residents of the district in which the sponsor is located separate from the achievement data of its full time virtual students who are residents of the district of sponsorship.

(B) The performance of non-resident full-time virtual students identified in (1) of this subsection shall be excluded from the determination of the overall school performance letter grade of the sponsoring school district, but shall be included in the overall school performance letter grade of the virtual charter school as resident students.

(2) Any virtual provider that contracts with a school district to provide full-time virtual education for resident students of the school district shall be considered a separate site within the school district for accountability purposes and shall be issued a separate report card that includes performance of full-time virtual students identified in (1) of this subsection as residents of the school district with which the provider contracts.

(o) **Statewide virtual charter schools.** Any virtual provider sponsored as a charter school by the Statewide Virtual Charter School Board shall be considered a "statewide virtual charter school."

(1) Each statewide virtual charter school will be considered a separate school site and "district" of the Statewide Virtual Charter School Board for accountability purposes and will be subject to the system of school improvement and accountability established by 70 O.S. § 1210.545 and the accompanying provisions set forth in this Section.

(2) The performance of all eligible students enrolled in a statewide virtual charter school shall be included in the calculation of the overall school performance letter grade of the virtual charter school. For purposes of this Section, any student enrolled full-time in a statewide virtual charter school who resides within the borders of the state shall be considered a resident student of the statewide virtual charter school.

[OAR Docket #16-450; filed 6-14-16]

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

[OAR Docket #16-451]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 11-103.6a; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
Superseded 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]
Gubernatorial approval:
October 5, 2015
Register publication:
33 Ok Reg 128
Docket number:
15-829
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
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, but the standards are still published in the Administrative Code. Now that new subject standards for World Languages have been published and taken effect as provided for at 70 O.S. § 11-103.6a, the former subject standards for World Languages must be revoked to update the Administrative Code.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 15. OKLAHOMA STANDARDS FOR WORLD LANGUAGES

210:15-3-133. Overview [REVOKED]

~~(a) The Oklahoma State Board of Education has identified the study of languages (foreign, Native American, American Sign Language) as core curriculum along with science, mathematics, social studies, language arts, and the arts (visual art and general music). All districts are required to implement a sequential program of study of at least one language other than English in the curriculum. THE STATE SCHOOL LAWS OF OKLAHOMA 2001 state "Students must learn about cultures and environments – their own and those of others with whom they share the earth. Students, therefore, must study social studies, literature, languages, the arts, mathematics and science." (70 O.S. § 11-103.6)~~

~~(b) The content standards for language learning included in this document are based on an instructional program in world languages other than English for all students, beginning in kindergarten and continuing through 12th grade. These standards reflect the latest research in the field of second language instruction as presented in the profession's national standards document, STANDARDS FOR FOREIGN LANGUAGE LEARNING: PREPARING FOR THE 21ST CENTURY. As in the national standards, there are five overarching goals in Oklahoma's curriculum framework: – communication, cultures, connections, comparisons, and communities. With communication and culture as the cornerstone for all language learning, the state's goal is for all Oklahoma students to learn "how, when, and why to say what to whom" in a language other than English (NATIONAL STANDARDS IN FOREIGN LANGUAGE EDUCATION PROJECT, 1996, p.11).~~

~~(c) LANGUAGES AWARENESS (Grades K-3) is to be a required program in Oklahoma schools through which children gain the insight that other languages exist besides their own. Districts will implement an exploratory program that will expose the student to several languages and cultures. The goal of this program model is to learn about language(s) and culture(s), and is not intended to lead to any proficiency in the language(s) studied. The student may be exposed to several languages and cultures.~~

~~(d) In addition to the required language(s) awareness program, districts may choose to start a sequential, articulated language program beginning in kindergarten that focuses on communication. The goal of this K-12 program model is communication that will lead to proficiency as students progress through the sequential, articulated program in their elementary and secondary schools. Heining Boynton maintains that for~~

~~those schools and/or districts that desire their students to begin the early study of foreign languages in a meaningful context with a highly structured curriculum articulated in a long sequence, then this is the model of choice (Heining Boynton, 1998, p. 2).~~

~~(e) For those districts who have not chosen to implement a sequential, articulated language program in K-3, Grade 4 is the beginning of a required sequential language program in Oklahoma schools through which all students begin to develop proficiency in a language. Language(s) selection is determined by each district. The students will continue the sequential and articulated program in the same language every year through Grade 8. By the end of the Grade 4-8 program sequence, students should demonstrate proficiency as described by the Novice Level progress indicators listed in this document.To reach the Novice Level proficiency requirement for the Grade 4-8 program, it is recommended that students will need to meet a minimum total of 365 hours of instruction in a standards-based curriculum classroom.~~

~~(f) Districts should be aware of federal legislation which offers monetary awards to districts who have implemented elementary foreign language programs that lead to student proficiency in the language. The Foreign Language Incentive Program of the No Child Left Behind Act of 2001 awarded "incentive payments to public elementary schools that provide students with a foreign language program designed to lead to communicative competency. A program leading to communicative competency is comparable to a program that provides at least 45 minutes of instruction per day for not less than 4 days per week throughout an academic year." (Federal Register, 2002, Vol. 67).~~

~~(g) Grades 9-12 provide continued sequencing of instruction for further language proficiency for Oklahoma students. School districts must offer at least two years of a specific language in high school. Districts may offer long-term, sequential programs in more than one language. Two Carnegie units of study (240 hours) of the same world language is part of the requirement for the Certificate of Distinction, an award that high schools may offer to high school graduates. (70 O.S. §11-103.6c)~~

~~(h) In Oklahoma's 4th grade through 8th grade sequential language program requirement, students should reach the Novice Level benchmark by the end of their language learning experience. If students choose to continue the study of the same language through high school, students should reach the Intermediate benchmark. Students should reach the Pre-advanced benchmark if they begin a sequential, articulated program in kindergarten and continue through 12th grade. This instructional sequence represents a vision for how well Oklahoma world language learners will perform in languages if they start early and continue language learning throughout their school experience.~~

~~(i) Realistic performance levels for students enrolled in a sequential language learning experience at various points are outlined in the AMERICAN COUNCIL ON THE TEACHING OF FOREIGN LANGUAGES (ACTFL) PERFORMANCE GUIDELINES FOR K-12 LEARNERS. This document describes realistic performance levels depending upon entry and exit into a sequential and articulated language program. It reflects the influence of time on language performance ability and shows what ability is reasonable to expect of students who begin foreign language study at various points in the K-12 spectrum. This information is based on the assumption that "elementary programs (K-5) meet from 3-5 days per week for no less than 30-40 minutes per class; middle school programs meet daily for no less than 40-50 minutes; and high school programs meet the required time that equals four Carnegie units of credit (480 hours of seat time)"(ACTFL PERFORMANCE GUIDELINES FOR K-12 LEARNERS, 1999, p. 6) A K-12 language program sequence following these minimum guidelines would meet for no less than 1400 hours in order to reach Pre-advanced Learner Range performance.~~

~~(j) Varying learning rates, different learning styles, and the general language learning ability of students all affect how well second language acquisition will happen. The amount of time spent in language instruction greatly influences performance ability. It is important to note that language proficiency is best developed when students start early and stay late in a sequential, articulated program. Haas (1998) states that learning a foreign language is not much different from learning other core curriculum subjects. In any area, students benefit from starting early and continuing through a long sequence of learning that grows and deepens as they mature (p. 43).~~

~~(k) For elementary sites, language certification for teachers is not required. However, teachers with language certification or teachers with language proficiency are preferred. In K-8 elementary sites, language certification for teachers of Grade 7 and/or 8 is required if students will receive high school credit for foreign language on their high school transcript.~~

~~(l) For middle school and junior high sites, language certification for teachers is required. For middle school and junior high sites giving high school credit for world languages, teachers must have secondary certification, and curriculum standards at the middle school or junior high level must equal requirements at the high school level.~~

~~(m) Oklahoma's world languages educators envision a future in which "ALL students will develop and maintain proficiency in English and at least one other language, modern or classical" (NATIONAL STANDARDS IN FOREIGN LANGUAGE EDUCATION PROJECT, 1996, p. 7). As stated in the profession's national goals, communication is at the heart of second language study, whether the communication takes place face-to-face, in writing, or through reading. Through the study of other languages, students gain a knowledge and understanding of the cultures that use that language. Learning languages provides connections to additional bodies of knowledge that are unavailable to monolingual English speakers. Through comparisons and contrasts with the language studied, students develop greater insight into their own language and culture and realize that multiple ways of viewing the world exist. Together, these elements enable the student of languages to participate in multilingual communities at home and around the world in a variety of contexts and in culturally appropriate ways (NATIONAL STANDARDS IN FOREIGN LANGUAGE EDUCATION PROJECT, 1996, p. 27). Students learn a language~~

~~best when they are provided opportunities to use the target language to communicate in a wide range of activities. The more learners use the target language in meaningful situations, the more rapidly they achieve competency. Active use of language is central to the learning process; therefore, learners must be involved in generating utterances for themselves. They learn by doing, by trying out language, and by modifying it to serve communicative needs (NATIONAL STANDARDS IN FOREIGN LANGUAGE EDUCATION PROJECT, 1996, p. 37). The following graphic is a visual summary of Oklahoma Standards for World Languages. The communication goal is central to the attainment of all other goals. The other four goals (cultures, connections, comparisons, and communities) serve as a context for the development of interpretive, interpersonal, and presentational communication.~~

~~(n) In the Oklahoma World Languages Standards document there are five goals for each level of proficiency: communication, cultures, comparisons, connections and communities. For each of the five goals there are two or more student standards that describe what students should know and be able to do in the target language. For each standard, there are a list of progress indicators that specifically describe what students need to know and do within a specified proficiency range. After the progress indicators for each standard, there is a list of performance guidelines based on the ACTFL PERFORMANCE GUIDELINES FOR K-12 LEARNERS (1998). The performance guidelines describe how well a student will be able to perform the standard within the specified proficiency range. Following the performance guidelines there is a set of classroom examples that describe what types of sample activities appropriately reflect the standard addressed.~~

~~(o) The Oklahoma standards document defines skills within certain ranges: Novice Level Range, Intermediate Level Range, and Pre-advanced Level Range. These proficiency ranges represent a continuum of student development, reflecting the diversity of individual student learning, as opposed to levels of instruction which are typically defined by years or semesters of classroom instruction.~~

~~(p) Typically, the levels of language instruction are based on the time involved in the instruction. Because the implementation of world language programs in Oklahoma varies greatly from one context to another and entry into a foreign language program can occur at various grades, the levels of instruction are described as follows:~~

~~(q) Level I instruction may be achieved in three ways: (1) in the elementary grades, kindergarten through Grade 5 (depending on the type of program offered); or (2) varying programs of instruction in middle school (comparable in content and contact hours to the course equivalent offered in high school); or (3) one Carnegie Unit (120 hours) of instruction in Grades 9-12.~~

~~(r) Level II is described as (1) instruction in middle school (depending on the type of program offered) after the successful completion of Level I in elementary school; or (2) one Carnegie Unit (120 hours) of instruction in high school after the successful completion of Level 1 in middle school or high school.~~

~~(s) Subsequent levels (Level III-VI) are described each as one Carnegie unit (120 hours) of instruction in high school after the successful completion of the previous level.~~

~~(t) Each proficiency range (Novice, Intermediate, Pre-advanced) may require more than one level of instruction, depending on various factors such as student ability, classroom instruction, scheduling logistics, and other variables affecting student learning. The Novice Level Range starts in Level I and generally carries over into Level II. The Intermediate Level Range may be initiated in Level II with some students, and generally includes Level III, extending into Level IV. The Pre-advanced Level Range will usually incorporate instruction initiated in Level IV and possibly continuing through Level VI.~~

~~(u) The standards written in this Oklahoma world languages curriculum framework are for all languages taught in Oklahoma schools. Some languages, such as American Sign Language, Native American languages, and classical languages have unique characteristics that may require some modifications in the standards to reflect their special traits. For example, Latin places a stronger emphasis on reading, while oral skills receive less emphasis. Native American languages emphasize oral skills, while written skills receive less emphasis. American Sign Language emphasize visual-gestural and interpretive communication.~~

210:15-3-133.1. Definitions [REVOKED]

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

~~**"Articulation"** means a foreign language program which provides for a gradual, sequential progression of knowledge and skills from level to level of language development.~~

~~**"Authentic assessment"** means assessments that evoke demonstrations of knowledge and skills in ways that are applied in the real world.~~

~~**"Authentic materials"** means resources including books, magazines, newspapers, brochures, menus, videos, recordings, etc., which are used by people in the target culture.~~

~~**"Benchmark"** means an interpretation of a performance standard according to age, grade, or developmental level.~~

~~**"Circumlocution"** means using alternate (roundabout) words and phrases to convey meaning or express an idea.~~

~~**"Classical languages"** means the forms of Latin and Greek used in ancient Greek and Latin literature.~~

~~**"Cognate"** means a word in the target language that looks like, or sounds like a word with the same meaning in English.~~

~~**"Culture"** means the term generally understood to include the philosophical perspectives, the behavioral practices, and the products - both tangible and intangible - of a society.~~

~~**"Curriculum framework"** means a comprehensive document developed for a content area consisting of overarching goals, content standards, and performance standards. The curriculum framework serves as a guide to local school districts as they create a curriculum unique to their needs.~~

~~**"Developmentally appropriate materials"** means materials that correlate to age, grade, or proficiency level of the student.~~

~~**"False start"** means the natural tendency of a speaker to restate what has just been uttered in order to correct, clarify, or improve upon it.~~

~~**"Idiomatic expressions"** means expressions in one language that cannot be directly translated into another language.~~

~~**"Intangible"** means examples of these types of products: a dance, an oral tale, a sacred ritual, a system of education.~~

~~**"Interpersonal mode of communication"** means communication that is characterized by active negotiation of meaning among individuals. Participants observe and monitor one another to see how their meanings and intentions are being communicated. Adjustments and clarifications can be made accordingly. The interpersonal mode is most obvious in conversation, but both the interpersonal and negotiated dimensions can be realized through reading and writing, such as the exchange of personal letters or of electronic mail messages. (ACTFL PERFORMANCE GUIDELINES FOR K-12 LEARNERS, 1998).~~

~~**"Interpretive mode of communication"** means communication that is focused on the appropriate cultural interpretation of meanings that occur in written and spoken form where there is no recourse to the active negotiation of meaning with the writer or the speaker. Such instances of "one-way" reading or listening include the cultural interpretation of texts, movies, radio and television broadcasts, and speeches. (ACTFL PERFORMANCE GUIDELINES FOR K-12 LEARNERS, 1998).~~

~~**"Overarching goals"** means relatively brief, very general statements that describe what students should know and be able to do. They should reflect the best and most recent theory and research in that area. They are more general than content standards, but provide a framework into which content standards can be organized.~~

~~**"Performance standards"** means standards that describe how well students perform the content standards. Performance standards gauge the degree to which content standards have been attained by individuals or groups, indicating the nature of the evidence and the quality of student performance on agreed-upon tasks or measurement instruments.~~

~~**"Perspectives"** means the attitudes, ideas, beliefs, viewpoints, or values of a cultural group.~~

~~**"Presentational mode of communication"** means communication that refers to the creation of messages in a manner that facilitates interpretation by members of the other culture where no direct opportunity for the active negotiation of meaning between members of the two cultures exists. Examples include the writing of reports and articles or the presentation of speeches. (ACTFL PERFORMANCE GUIDELINES FOR K-12 LEARNERS, 1998).~~

~~**"Proficiency"** means ability to communicate effectively in everyday real-life situations in both oral and written forms in the cultures where the language is spoken.~~

~~**"Recombination"** means the ability to use previously learned vocabulary and structures to create new and unique expressions.~~

~~**"Sequential language learning"** means language learned in a continuous related order. In an articulated, sequential program, courses are scheduled every year and teachers follow a curriculum that spirals learning objectives from year to year for the purpose of the students attaining communicative proficiency in the language learned.~~

~~**"Tangible"** means these types of products: a toy, a painting, an article of clothing, a cathedral, a piece of literature, a pair of chopsticks.~~

~~**"Target culture"** means the culture of the people who speak the target language.~~

~~**"Target language"** means the language that is being taught or learned.~~

210:15-3-134. Language(s) awareness k - grade 3 [REVOKED]

~~(a) **Standard - communication.** Students will communicate in languages other than English.~~

~~(1) Understand limited one- and two-word phrases, cognates, and social greetings.~~

~~(2) Speak with one- or two-word phases such as reciting numbers, colors, classroom objects, etc.~~

~~(3) Develop careful listening skills.~~

~~(4) Read isolated words when strongly supported by visuals.~~

~~(5) Copy familiar words for labeling, identifying, and organizing purposes.~~

~~(b) **Standard - cultures.** Students will gain knowledge and understanding of other cultures.~~

~~(1) Develop an awareness of other cultures.~~

~~(2) Be able to identify areas of the world where the languages studied are spoken.~~

~~(3) Participate in developmentally appropriate cultural activities such as games and songs.~~

~~(4) Identify and reproduce distinctive cultural products of the culture of the languages studied.~~

~~(5) Imitate culturally appropriate etiquette in verbal and nonverbal communication during greetings, leave takings and daily classroom interactions.~~

~~(c) **Standard - connections.** Students will connect with other disciplines and acquire information.~~

~~(1) Use isolated words from other content areas (math, science, geography, etc.) in foreign language class activities.~~

~~(2) View and listen to developmentally appropriate programs in the target language on topics from other content areas (math, science, geography, etc.),~~

~~(d) **Standard - comparisons.** Students will develop insight into the nature of language and culture.~~

~~(1) Be aware of the differences among cultures and respect those differences.~~

~~(2) Develop awareness that the world has many languages.~~

~~(3) Compare holidays and celebrations.~~

~~(4) Compare daily practices of people in the target cultures with their own.~~

~~(e) **Standard - communities.** Students will use the language both within and beyond the school setting.~~

~~(1) Develop an interest in future language(s) study.~~

~~(2) Explore the value of communicating in another language.~~

~~(3) Identify the target language in school and community environments.~~

~~(4) Participate in activities related to special events celebrated in the target culture(s).~~

210:15-3-135. Novice level range [REVOKED]

~~(a) **Standard - interpersonal communication - speaking/writing.** Students will engage in conversations and/or written correspondence in which they provide and obtain information, express feelings and emotions, and exchange opinions.~~

~~(1) Progress indicators.~~

~~(A) Initiate greetings, introductions, and leave taking.~~

~~(B) Ask and answer basic questions based on self and familiar material such as family members, personal belongings, school and leisure activities, location of people and objects, time, and weather.~~

~~(C) Express personal needs, preferences, and feelings.~~

~~(D) Initiate simple commands.~~

~~(2) **Performance guidelines.**~~

~~(A) Use memorized phrases and short sentences when communicating.~~

~~(B) Use words and phrases primarily as lexical items without awareness of grammatical structure.~~

~~(C) Comprehend and produce vocabulary that is related to everyday objects and actions on a limited number of familiar topics.~~

~~(D) Rely on visual aids, gestures and repetitions to enhance communication.~~

~~(E) Imitate modeled words and phrases using intonation and pronunciation similar to that of the model.~~

~~(F) Communicate with pauses, false starts, some recourse to their native language and make frequent errors when taking risks with the language.~~

~~(G) Are understood primarily by those very accustomed to interacting with language learners.~~

~~(3) **Classroom examples.**~~

~~(A) Make five statements about yourself to a partner who must then agree or disagree with your self-perception.~~

~~(B) Rank sports by preference and using highly practiced language, tell a friend why you like or dislike certain sports, and ask him/her what sports he/she likes.~~

~~(C) Ask/Answer questions with a partner about the age and names of family members.~~

~~(D) Write an e-mail to a friend listing the items in your school backpack, and then ask what is in his/her backpack.~~

~~(E) Ask/answer questions with a friend about what you want to do this weekend, and at what time you want to do this.~~

~~(F) Introduce friends and family members to others.~~

~~(b) **Standard - interpretive communication - listening/reading/Viewing.** Students will understand and interpret written and spoken language on a variety of topics.~~

~~(1) **Progress indicators.**~~

~~(A) Comprehend simple daily communications on familiar topics, including simple instructions such as classroom procedures.~~

~~(B) Understand key words in written material such as advertisements, schedules, and menus, etc.~~

~~(C) Comprehend the main idea of selected, age-appropriate authentic recordings and broadcasts and videos.~~

~~(D) Comprehend the main idea of selected, short, authentic written materials that use familiar vocabulary and language structures.~~

~~(E) Respond to simple commands, familiar vocabulary, and language structures.~~

~~(2) **Performance guidelines.**~~

~~(A) Understand short, simple conversations and narratives (live or recorded), within highly predictable and familiar contexts.~~

~~(B) Recognize highly predictable key words and phrases and familiar structures by using contextual clues with strong visual support.~~

~~(C) Rely on personal background experience to assist in comprehension.~~

~~(D) Rely on repetition for understanding.~~

~~(E) Determine meaning by recognition of cognates, prefixes, suffixes, and thematic vocabulary.~~

~~(3) **Classroom examples.**~~

~~(A) Recognize key words on store fronts and identify the type of store or services provided (e.g., book store, bakery, video store).~~

~~(B) Read and understand simple official forms (e.g., hotel registration, passport and visa applications).~~

~~(C) Listen to your teacher tell you to place certain items in different parts of the classroom, and respond accordingly.~~

~~(D) Listen to a patient explaining his/her symptoms of illness, including mention of various body parts, to a doctor and take simple notes listing what problems the patient is having.~~

~~(E) Read advertisements from authentic magazines and list all of the cognates found in the ads.~~

~~(F) Listen to authentic songs and write the main ideas expressed.~~

~~(G) Listen to a conversation of two native speakers. Answer simple comprehension questions in English.~~

~~(H) Listen to a simple story several times. Then draw what happened in the story.~~

~~(c) **Standard - presentational communication - speaking/writing.** Students will present information, concepts, and ideas to an audience of listeners or readers on a variety of topics.~~

~~(1) **Progress indicators.**~~

~~(A) Describe in written or spoken format basic information, such as self, family members and friends,~~

~~events, interests, school activities, and personal belongings.~~

~~(B) Give simple commands and make requests of another person or group.~~

~~(C) Retell a simple story using familiar vocabulary and language structures.~~

~~(D) Write personal journals and send brief messages to friends.~~

~~(E) Dramatize student-created and/or authentic songs, short poems, skits or dialogs.~~

~~(2) **Performance guidelines.**~~

~~(A) Use memorized, short phrases and sentences in oral and written presentations based on familiar material.~~

~~(B) Demonstrate some accuracy in pronunciation and intonation when presenting well-rehearsed material on familiar topics.~~

~~(C) Rely heavily on repetition, gestures, facial expressions and visual aids to communicate their message orally.~~

~~(D) Reproduce familiar material in written presentations.~~

~~(E) Communicate with pauses, false starts, some recourse to their native language, and make frequent errors when taking risks with the language and attempting to produce language beyond the memorized.~~

~~(F) Are understood primarily by those very accustomed to interacting with language learners.~~

~~(3) **Classroom examples.**~~

~~(A) Give short, simple directions to a person about how to get to the grocery store from your school parking lot.~~

~~(B) Write a thank you postcard to your grandmother/aunt/brother for a birthday gift that you received.~~

~~(C) Prepare short messages in video or audio formats to be sent to your peers in the target culture on the things that you like to do.~~

~~(D) Design a poster for a nutrition class showing foods that should and should not be eaten. Present it to the class in the target language.~~

~~(E) Use a highly practiced vocabulary and visuals, retell a children's story to the class or group.~~

~~(d) **Standard - practices of culture.** Students will demonstrate an understanding of the relationship between the practices and perspectives of the culture(s) studied.~~

~~(1) **Progress indicators.**~~

~~(A) Imitate patterns of behavior such as greetings or gestures used in formal and informal settings in the target culture.~~

~~(B) Identify some customs and traditions such as celebrations and holiday practices of the target culture.~~

~~(C) Participate in cultural activities such as games, songs, and dances of the target culture.~~

~~(D) Identify some viewpoints of the target culture, such as those relating to time, school, transportation, pastimes, and the roles of family members.~~

~~(E) Recognize and explore the process of stereotyping other cultures.~~

~~(2) **Performance guidelines.**~~

~~(A) Imitate the use of culturally appropriate vocabulary, idiomatic expressions, and nonverbal behaviors modeled by the teacher.~~

~~(B) Use memorized phrases and short sentences when communicating in spoken or written formats.~~

~~(C) Rely on visual aids, gestures, and repetition to enhance comprehensibility.~~

~~(D) Comprehend written and spoken language better when content has been previously presented in an oral and/or visual context.~~

~~(E) Understand a story line or event in written or oral contexts that reflect a cultural background similar to their own~~

~~(F) Use the student's native language only when the investigation of cultural perspectives extends beyond the novice proficiency range.~~

~~(3) **Classroom examples.**~~

~~(A) Collaborate in creating a class book with illustrations and written descriptions of various aspects of daily life in the target cultures.~~

~~(B) Write your key pal with lists of personal interests (the contents of your backpack, the programs you watch on TV, or a list of your school holidays) and ask your key pal to respond with lists of personal interests.~~

~~(C) Identify and illustrate or perform a traditional custom or celebration.~~

~~(D) Initiate and respond to formal and informal telephone calls.~~

~~(e) **Standard - products of culture.** Students will demonstrate an understanding of the relationship between the products and perspectives of the culture(s) studied.~~

~~(1) **Progress indicators.**~~

~~(A) Identify objects, images and symbols, such as flags, currency, food, dress, and toys, that are commonly used in the target culture.~~

~~(B) Identify some major contributions and historical figures from the target culture, including contributions in science, mathematics, government, and fine arts.~~

~~(C) Identify some historical and contemporary influences from the target culture that are significant in the U.S. culture, such as explorers and settlers, music and sports.~~

~~(D) Identify countries, regions, and geographic features where the target language is spoken.~~

~~(E) Extract samples of the culture's perspectives from popular media in the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Use memorized phrases and short sentences when communicating in spoken or written formats about cultural products.~~

~~(B) Rely on visual aids, gestures, and repetition to enhance comprehensibility about cultural products.~~

~~(C) Comprehend written and spoken language about cultural products better when content has been previously presented in an oral and/or visual context.~~

~~(D) Understand a story line or event in written or oral contexts that reflects a cultural background similar to their own.~~

~~(E) Use the student's native language only when the investigation of cultural perspectives extends beyond the novice proficiency range.~~

~~(3) **Classroom examples.**~~

~~(A) Recite a poem/sing a song of the target language.~~

~~(B) Demonstrate understanding of a story, folk tale, or legend by answering questions or retelling the story with or without visuals.~~

~~(C) Listen to the teacher's description of the physical attributes and/or contributions of a famous person of the target culture and identify who it is.~~

~~(f) **Standard - interdisciplinary studies.** Students will reinforce and further their knowledge of other content areas through the foreign language.~~

~~(1) **Progress indicators.**~~

~~(A) Identify and/or use selected information and skills from other content areas (such as the arts, health, social studies, sciences, mathematics, and English) in the target language classroom.~~

~~(B) Using authentic target language resources, (such as the Internet, books, magazines), identify and/or use selected information to reinforce or expand learning in other content area classrooms (the arts, health, social studies, sciences, mathematics, English, etc.).~~

~~(2) **Performance guidelines.**~~

~~(A) Use memorized phrases and short sentences when communicating about selected content areas.~~

~~(B) Rely on visual aids, gestures and repetitions to enhance communication about other content areas.~~

~~(C) Understand short, simple conversations and narratives about other content areas (live or recorded), within highly predictable and familiar contexts.~~

~~(D) Recognize highly predictable key words and phrases and familiar structures by using contextual clues with strong visual support.~~

~~(E) Rely on personal background experience to assist in comprehension.~~

~~(F) Rely on repetition for understanding.~~

~~(G) Determine meaning by recognition of cognates, prefixes, suffixes and thematic vocabulary.~~

~~(3) **Classroom examples.**~~

~~(A) Use currency of the target culture to make change using bills and coins.~~

~~(B) Prepare a healthy menu using typical foods of the target culture.~~

~~(C) Use authentic instruments of the target culture to explore music and rhythms.~~

~~(D) Learn the solar system, parts of a plant, life cycle of a butterfly.~~

~~(g) **Standard - distinctive Viewpoints.** Students will acquire information and recognize the distinctive viewpoints that are only available through the foreign language and its cultures.~~

~~(1) **Progress indicators.**~~

~~(A) Extract information about the target culture from selected authentic sources (such as the Internet, books, magazines).~~

~~(B) Use authentic target language sources to gain insight about the distinctive perspectives of the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Understand general oral and written information when enhanced by illustrations within highly predictable contexts.~~

~~(B) Increase their comprehension by looking for and recognizing key words or phrases.~~

~~(C) Rely on personal background information to help in understanding something they read or hear.~~

~~(D) Rely on memorized phrases and short sentences to describe distinctive viewpoints of the target culture.~~

~~(E) Use the student's native language only when the discussion of distinctive viewpoints extends beyond the novice proficiency range.~~

~~(3) **Classroom examples.**~~

~~(A) With several other students, act out familiar folktales, fables, or legends known to children of the target culture while another student reads the story aloud.~~

~~(B) Use the target language to describe an animal or plant that is indigenous to a particular region or country of the target culture.~~

~~(C) Use authentic sources to identify the current popular products of the target culture.~~

~~(h) **Standard - language comparisons.** Students demonstrate understanding of the nature of language through comparisons of the language studied with their own.~~

~~(1) **Progress indicators.**~~

~~(A) Recognize cognates and borrowed words and be aware of their usefulness in comprehending language.~~

~~(B) Identify and compare the sound and writing systems of the target language with their own, including stress, intonation, punctuation, etc.~~

~~(C) Identify basic grammatical structures of the language studied and compare these structures to their own language, including word order, gender, agreement, etc.~~

~~(D) Recognize identified idiomatic expressions that cannot be directly translated into their own language.~~

~~(2) **Performance guidelines.**~~

~~(A) Rely primarily on memorized phrases or short sentences when describing language structure comparisons between cultures.~~

~~(B) Rely heavily on visuals to get ideas across to the audience.~~

~~(C) Rely on personal background information to help in understanding similarities and differences of grammatical structures between the cultures.~~

~~(3) **Classroom examples.**~~

~~(A) Create a graphic organizer to compare language structures in English and the target language.~~

~~(B) Discuss the variations in vocabulary in English (apartment/flat, elevator/lift) as well as the variations in vocabulary among target language countries.~~

~~(C) Listen as the teacher models how to express language structures (e.g., word order, number and gender agreement, question formation) in the target language and identify how it is different from English.~~

~~(i) **Standard - culture comparisons.** Students demonstrate understanding of the concept of culture through comparisons of the cultures studied and their own.~~

~~(1) **Progress indicators.**~~

~~(A) Identify similarities and differences in verbal and nonverbal behavior between cultures.~~

~~(B) Recognize cross-cultural similarities and differences in the practices of the culture studied.~~

~~(C) Identify cross-cultural similarities and differences in the products of the culture studied.~~

~~(D) Recognize cross-cultural similarities and differences in the perspectives within the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Rely primarily on memorized phrases or short sentences when describing comparisons between cultures.~~

~~(B) Rely heavily on visuals to get ideas across to the audience.~~

~~(C) Rely on personal background information to help in understanding cultural similarities and differences between the culture studied and their own.~~

~~(3) **Classroom examples.**~~

~~(A) Follow the teacher's model to practice the table manners of the target culture and compare them with the student's own culture.~~

~~(B) Identify the significance of signs and symbols in the target culture.~~

~~(C) Make a Venn diagram comparing a celebration in the U.S. with the same or equivalent celebration in the target culture.~~

~~(D) Compare the greetings, leave takings, and the use of personal space in the target culture and in the U.S.~~

~~(E) Looking at pictures of restaurant scenes in the U.S. and the target country, compare similarities and differences of the scenes.~~

~~(j) **Standard - school and community.** Students will use the language both within and beyond the school setting.~~

~~(1) **Progress indicators.**~~

~~(A) Identify professions/occupations which are enhanced by proficiency in another language.~~

~~(B) Practice oral or written use of the foreign language with people outside the classrooms.~~

~~(C) Communicate on a personal level with speakers of the language via short letters, e-mail, audio, and videotapes.~~

~~(D) Produce short skits, stories, poems, multimedia shows, etc., and present their works at school and/or in the community.~~

~~(2) **Performance guidelines.**~~

~~(A) Use memorized phrases or short sentences with very familiar topics.~~

~~(B) Write simple tasks, such as short messages or notes.~~

~~(C) Be accurate in pronunciation when presenting well-rehearsed materials.~~

~~(D) Understand general information when enhanced by visuals or gestures.~~

~~(3) **Classroom examples.**~~

~~(A) Keep an in-class log or chart of personal encounters with the target language outside of the school.~~

~~(B) Establish a pen pal/key pal correspondence with someone from the target culture.~~

~~(C) Locate/visit stores within the community that cater to the target culture.~~

~~(D) Listen to radio broadcasts and list recognizable words from the target culture.~~

~~(E) Teach basic expressions and level appropriate songs and games from the target culture to children in a neighboring elementary or preschool or at home to members of the family.~~

~~(k) **Standard - personal enrichment.** Students will show evidence of becoming lifelong learners by using the language for personal enjoyment and enrichment.~~

~~(1) **Progress indicators.**~~

~~(A) Demonstrate a willingness to interact with native speakers.~~

~~(B) Discover and explore a variety of entertainment sources representative of the target culture.~~

~~(C) Identify current issues of interest within the target culture.~~

~~(D) Discover and explore samples of art, literature, music, etc., representative of the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Be understood primarily by those very accustomed to interacting with language learners.~~

~~(B) Exhibit increased comprehension when constructing meaning through recognition of key words or phrases embedded in familiar contexts.~~

~~(C) Rely heavily on visuals to enhance comprehensibility in both oral and written presentations.~~

~~(D) Use primarily memorized phrases and short sentences during highly predictable interactions on very familiar topics.~~

~~(3) **Classroom examples.**~~

~~(A) Use Web sites in the target language to make plans for a vacation in the target culture.~~

~~(B) Select an audio clip of favorite music in the target language and share it with other members of the class.~~

~~(C) Attend cultural events of the target culture within the community.~~

~~(D) Visit art exhibits of artists from the target culture.~~

~~(E) Learn a dance of the target culture and host a dance with music only from the target culture.~~

210:15-3-136. Intermediate level range [REVOKED]

~~(a) **Standard - interpersonal communication - speaking/writing.** Students will engage in conversations and/or written correspondence in which they provide and obtain information, express feelings and emotions, and exchange opinions.~~

~~(1) **Progress indicators.**~~

~~(A) Sustain a conversation on selected topics about themselves and others, using details and descriptions.~~

~~(B) Ask and answer a variety of questions, giving reasons for their answers.~~

~~(C) Express personal preferences and feelings with some explanation.~~

~~(D) Initiate a series of commands.~~

~~(2) **Performance guidelines.**~~

~~(A) Use strings of sentences when communicating on familiar topics.~~

~~(B) Recombine learned vocabulary and structures to express their own thoughts within familiar contexts.~~

~~(C) Use some paraphrasing and can find another way to express an idea/term to avoid a breakdown in communication, and can ask for clarification.~~

~~(D) May mispronounce words in new context or words being read for the first time.~~

~~(E) Continue to communicate with false starts and pause frequently to search for words when interacting with others.~~

~~(F) Are understood by those accustomed to interacting with language learners.~~

~~(G) Demonstrate control of present time and show evidence of some control of other time frames.~~

~~(3) **Classroom examples.**~~

~~(A) Write an apology (e.g., for missing a birthday, date, hurting someone's feelings)~~

~~(B) Tell what you or others will be doing five years from now and ask someone else about his/her future plans.~~

~~(C) Give instructions to someone to do something (how to study for a test, what to do in case of an emergency).~~

~~(b) **Standard - interpretive communication listening/reading/Viewing.** Students will understand and interpret written and spoken language on a variety of topics.~~

~~(1) **Progress indicators.**~~

~~(A) Understand spoken language that incorporates familiar vocabulary and structures including high frequency idioms.~~

~~(B) Understand more detailed information in written advertisements, schedules, and menus.~~

~~(C) Comprehend the main idea and some supporting ideas of selected authentic materials including recordings, broadcasts, videos, and Internet resources.~~

~~(D) Comprehend the main idea and some supporting ideas of selected authentic written materials such as short stories, narratives, advertisements, and brochures on topics of personal interest.~~

~~(E) Respond to a series of commands.~~

~~(2) **Performance guidelines.**~~

~~(A) Understand longer, more complex conversations and narratives as well as recorded material in familiar contexts.~~

~~(B) Identify main ideas and some specific information on a limited number of predictable topics.~~

~~(C) Use background knowledge to comprehend simple stories and personal correspondence.~~

~~(D) Depend on the use of paraphrase and restatement in order to understand the message.~~

~~(E) Infer meaning of some unfamiliar words in order to understand the gist of an oral or written text.~~

~~(3) **Classroom examples.**~~

~~(A) Read and understand the directions for assembling a child's toy.~~

~~(B) Read and understand the general meaning of a movie review.~~

~~(C) Listen to and understand a native speaker describe a significant life event (e.g., obtaining his/her driving license, important sporting event, passing an exam, getting a job).~~

~~(D) Listen to and understand a sequence of directions about what to do during a tornado.~~

~~(c) **Standard - presentational communication - speaking and writing.** Students will present information, concepts, and ideas to an audience of listeners or readers on a variety of topics.~~

~~(1) **Progress indicators.**~~

~~(A) Describe in written or spoken format a short presentation on familiar topics (e.g., school, community, or personal experiences).~~

~~(B) Give directions to someone in order to complete a multistep task.~~

~~(C) Recount an event incorporating some description and detail.~~

~~(D) Write one page compositions and letters.~~

~~(E) Present student created and/or authentic short plays, stories, skits, poems and songs.~~

~~(2) **Performance guidelines.**~~

~~(A) Express their own thoughts, describe and narrate, using sentences and strings of sentences in oral and written presentations about familiar topics.~~

~~(B) Communicate oral and written information with sufficient accuracy that listeners and readers understand most of what is presented.~~

~~(C) Make occasional use of paraphrasing and can find another way to express and idea/term to avoid a breakdown in communication, and make efforts at self-correction.~~

~~(D) Supplement their basic vocabulary for both oral and written presentations with expressions acquired from other sources such as dictionaries.~~

~~(E) Continue to pause to search for words and shows some interference from the native language when attempting to present less familiar material.~~

~~(F) Use pronunciation and intonation patterns that can be understood by those accustomed to interacting with language learners.~~

~~(G) Formulate oral and written presentations primarily in present time but also, with preparation, in past and future time.~~

~~(3) **Classroom examples.**~~

~~(A) Give excuses or explanations for why you were late for class or why you did not do your work.~~

~~(B) Retell a familiar fairy tale or short story.~~

~~(C) Write a diary entry about an event that happened in the past, including background information and circumstances.~~

~~(d) **Standard - practices of culture.** Students will demonstrate an understanding of the relationship between the practices and perspectives of the culture studied.~~

~~(1) **Progress indicators.**~~

~~(A) Interact with respect using culturally appropriate patterns of behavior in everyday informal and social situations.~~

~~(B) Explain in simple terms the reasons for different traditions and customs of the target culture.~~

~~(C) Experience cultural and social activities common to a student of similar age in the target culture such as school life, sports, music and other entertainment.~~

~~(D) Identify and discuss perspectives typically associated with the target culture's business practices.~~

~~(E) Discuss some commonly held generalizations about the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Begin to use culturally appropriate vocabulary, idiomatic expressions, and nonverbal behaviors outside the memorized context.~~

~~(B) Express their own thoughts, describe and narrate, using sentences and strings of sentences in oral and written presentations about cultural practices.~~

~~(C) Demonstrate some cultural knowledge in oral and written presentations.~~

~~(D) Recognize the reflections of practices, products, and perspectives of the target culture in oral and written texts.~~

~~(E) Use knowledge of their own culture and that of the target culture to communicate more accurately about cultural practices.~~

~~(F) Supplement their basic vocabulary about cultural practices from other sources such as dictionaries.~~

~~(G) Use the student's native language when the investigation of cultural perspectives extends beyond the Intermediate Level Range.~~

~~(3) **Classroom examples.**~~

~~(A) Prepare messages on video or audio tape to be sent to peers in the target culture on topics of shared personal interest in their daily lives at home or at school.~~

~~(B) Teach the class how to play a game/sport of the target country.~~

~~(C) Prepare a presentation (written report, poem, dramatization) which describes ways in which the learner's views about the target culture have changed over time.~~

~~(D) View a video depicting a cultural celebration and write a short letter in the language describing it and explaining its origin.~~

~~(E) Using the Internet, research information about several common businesses in the target country and document such things as store hours, requirements for employment, and acceptable methods of payments.~~

~~(e) **Standard - products of culture.** Students will demonstrate an understanding of the relationship between the products and perspectives of the culture studied.~~

~~(1) **Progress indicators.**~~

~~(A) Explain the significance of objects, images, and symbols, and products of the target culture.~~

~~(B) Describe major contributions and historical figures from the target culture including contributions in science, mathematics, government, and fine arts.~~

~~(C) Identify the influence of the target culture on the products of the U.S.~~

~~(D) Explain the impact of the target country's geography on daily life in the target culture.~~

~~(E) Identify the target culture's basic perspectives in its art, literature, music, dance, etc.~~

~~(2) **Performance guidelines.**~~

~~(A) Express their own thoughts, describe and narrate, using sentences and strings of sentences in oral and written presentations about cultural products.~~

~~(B) Recognize the reflections of practices, products, and perspectives of the target culture in oral and written texts.~~

~~(C) Demonstrate some cultural knowledge about cultural products in oral and written presentations.~~

~~(D) Use the student's native language when the investigation of cultural perspectives extends beyond the intermediate proficiency range.~~

~~(3) **Classroom examples.**~~

~~(A) After reading about the lives of famous people of the target culture, the learner will summarize in writing and present orally information about one of the famous people.~~

~~(B) Create and explain a visual display which illustrates the influence of the target culture on the student's home culture.~~

~~(C) Develop a timeline which illustrates major contributions of the culture to the world community.~~

~~(D) Write a letter describing how to get to a specific place in the target culture, including means of transportation, directions, landmarks, and distance.~~

~~(E) Paint an animal of your choice in the style of an artist from the target country.~~

~~(F) Research and report on the symbolism found in the colors and symbols on the national flag of the target culture.~~

~~(f) **Standard – interdisciplinary studies.** Students will reinforce and further their knowledge of other content areas through the foreign language.~~

~~(1) **Progress indicators.**~~

~~(A) Transfer and apply information and skills from other content areas (the arts, health, social studies, sciences, mathematics, English, etc.) to the target language classroom.~~

~~(B) Apply the information gathered through target language resources in other content area classrooms (such as the arts, health, social studies, sciences, mathematics, English) in order to supplement learning.~~

~~(2) **Performance guidelines.**~~

~~(A) Use strings of sentences when communicating in oral or written contexts on familiar topics in selected content areas.~~

~~(B) Recombine learned vocabulary and structures to express their own thoughts within familiar contexts.~~

~~(C) Understand longer, more complex conversations and narratives as well as recorded material in familiar contexts about selected content areas.~~

~~(D) Identify main ideas and some specific information on a limited number of predictable topics in selected content areas.~~

~~(3) **Classroom examples.**~~

~~(A) Explore the measuring system used in the target culture.~~

~~(B) Present a dramatization of an historical event.~~

~~(C) Prepare, conduct, and record results of a science experiment in the target language.~~

~~(D) Use weather reports in newspapers to compare temperatures in Fahrenheit and Celsius.~~

~~(E) Explain the historical reason for the origin or the geographical names found in the United States that are derived from the target language.~~

~~(g) **Standard – distinctive Viewpoints.** Students will acquire information and recognize the distinctive viewpoints that are only available through the foreign language and its cultures.~~

~~(1) **Progress indicators.**~~

~~(A) Using authentic target language sources, (such as the Internet, books and magazines) acquire and apply information about the target culture.~~

~~(B) Use authentic sources to explore the distinctive perspectives of the foreign culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Understand longer, more complex oral and written information in familiar contexts.~~

~~(B) Identify main ideas and some specific information on a limited number of topics found in the target culture.~~

~~(C) Determine meaning by using contextual clues.~~

~~(D) Are helped by the use of redundancy, paraphrase, and restatement in order to understand the message.~~

~~(E) Use strings of sentences to describe distinctive viewpoints of the target culture.~~

~~(F) Use the student's native language only when the discussion of distinctive viewpoints extends beyond the Intermediate Level Range.~~

~~(3) **Classroom examples.**~~

~~(A) Using a Web site for a department store in the target culture, identify the popular product lines you might not find in the U.S.~~

~~(B) Apply the grammatical knowledge acquired in the foreign language to achieve a better understanding of English grammatical structures.~~

~~(C) Show how the works of artists in the target culture have influenced the arts in the home culture.~~

~~(h) **Standard – language comparisons.** Students demonstrate understanding of the nature of language through comparisons of the language studied with their own.~~

~~(1) **Progress indicators.**~~

~~(A) Explore the historical and cultural reasons for cognates and borrowed words.~~

~~(B) Use knowledge of sound and writing systems (including stress, intonation, punctuation, etc.) to communicate on topics of personal interest.~~

~~(C) Contrast identified structural patterns of the language studied (such as tense, gender, word order, agreement) to structural patterns in their own language.~~

~~(D) Use appropriate idiomatic expressions in limited settings.~~

~~(2) **Performance guidelines.**~~

~~(A) Understand general concepts about language comparisons.~~

~~(B) Express their own thoughts using sentences/strings of sentences when describing language structure comparisons.~~

~~(C) Rely on paraphrase and restatement in order to understand or communicate about language structure comparisons between cultures.~~

~~(3) **Classroom examples.**~~

~~(A) Compare the target language and English titles for movies originating in the U.S. to determine whether the title in the target language is a literal translation of the English title, or if the title in the target language is meant to be a representation of the movie content.~~

~~(B) Identify terms of respect and terms of affection used in the target language and compare them to terms used in English.~~

~~(C) Discuss the various command forms of the target language compared with only one command form of English.~~

~~(D) Discuss the idea of past tense in English and compare it to the past tense(s) of the target language.~~

~~(i) **Standard - culture comparisons.** Students demonstrate understanding of the concept of culture through comparisons of the cultures studied and their own.~~

~~(1) **Progress indicators.**~~

~~(A) Give simple descriptions of the similarities and differences in verbal and non-verbal behavior between cultures.~~

~~(B) Give basic descriptions of cross-cultural similarities and differences in the practices of the target culture.~~

~~(C) Give basic descriptions of cross-cultural similarities and differences in the products of the target culture.~~

~~(D) Give simple descriptions of cross-cultural similarities and differences in the perspectives of the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Express their own thoughts using sentences/strings of sentences when describing cultural comparisons between the culture studied and their own.~~

~~(B) Understand general concepts about cultural similarities and differences.~~

~~(C) Rely on paraphrase and restatement in order to understand or communicate about cross-cultural comparisons.~~

~~(3) **Classroom examples.**~~

~~(A) Listen to a song always associated with a particular celebration in the target culture and compare it to the song sung in the U.S. for the same celebration.~~

~~(B) Use Web sites, magazines, movies, and television programs to collect information about the favorite stars in the target culture. Compare them with the favorites in the U.S.~~

~~(C) Compare the symbols/landmarks of the American culture to those found in the target culture.~~

~~(j) **Standard - school and community.** Students will use the language both within and beyond the school setting.~~

~~(1) **Progress indicators.**~~

~~(A) Investigate and/or participate in activities where the ability to communicate in a second language is beneficial, such as local business visitations, exchange programs, and sister-city projects.~~

~~(B) Communicate with others who speak or have a working knowledge of the language about a variety of topics, such as sports, hobbies, or current events.~~

~~(C) Establish contact with a native speaker through Internet, e-mail, personal travel, etc.~~

~~(D) Take part in language-related activities to benefit their school and/or community such as tutoring, interpreting, or public performance.~~

~~(2) **Performance guidelines.**~~

~~(A) Express their own thoughts using sentences/strings of sentences on familiar topics.~~

~~(B) Demonstrate control of present time and some control of other time frames.~~

~~(C) Describe and narrate in oral and written presentations on familiar topics.~~

~~(D) Understand main ideas and some specific information on a limited number of topics.~~

~~(3) **Classroom examples.**~~

~~(A) Use the target language to communicate with speakers of the target culture while on community service projects/trips.~~

~~(B) Listen to personal accounts from people who speak more than one language.~~

~~(C) Keep a log of personal encounters with the target language in the school and community.~~

~~(D) Research topics of interest in magazines, newspapers or on the Web.~~

~~(k) **Standard - personal enrichment.** Students will show evidence of becoming lifelong learners by using the language for personal enjoyment and enrichment.~~

~~(1) **Progress indicators.**~~

~~(A) Exchange information with native speakers about topics of personal interest.~~

~~(B) Explore various target language resources to expand their knowledge of individual hobbies or interests.~~

~~(C) Research current issues of interest using various foreign language/culture sources.~~

~~(D) Demonstrate extracurricular use of target language media as a source of entertainment.~~

~~(2) **Performance guidelines.**~~

~~(A) Are understood by those very accustomed to interacting with language learners.~~

~~(B) Identify main ideas and some specific information on a limited number of topics found in the products of the target culture such as those presented on TV, radio, video, or live and computer-generated presentations, although comprehension may be uneven.~~

~~(C) Rely on the use of paraphrase and restatement in order to enhance comprehensibility in both oral and written presentations.~~

~~(D) Express their own thoughts, describe and narrate, using sentences and strings of sentences, in oral and written presentations on familiar topics.~~

~~(3) **Classroom examples.**~~

~~(A) Students will identify their "ideal home" and then use a Web site of homes for sale in the target culture to find a good match.~~

~~(B) View videos, television programs, and/or movies of interest in the target language.~~

~~(C) Invite/interact with classmates who are native speakers of the target language to school functions and interact with them in the target language.~~

~~(D) Attend a service or meeting conducted in the target language.~~

210:15-3-137. Pre-advanced level range [REVOKED]

~~(a) **Standard - interpersonal communication - speaking/writing.** Students will engage in conversations, and/or written correspondence in which they provide and obtain information, express feelings and emotions, and exchange opinions.~~

~~(1) **Progress indicators.**~~

~~(A) Initiate, sustain and conclude communication on a variety of topics.~~

~~(B) Ask and answer a variety of questions that require follow-up questions and responses for more information.~~

~~(C) Support personal preferences, feelings, opinions with more complete explanation.~~

~~(D) Persuade another person to do something.~~

~~(2) **Performance guidelines.**~~

~~(A) Use connected sentences and/or paragraphs when communicating on a variety of familiar topics, making use of transition words and phrases.~~

~~(B) Interact with others in more complicated or unfamiliar contexts using vocabulary from a variety of topics.~~

~~(C) Ask for clarification and suggest alternative words to ensure understanding.~~

~~(D) Be able to use rules of pronunciation to correctly pronounce new words.~~

~~(E) Use language more confidently and with fewer pauses.~~

~~(F) Be understood by native speakers unaccustomed to interacting with language learners.~~

~~(G) Demonstrate sustained control of basic structures in present time and partial control of more complex structures and time frames in the past and future.~~

~~(3) **Classroom examples.**~~

~~(A) In a panel discussion, discuss what constitutes a healthy diet and its impact on health.~~

~~(B) Introduce yourself to an incoming freshman and give him/her pointers on how to survive at your school.~~

~~(C) With three or four classmates debate the issue of whether family life is more or less important in today's world.~~

~~(b) **Standard - interpretative communication - listening/reading/Viewing.** Students will understand and interpret written and spoken language on a variety of topics.~~

~~(1) **Progress indicators.**~~

~~(A) Understand spoken language that incorporates more advanced vocabulary and structures, including idiomatic expressions.~~

~~(B) Understand more complex written materials in both concrete and abstract contexts.~~

~~(C) Comprehend the main ideas and supporting ideas of oral and written presentations, and selected authentic materials, including videos, radio and television broadcasts, and Internet resources.~~

~~(D) Analyze the main elements of authentic literary texts.~~

~~(E) Respond appropriately to compound directions, instructions, and commands.~~

~~(F) Research and synthesize information from a variety of sources.~~

~~(2) **Performance guidelines.**~~

~~(A) Demonstrate growing independence as a reader or listener and generally comprehend what they read and hear without relying solely on formally learned vocabulary.~~

~~(B) Understand main ideas and significant details on a variety of topics.~~

~~(C) Deduce meaning in unfamiliar language passages by classifying words or concepts according to word order or grammatical use.~~

~~(D) Apply rules of language to construct meaning from oral and written text.~~

~~(E) Move beyond literal comprehension toward more critical reading and listening.~~

~~(3) **Classroom examples.**~~

~~(A) Read and understand an article in popular magazines and be able to give a brief global summary and find specific facts.~~

~~(B) As the teacher describes the scene in a well-known painting, draw as you visualize it.~~

~~(C) Listen to and understand excerpts from a film/play and demonstrate comprehension of plot and character traits.~~

~~(c) **Standard - presentational communication - speaking/writing.** Students will present information, concepts, and ideas to an audience of listeners or readers on a variety of topics.~~

~~(1) **Progress indicators.**~~

~~(A) Describe in written or spoken format a presentation on a topic of personal interest.~~

~~(B) Give a series of directions to someone, coaching the person in order to complete the tasks.~~

~~(C) Recount an event with substantive description and detail.~~

~~(D) Write formal compositions and letters for a variety of purposes.~~

~~(E) Present student created works and excerpts of authentic literature.~~

~~(2) **Performance guidelines.**~~

~~(A) Report, narrate, and describe, using paragraph length and longer forms of discourse in oral and written presentations on topics of personal, school, and community interest.~~

~~(B) Demonstrate conscious efforts at correct formulation and self-correction by use of self-editing.~~

~~(C) Make use of simplification, reformulation, and circumlocution to enhance written and oral communication.~~

~~(D) Demonstrate control of an extensive vocabulary from a variety of topics.~~

~~(E) Use language with ease and with few pauses.~~

~~(F) Make use of a variety of resource materials and presentation methods to enhance communication.~~

~~(G) Possibly show some inaccuracies and interference from the native language when presentations deal with multiple time frames.~~

~~(3) **Classroom examples.**~~

~~(A) Narrate an accident that you have experienced or witnessed.~~

~~(B) Write and perform an original dialog based on two characters from a film or text.~~

~~(C) Write a complaint about a familiar topic (dress code, food in the cafeteria, choice of course offerings) and give suggestions for changes.~~

~~(D) Speculate about what life would be like elsewhere (on the moon, under the sea, in the target culture).~~

~~(E) Present yourself in a job interview, explain your qualifications, why you want the job, why you would be better than other applicants, etc. (This presentation may be videotaped.)~~

~~(d) **Standard - practices of culture.** Students will demonstrate an understanding of the relationship between the practices and perspectives of the culture(s) studied.~~

~~(1) **Progress indicators.**~~

~~(A) Interact according to the social and cultural requirements of most social and some formal contexts.~~

~~(B) Discuss inappropriately used verbal and nonverbal expressions and analyze the cultural implications.~~

~~(C) Participate in and analyze cultural events.~~

~~(D) Exhibit deeper knowledge of historical background of the target culture that explain their cultural practices.~~

~~(E) Analyze some commonly held generalizations about the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Use language increasingly reflective of authentic cultural practices and perspectives.~~

~~(B) Describe cultural practices by using connected narrative and descriptive sentences in present and other time frames.~~

~~(C) Use culturally appropriate vocabulary, idioms, and nonverbal behaviors in an authentic situation.~~

~~(D) Integrate culturally embedded words, phrases, and idioms in everyday communication.~~

~~(E) Communicate with a fairly high degree of facility when making oral and written presentations about well-researched topics of cultural practices.~~

~~(F) Apply understanding of cultural practices to enhance comprehension of oral and written texts.~~

~~(3) **Classroom examples.**~~

~~(A) Read a short passage about the origins of a custom or cultural celebration in the language and do a presentation on it using the language.~~

~~(B) Report on information gained from authentic texts (newspapers, magazines, letters, e-mail) on how people in the target culture view the role of the U.S. in world affairs.~~

~~(C) Write a report giving examples of how media and texts in the target language reflect patterns of behavior, beliefs, and attitudes.~~

~~(e) **Standard - products of culture.** Students will demonstrate an understanding of the relationship between the products and perspectives of the culture(s) studied.~~

~~(1) **Progress indicators.**~~

~~(A) Research the cultural significance of objects, images, and symbols of the target culture.~~

~~(B) Describe the target culture through its visual arts, architecture, literature, and music.~~

~~(C) Describe the role and significance of the contributions of the target culture in today's world.~~

~~(D) Research an environmental issue from the target country and use the language to tell/write of its impact on the target country.~~

~~(E) Identify some of the target language's literary masterpieces and authors and explore the cultural perspectives representative of their work.~~

~~(2) **Performance guidelines.**~~

~~(A) Describe cultural products by using connected narrative and descriptive sentences in present and other time frames.~~

~~(B) Integrate culturally embedded words, phrases, and idioms in everyday communication.~~

~~(C) Use language increasingly reflective of authentic cultural products and perspectives.~~

~~(D) Communicate with a fairly high degree of facility when making oral and written presentations about well-researched topics on cultural products~~

~~(3) **Classroom examples.**~~

~~(A) You are a tour guide in a tourist area of the target country. Give information about the sites to the group of tourists as the tour bus drives through the area.~~

~~(B) While participating in a conversation with peers and/or adults, exchange information/opinions about causes and consequences of an historical event in the target language country.~~

~~(C) After reading a literary text (short story, poem, novel, drama or viewing a film in the target language), participate in a panel presentation and share viewpoints/opinions about the text/film.~~

~~(D) Prepare a display and orally present information about commercial trade patterns between the home and target culture.~~

~~(f) **Standard - interdisciplinary studies.** Students will reinforce and further their knowledge of other content areas through the foreign language.~~

~~(1) **Progress indicators.**~~

~~(A) Interpret information and apply skills from other content areas (such as the arts, health, social studies, sciences, mathematics, English) to the target language classroom.~~

~~(B) Locate target language resources in order to analyze and synthesize information for use in other content areas (such as the arts, health, social studies, sciences, mathematics, English).~~

~~(2) **Performance guidelines.**~~

~~(A) Use connected sentences and/or paragraphs when communicating on a variety of familiar topics studied in selected content areas.~~

~~(B) Interact with others on information learned in other selected content areas.~~

~~(C) Understand main ideas and significant details on topics studied in selected content areas.~~

~~(D) Make use of a variety of resource materials and presentation methods to enhance communication.~~

~~(3) **Classroom examples.**~~

~~(A) Measure and record distances, weights, and capacities of a variety of objects using the measuring system of the target cultures.~~

~~(B) Make a display and orally present information about careers that require communicative competence in the target language.~~

~~(C) Research the importance of a major historical event in the target culture.~~

~~(D) Read newspaper accounts of the same event in English and the target language to compare the treatment of the event.~~

~~(E) Demonstrate understanding of maps, graphs, charts, and other visuals by responding to questions that require the learner to identify patterns, note trends, and draw conclusions.~~

~~(g) **Standard – distinctive Viewpoints.** Students will acquire information and recognize the distinctive viewpoints that are only available through the foreign language and its cultures.~~

~~(1) **Progress indicators.**~~

~~(A) Synthesize information about the target culture, using authentic sources.~~

~~(B) Use authentic sources to analyze the distinctive perspectives of the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Understand more complex written materials in both concrete and abstract contexts.~~

~~(B) Apply rules of language to construct meaning from oral and written text.~~

~~(C) Comprehend the main ideas and supporting ideas of oral and written presentations.~~

~~(D) Use connected sentences and/or paragraphs when communicating about distinctive viewpoints of the target culture.~~

~~(3) **Classroom examples.**~~

~~(A) Access the Internet to find information about AIDS in the target culture.~~

~~(B) Using authentic popular music, identify cultural perspectives associated with the target culture.~~

~~(C) Use information gained from authentic texts to develop a timeline which illustrates major contributions of the target culture to the world community.~~

~~(D) Research the interpretation of the same historical event from the home culture and the target cultures' points of view.~~

~~(h) **Standard – language comparisons.** Students demonstrate understanding of the nature of language through comparisons of the language studied with their own.~~

~~(1) **Progress indicators.**~~

~~(A) Have some insight into the origins of cognates and borrowed words and speculate about what changes might occur in the future.~~

~~(B) Apply knowledge of sound and writing systems in spontaneous communicative situations.~~

~~(C) Use knowledge of structural patterns of their own language and the target language for effective communication.~~

~~(D) Apply idiomatic expression in a variety of social contexts.~~

~~(2) **Performance guidelines.**~~

~~(A) Use connected sentences and/or paragraphs when communicating about basic language comparisons between cultures.~~

~~(B) Use more specialized and precise vocabulary when describing language structure comparisons.~~

~~(C) Use background knowledge to deduce meaning and to understand complex information about language structures.~~

~~(D) Be able to clarify details about language structures by asking questions.~~

~~(3) **Classroom examples.**~~

~~(A) Compare how people express apologies, condolences, praise, reprimands, requests, etc., in the target language and English.~~

~~(B) Analyze the differences among grammatical structures in English and the target language.~~

~~(C) Explore authentic materials to find new words adapted from English.~~

~~(D) Role play a shopping situation in a foreign market place using appropriate idiomatic expressions.~~

~~(i) **Standard – culture comparisons.** Students demonstrate understanding of the concept of culture through comparisons of the cultures studied and their own.~~

~~(1) **Progress indicators.**~~

~~(A) Apply appropriate verbal and nonverbal behavior between cultures.~~

~~(B) Analyze cross cultural similarities and differences in the practices of the culture studied.~~

~~(C) Analyze cross cultural similarities and differences in the products of the culture studied.~~

~~(D) Analyze and infer cross cultural similarities and differences in the perspectives of the culture studied.~~

~~(2) **Performance guidelines.**~~

~~(A) Use connected sentences and/or paragraphs when communicating about similarities and differences between the culture studied and their own.~~

~~(B) Use more specialized and precise vocabulary when describing cultural similarities and differences between cultures.~~

~~(C) Use background knowledge to deduce meaning and to understand complex information about cultural similarities and differences.~~

~~(D) Be able to clarify details about cultural differences by asking questions.~~

~~(3) **Classroom examples.**~~

~~(A) Study murals painted in both the USA and in the target culture and compare their artistic styles and political messages.~~

~~(B) Discuss the similarities and differences of folk legends in the target culture with those found in the student's own culture.~~

~~(C) Analyze the differences of the concept of life/death between the target culture and the student's own culture.~~

~~(D) Discuss the similarities and differences in the perspectives of time/money/work ethic between the two cultures.~~

~~(E) Explore how ceremonies such as weddings or funerals differ between the target culture and the student's own culture.~~

~~(j) **Standard - school and community.** Students will use the language both within and beyond the school setting.~~

~~(1) **Progress indicators.**~~

~~(A) Research the benefits of being able to communicate in more than one language.~~

~~(B) Interact appropriately in the target language in real-life situations.~~

~~(C) Maintain ongoing personal contact with a native speaker.~~

~~(D) Provide services such as tutoring, interpreting, and public performances within and beyond the school community using the target language.~~

~~(2) **Performance guidelines.**~~

~~(A) Narrate and describe using connected sentences and paragraphs in present and other time frames when interacting on topics of personal, school, and community interest.~~

~~(B) Communicate with a fairly high degree of facility when making oral and written presentations about familiar and well-researched topics.~~

~~(C) May encounter difficulty comprehending language dealing with abstract topics.~~

~~(D) Understand main ideas and significant details on a variety of topics, although comprehension may be uneven.~~

~~(3) **Classroom examples.**~~

~~(A) Using e-mail communication, survey students in the target culture concerning U.S. involvement in world affairs and then compile and analyze the data.~~

~~(B) Intern with someone from the business community who uses the target language at work.~~

~~(C) Volunteer to interpret for a community service, such as a clinic, that serves speakers of the target language.~~

~~(D) Interview bilingual professionals to find out how being bilingual has enhanced opportunities in their field.~~

~~(E) Prepare and conduct a survey among corporations and businesses to identify second language skills required of their employees.~~

~~(k) **Standard - personal enrichment.** Students will show evidence of becoming lifelong learners by using the language for personal enjoyment and enrichment.~~

~~(1) **Progress Indicators.**~~

~~(A) Initiate and sustain long-term associations with others proficient in the language.~~

~~(B) Use a variety of sources for entertainment or personal growth such as films, books, Internet, or social events.~~

~~(C) Critically discuss current issues of the target culture.~~

~~(D) Pursue personal interests in various aspects of the target culture.~~

~~(2) **Performance guidelines.**~~

~~(A) Are able to be understood by those with whom they interact, although there may still be a range of linguistic inaccuracies, and on occasion the communication partner may need to make a special effort to understand the message.~~

~~(B) Understand main ideas and significant details on a variety of topics found in the products of the target culture such as those presented on TV, radio, video, or live and computer generated presentations, although comprehension may be uneven.~~

~~(C) Occasionally do not comprehend but usually are able to clarify details by asking questions.~~

~~(D) Formulate paragraph length and longer oral and written presentations in present time, on topics of personal, school, community and global interest.~~

~~(E) May show some inaccuracies and/or interference from the native language when presentations deal with multiple time frames and/or other complex structures.~~

~~(3) **Classroom examples.**~~

~~(A) Participate in a study abroad program and/or host an exchange student from the target culture.~~

~~(B) Interact with an exchange student in the target language.~~

~~(C) Volunteer in the community where the target language can be utilized.~~

~~(D) Attend performances presented in the target language.~~

~~(E) Using electronic media, report on current events from the target culture.~~

~~(F) Using the target language, teach others the rules and strategies of a popular sport of the target culture.~~

[OAR Docket #16-451; filed 6-14-16]

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

[OAR Docket #16-452]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 27. Reading Sufficiency Act

210:15-27-1. Reading Sufficiency Plans and Summer Academy Reading Programs [AMENDED]

210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act [AMENDED]

210:15-27-3. Standards for mid-year promotion of retained third graders [AMENDED]
210:15-27-4. Program of reading instruction [NEW]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1210.508A et seq.; State Board of Education

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The Reading Sufficiency Act (RSA) rules must be updated to incorporate statutory changes made by Senate Bill 630 (2015). Proposed changes to the rules include the addition of State Board-approved screening instruments as a means of demonstrating reading competency following completion of a Summer Academy Reading Program, and clarification that only scores from the reading comprehension and vocabulary portions of the third grade criterion-reference test shall be used in promotion and retention decisions. An additional good cause exemption for promotion is added for students who have been granted a medical emergency exemption during the testing window when the student's class takes the third grade criterion-referenced test. A new rule, "Program of reading instruction", outlines the duties of Student Reading Proficiency Teams.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 27. READING SUFFICIENCY ACT

210:15-27-1. Reading Sufficiency Plans and Summer Academy Reading Programs

(a) Each public school district will develop a district reading sufficiency plan that includes a plan for each site. The district and site reading plans must be updated annually and electronically submitted to and approved by the Office of Instruction of the State Department of Education as part of the requirements for receiving accreditation, provided that electronic submission and approval of annual updates to the district plan shall not be required if:

(1) The last plan submitted by the school district was approved; and

(2) Expenditures for the district's reading program include only expenses relating to:

(A) Individual and small group tutoring;

(B) Purchase of and training in the use of screening and assessment measures;

(C) Summer school programs; or

(D) Saturday school programs.

(b) If any expenditure for the district's reading program is deleted or changed or if any other type of expenditure for the district's reading program is implemented, the school district shall be required to submit the latest annual update for approval. Notwithstanding the provisions of (a)(1) and (2) of this Section, if a district has one or more schools that are not achieving the annual improvement goals as outlined in the Reading Sufficiency Act, or if a district has one or more schools designated as a school in need of improvement, the district shall submit its district reading sufficiency plan for approval.

(c) Each school district and each school site shall submit to the State Department of Education the information to be used for the required Reading Sufficiency Act Annual Reading Report Card by the submission deadline to be determined by the Office of Instruction of the State Department of Education.

(d) Each school district will submit to the State Department of Education the number of students in kindergarten, first, second and third grades found to be in need of remediation in reading based on screening instruments approved by the State Board of Education by the submission deadline to be determined by the Office of Instruction of the State Department of Education.

(e) Pursuant to the Reading Sufficiency Act, each school district which has any schools that are not achieving the required annual reading goal set forth in 70 O.S. § 1210.508B shall submit to the State Department of Education its annual improvement goals necessary to progress from the baseline established September 1, 2005, to achieving the reading goal for all third-grade students set forth at 70 O.S. 1210.508B(D).~~.~~ These improvement goals shall be submitted to the State Board of Education by the submission deadline to be determined by the Office of Instruction of the State Department of Education.

(f) Contingent on the availability of appropriated funds designated for the Reading Sufficiency Act, the State Department of Education may allocate funds to public school districts in accordance with the provisions of 70 O.S. § 1210.508D.

(g) Reading sufficiency funds allocated pursuant to subsection (f) of this Section must be used for expenses relating to individual and small group tutoring, purchase of and and/or development of instructional training in the use of screening assessment measures, summer academy reading sufficiency plan programs, Saturday school programs, and any other reading program or professional development training contemplated as necessary by the districts to perform the goals of the Reading Sufficiency Act for students in the kindergarten, first, second, and third grades who have been identified by the elementary site as in need of a program of reading instruction.

~~(h) Each district will submit the number of eligible students who may participate in an approved summer academy reading~~

~~program based on results from an approved assessment as outlined in the Reading Sufficiency Act by the submission deadline to be determined by the Office of Instruction of the State Department of Education.~~

(~~i~~h) Summer academy reading programs for students shall be courses that:

(1) provide at least four (4) weeks of tutoring a half (1/2) day each day for four days;

(2) incorporate the content of a reading program that meets the criteria set forth in the Reading Sufficiency Act;

(3) are taught by teachers who have successfully completed a professional development institute or program in reading as prescribed by the statutory provisions of the Reading Sufficiency Act; and

(4) include only eligible students not reading at grade level based on results from an assessment approved by the State Board of Education.

(~~j~~i) School districts observing a continuous learning calendar may request to implement a summer academy reading program on an alternative schedule throughout the extended school year (e.g., during intersession breaks) by submitting a proposed alternative summer academy reading program schedule to the State Department of Education for approval prior to the deadline established by the Office of Instruction of the State Department of Education, provided that any proposed alternative schedule must meet the requirements set forth in (i) of this Section.

(~~k~~j) Superintendents of districts will sign and submit an assurance statement that their reading program(s) meet the requirements of the Reading Sufficiency Act prior to receipt of funding.

(~~l~~k) Upon completion of a Summer Academy Reading Program pursuant to 70 O.S. § 1210.508E, a student may demonstrate successful completion of the required competencies for reading necessary for promotion to fourth grade upon the student's completion of either:

(1) A student portfolio in accordance with the criteria set forth in 210:15-27-2(b)(4); or

(2) An acceptable level of performance on an alternative reading assessment in accordance with the criteria set forth in 210:15-27-2(b)(3)(A)~~.~~; or

(3) An acceptable level of performance on one of the screening instruments approved by the State Board of Education.

210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act

(a) Beginning with the 2013-2014 school year, students who score at the Unsatisfactory level on the Reading portion of the third grade criterion-referenced test(s) may only be promoted to fourth grade if the student qualifies for a good cause exemption pursuant to 70 O.S. § 1210.508C. Only the scores from the reading comprehension and vocabulary portions of the third grade criterion-referenced test shall be used to determine the promotion and retention of third grade students pursuant to the Reading Sufficiency Act.

(b) Good cause exemptions shall be limited to the ~~six (6)~~seven (7) statutory exemptions outlined in 70 O.S. § 1210.508C (K) as follows:

(1) Students with limited English proficiency may be granted a good cause exemption for promotion to the fourth grade pursuant to 70 O.S. § 1210.508C(K)(1). To qualify for this exemption, the student must:

(A) Be identified as Limited-English Proficient (LEP)/English Language Learner (ELL) on a screening tool approved by the Oklahoma State Department of Education Office of Bilingual/Migrant Education and have a Language Instruction Educational Plan (LIEP) in place prior to the administration of the third grade criterion referenced test; and

(B) The student must have had less than two (2) years of instruction in an English Language Learner (ELL) program that meets the definition of a "language instruction educational program" set forth in 20 U.S.C. §7011.

(2) Students with disabilities who are assessed with alternate achievement standards (AA-AAS) under the Oklahoma School Testing Program (OSTP) with the Oklahoma Alternative Assessment Program (OAAP) qualify for the good cause exemption pursuant to 70 O.S. § 1210.508C(K)(2). To qualify for this exemption, the student must meet all of the following criteria:

(A) The student must be identified as needing special education services prior to the administration of the third grade criterion referenced test;

(B) The student must have an Individualized Education Program (IEP) in place prior to the administration of the third grade criterion referenced test; and

(C) The student's IEP must direct that the student is to be assessed with alternate achievement standards through the Oklahoma Alternative Assessment Program (OAAP) based upon the OSDE Criteria Checklist for Assessing Students with Disabilities on State Assessments.

(3) Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment may be granted a good cause exemption for promotion to the fourth grade pursuant to 70 O.S. § 1210.508C(K)(3). To promote a student using an alternative standardized reading assessment, the following criteria shall apply:

(A) The student must score an acceptable level of performance on an approved alternative standardized reading assessment. The following are approved alternative standardized reading assessments that may be used to justify a good cause promotion pursuant to 70 O.S. § 1210.508C(K)(3). The listed score constitutes an acceptable level of performance, and the student must score at or above the following percentiles:

(i) Stanford Achievement Test, Tenth Edition, (SAT 10) - 45th Percentile

(ii) Iowa Test of Basic Skills (ITBS) Complete Battery Form A, C or E, Level 9, Reading Comprehension - 45th Percentile

(iii) Iowa Test of Basic Skills (ITBS) Core Battery, Form A, C, or E, Level 9, Reading Comprehension - 45th Percentile

(iv) TerraNova, Third Edition Complete Battery Level 13, Reading - 45th Percentile

(B) Alternative standardized reading assessments may only be administered following the administration of the Reading portion of the third grade criterion-referenced test(s). The spring test form of the exam shall be administered.

(C) An approved alternative standardized reading assessment may be administered at any time prior to the start of the next academic year, if there are at least twenty (20) calendar days between administrations and different test forms are administered.

(4) Students who can demonstrate evidence through a student portfolio that the student has mastered state standards beyond the retention level and that the student is reading on grade level or higher may be granted a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(4). To promote a student through the use of a student portfolio, the following criteria shall apply:

(A) The student portfolio shall include evidence demonstrating the student's mastery of the Oklahoma state standards in reading equal to grade level performance on the ~~Reading portion~~reading comprehension and vocabulary portions of the statewide third grade criterion-referenced test(s). Such evidence shall be documented through an organized collection of work representing the student's mastery of such standards, including a demonstration of mastery of all of the following essential components of reading:

(i) ~~Phonological~~Phonemic awareness;

(ii) Phonics (i.e., The student demonstrates awareness of letter-sound correspondence for consonants, vowels, and consonant diagraphs, syllable types, and two to three syllable words);

~~(iii) Vocabulary (i.e., The student demonstrates ability to determine the meaning of general academic-specific and domain-specific words and phrases in a text relevant to a grade three topic or subject area);~~

(~~iv~~iii) ~~Automaticity/Fluency~~Reading fluency (i.e., The student demonstrates timed letter and word identification, sight words, modeled paragraph reading);

(iv) Vocabulary (i.e., The student demonstrates ability to determine the meaning of general academic-specific and domain-specific words and phrases in a text relevant to a grade three topic or subject area); and

(v) Comprehension (i.e., The student demonstrates ability to read and comprehend informational text independently and proficiently)~~; and~~.

~~(vi) Spelling/Writing (i.e., The student demonstrates proficiency in spelling and writing through spelling tests and writing samples).~~

(B) The student portfolio shall include clear evidence that the standards assessed by the ~~Reading portion~~ reading comprehension and vocabulary portions of the statewide third grade criterion-referenced test(s) have been met. Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:

(i) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or

(ii) Teacher-prepared assessments.

(C) Each standard and objective assessed by the ~~Reading portion~~reading comprehension and vocabulary portions of the third grade criterion-referenced test(s) must include a minimum of four (4) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required.

(D) The student portfolio shall include copies of the screening assessments and benchmark/progress monitoring assessments administered pursuant to 70 O.S. 1210.508C(B) and (C), as well as a copy of the student's Academic Progress Plan.

(E) The student portfolio shall be signed by the certified classroom teacher responsible for the student's Reading instruction and the principal of the school, attesting that:

(i) The portfolio is an accurate assessment of the student's reading achievement level;

(ii) The portfolio includes only work that has been independently produced by the student in the third grade, including programs of reading instruction provided after regular school hours, on Saturdays, and during the summer following the student's third grade year; and

(iii) The student possesses required reading skills to be promoted to fourth grade.

(5) Students with disabilities who participate in the statewide criterion-referenced test and have an IEP may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(5). To qualify for this exemption, the student must meet the following criteria:

(A) The student must have been previously retained in pre-kindergarten for academic reasons, kindergarten, first grade, second grade, or third grade; and

(B) The student's IEP must:

(i) Identify Reading as an area of education need for the student or identify some type of special education service in the area of Reading; and

(ii) Reflect that the student has received intensive remediation for more than two (2) years. Intensive remediation may include any type of

program offering intensive reading instruction that is identified as appropriate by the IEP team.

(6) Students who demonstrate a reading deficiency and have been previously retained may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(6). To qualify for this exemption, the student must meet the following criteria:

(A) The student must have been previously retained in pre-kindergarten for academic reasons, kindergarten, first grade, second grade, or third grade for a total of two (2) years; and

(B) The student must have received intensive reading instruction for two (2) or more years.

(7) Students who have been granted an exemption for medical emergencies by the State Department of Education may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(7). To qualify for this exemption, the student must have been granted a medical emergency exemption pursuant to 70 O.S. § 1210.508-2 and 210:10-13-23, applicable to the testing window during which the reading comprehension and vocabulary portions of the third grade criterion reference test were administered to the student's class.

(c) Each student completion of a transitional grade between kindergarten and third grade shall be considered a previous retention for purposes of 70 O.S. § 1210.508C(K). A transitional grade consists of subject area curriculum selected from two consecutive grade levels to provide differentiated instruction needed for a student to master appropriate skills required for promotion.

(d) Documentation shall be maintained in the student record of any student promoted on the basis of a good cause exemption listed in 70 O.S. § 1210.508C(K). Documentation shall include the student's criterion-referenced test score and any documentation relied upon to grant a good cause exemption or exemption pursuant to (b) of this Section.

(e) Any student promoted on the basis of a good cause exemption listed in 70 O.S. 1210.508C(K) should continue to receive intensive reading instruction and intensive instructional services and supports through the continued implementation of an Academic Progress Plan (APP) to remedy the reading deficiency.

(f) Each student's APP required under this section shall be documented on a form approved by the Office of Instruction of the State Department of Education, and shall include, but not be limited to, the following information:

(1) Identification of assessments used for diagnostic purposes and periodic progress monitoring;

(2) The results of the assessment(s) used to identify the reading deficiency;

(3) A list of the developmental reading skill areas targeted for improvement (i.e., ~~comprehension, phonics, phonological~~phonemic awareness, ~~spelling,~~phonics, reading fluency, ~~or~~ vocabulary, or comprehension);

(4) A description of the supplemental and/or remedial services and supports provided to the student in accordance with the provisions of 70 O.S. § 1210.508C(N)(2);

(5) A description of parental involvement strategies; and

(6) Identification of any collaborative services provided to the child in order to facilitate the APP (i.e., Title I, IDEA, ELL/Title III).

~~(g) For purposes of the Reading Sufficiency Act, a "program of reading instruction" shall be based upon a three-tiered Response to Intervention ("RtI") model, and shall include:~~

~~(1) For students identified for Tier I intervention, a minimum of ninety (90) minutes of uninterrupted daily scientific research-based reading instruction;~~

~~(2) For students identified for Tier II intervention, at least thirty (30) to forty-five (45) minutes of additional uninterrupted daily scientific research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I; and~~

~~(3) For students identified for Tier III intervention, at least forty-five (45) to sixty (60) minutes of additional uninterrupted daily scientific research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I.~~

210:15-27-3. Standards for mid-year promotion of retained third graders

(a) District school boards of education shall adopt and implement a policy for the mid-year promotion of any student retained in third grade due to a reading deficiency as required by 70 O.S. § 1210.508C. Such mid-year promotions of retained third grade students must occur during the first semester of the academic year, and must occur prior to November 1 of that academic year.

(b) To be eligible for mid-year promotion, a student must demonstrate by reasonable expectation that he or she:

(1) Is a successful and independent reader as demonstrated by reading at or above grade level;

(2) Has progressed sufficiently to master appropriate fourth grade reading skills; and

(3) Has met any additional requirements, such as satisfactory achievement in other curriculum areas, as determined by the policies of the district school board.

(c) Standards that provide a reasonable expectation that the student has met the requirements of (b) of this Section include demonstrating a level of proficiency required to score above the Unsatisfactory level on the Grade 3 criterion referenced test(s) and mastery of reading skills, consistent with the month of promotion to fourth grade, as presented in the scope and sequence of the school district's core reading program. Evidence of demonstrated mastery shall be shown by the following:

(1) Successful completion of portfolio elements that meet state criteria in (d) of this Section; or

(2) Satisfactory performance on a subsequent alternative standardized assessment as specified in (e) of this Section.

(d) To promote a student mid-year using a student portfolio as provided for in (c)(1) of this Section, there must be evidence of the student demonstrating a level of proficiency required to score above the Unsatisfactory level on the Oklahoma state

standards as assessed by the ~~Reading portion~~reading comprehension and vocabulary portions of the Grade 3 criterion-referenced test(s), and mastery of the Oklahoma state standards as assessed by the ~~Reading portion~~reading comprehension and vocabulary portions of the Grade 4 criterion-referenced test(s), as specified in (b) of this Section. The student portfolio must meet the following requirements:

(1) Consist only of work selected by the certified classroom teacher responsible for the student's Reading instruction;

(2) Be an accurate representation of the student's reading achievement level, and only include work that has been independently produced by the student in the classroom of the certified classroom teacher responsible for the student's Reading instruction;

(3) Include evidence demonstrating a level of proficiency required to score above the Unsatisfactory level on the standards assessed by the ~~Reading portion~~reading comprehension and vocabulary portions of the Grade 3 criterion-referenced test(s) by meeting all requirements set forth in 210:15-27-2(b)(4);

(4) Include evidence of beginning mastery of fourth grade state standards that are assessed by the Grade 4 ~~Reading portion~~reading comprehension and vocabulary portions of the criterion-referenced test(s). Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:

(A) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or

(B) Teacher-prepared assessments;

(5) Each standard and objective assessed by the Grade 4 ~~Reading portion~~reading comprehension and vocabulary portions of the criterion-referenced test(s) must include a minimum of three (3) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required; and

(6) Be signed by the certified classroom teacher responsible for the student's reading instruction and the principal of the school, both attesting that the portfolio is an accurate assessment of the student's ability and that the student possesses the required reading skills to be promoted to fourth grade.

(e) To promote a student mid-year using an alternative standardized assessment as provided for in (c)(2) of this Section, there must be evidence that the student scored at or above grade level on the reading portion of an alternative standardized reading assessment listed in OAC 210:15-27-2(b)(3)(A), as demonstrated by standard scores or percentiles consistent with the month of promotion to the fourth grade. Alternative assessments administered for the purpose of determining a student's eligibility for mid-year promotion must also comply with the requirements of 210:15-27-2(b)(3)(B)-(C) and the school district's policy for mid-year promotion, provided that alternative assessments administered for this purpose may be administered until November 1 of the school year.

(f) The Academic Progress Plan (APP) for any retained third grade student who has been promoted mid-year to fourth grade must continue to be implemented for the entire academic year.

(g) A mid-year promotion shall only occur upon agreement of the parent or legal guardian of the student, and the principal of the school. Such decision should be made in consultation with the student's third and fourth grade teachers.

210:15-27-4. Program of reading instruction

(a) **Eligible students.** Each student enrolled in kindergarten, first, second, and third grade in the public schools of Oklahoma shall be assessed at the beginning and end of each school year using a screening instrument approved by the State Board of Education. Any student found not to be reading at grade level shall be provided a program of reading instruction designed to enable the student to acquire the appropriate grade level reading skills. Diagnostic assessment shall be provided if determined appropriate, and progress monitoring shall continue throughout the year.

(b) **Student Reading Proficiency Team.** For students found not to be reading at the corresponding grade level upon completion of an approved screening instrument, a Student Reading Proficiency Team shall be created. The following guidelines apply to Student Reading Proficiency Teams:

(1) For a student not reading at the corresponding grade level in first grade or second grade as identified by an approved screening instrument, the Student Reading Proficiency Team shall develop an individualized program of reading instruction. The team shall be composed of:

(A) The student's parent(s) or guardian(s);

(B) The teacher assigned responsibility for the student's reading instruction in that academic year;

(C) A teacher assigned responsibility for reading instruction in the student's next grade level; and

(D) A certified reading specialist, if available.

(2) For a third grade student who is not eligible for automatic promotion and who scores at the unsatisfactory or limited knowledge levels on the reading portion of the third-grade statewide criterion-referenced test, a Probationary Promotion Reading Proficiency Team may evaluate the student for probationary promotion. Upon the unanimous recommendation of the Probationary Promotion Reading Proficiency Team and approval of the school principal and district superintendent, a student recommended for probationary promotion shall be promoted to fourth grade. The Probationary Promotion Reading Proficiency Team shall be composed of:

(A) The student's parent(s) or guardian(s);

(B) The teacher assigned responsibility for the student's reading instruction in that academic year;

(C) A teacher assigned responsibility for reading instruction in the student's next grade level; and

(D) A certified reading specialist.

(c) **Program requirements.** Each program of reading instruction shall include provisions of the READ Initiative adopted by the school district as provided for in 70 O.S. §

1210.508C. For purposes of the Reading Sufficiency Act, a "program of reading instruction" shall be based upon a three-tiered Response to Intervention ("RtI") model, and shall include:

(1) For students identified for Tier I intervention, a minimum of ninety (90) minutes of uninterrupted daily scientific-research-based reading instruction;

(2) For students identified for Tier II intervention, at least an amount of uninterrupted scientific-research-based reading instructional time that is:

(A) Based on specific student needs;

(B) Reflects the needed intensity and/or frequency as identified on a screening tool, diagnostic assessment, and/or progress monitoring instrument; and

(C) Is determined by the classroom teacher, reading specialist (if available), and building principal.

(3) For students identified for Tier III intervention, at least forty-five (45) to sixty (60) minutes of additional uninterrupted daily scientific-research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I.

(d) **District review of program.** Each district shall conduct a review of the program of reading instruction for all students who score below the proficient level on the reading comprehension and vocabulary portions of the third grade statewide criterion-referenced tests and do not qualify for a good-cause exemption under 70 O.S. § 1210.508C(K). For each student retained under the provisions of the Reading Sufficiency Act, the school district shall require a student portfolio to be completed. The district review of each retained student's program of reading instruction shall address additional supports and services needed to remediate the identified areas of reading deficiency, which may include but not limited to:

(1) Small group instruction;

(2) Reduced teacher-student ratios;

(3) More frequent progress monitoring;

(4) Tutoring or mentoring;

(5) Transition classes containing third and fourth grade students;

(6) Extended school day, week, or year; and

(7) Summer reading academies as provided for in 70 O.S. § 1210.508E, if available.

(e) **Transition to ACE remediation for students approved for probationary promotion.** For a student who is approved for probationary promotion, the Probationary Promotion Reading Proficiency Team shall continue to review the student's reading performance and repeat the evaluation and recommendation process described in 1210.508C(H)(4) each academic year until the student demonstrates grade-level proficiency on an approved screening instrument or transitions to remediation provided under the Achieving Classroom Excellence Act (ACE).

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

[OAR Docket #16-453]

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PERMANENT final adoption
RULES:
Subchapter 37. Workplace Safety Training in Schools [NEW]
210:15-37-1. Workplace Safety Training in Schools [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 11-103.6j; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2016
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
A new rule encouraging school districts to incorporate workplace safety training for students in 7th through 12th grade is being established pursuant to statute. Senate Bill 262 (2015) directs the Oklahoma State Department of Education (OSDE) to make available to school districts workplace safety information that has been developed by the Department of Labor, and the rule announces that this curriculum is available on the OSDE website. This rule does not impose an obligation on school districts.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 37. WORKPLACE SAFETY TRAINING IN SCHOOLS

210:15-37-1. Workplace safety training in schools

School districts are encouraged to inform teachers of students in grades seven (7) through twelve (12) about the importance of incorporating workplace safety training in their curriculum. The Oklahoma Department of Labor has prepared a

free "Youth @ Work Talking Safety" curriculum for this purpose, available through the Oklahoma State Department of Education website.

[OAR Docket #16-453; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-455]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 1. General Teaching Certification Requirements
210:20-9-10.2. Teacher Competency Review Panel; recommendation for certification; fee assessment [REVOKED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-202; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 27, 2015
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Approved by Governor's Declaration on June 9, 2016
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June 9, 2016
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August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This rule has been revoked because the authorizing statute was repealed. The Teacher Competency Review Panel that was described by 70 O.S. § 6-202 is no longer in place, so the accompanying regulations must be revoked.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 1. GENERAL TEACHING CERTIFICATE REQUIREMENTS

210:20-9-10.2. Teacher Competency Review Panel; recommendation for certification; fee assessment [REVOKED]

~~A fee of $100 shall be assessed to all candidates seeking certification to teach through recommendation of the Teacher Competency Review Panel pursuant to 70. O.S. §6-202 said fee to be utilized to fund the functions of the Teacher Competency Review Panel.~~

[OAR Docket #16-455; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-454]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 1. General Teaching Certificate Requirements
210:20-9-9. Kinds, types, classes, and processing fees of certificates [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule that lists classes of teacher and administrator certificates had contained outdated references to a specific "license" category for first-year teachers, a certification status that no longer exists. The amendments strike references to this obsolete category.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 1. GENERAL TEACHING CERTIFICATE REQUIREMENTS

210:20-9-9. Kinds, types, classes, and processing fees of certificates

(a) **Kinds of certificates.** The specific use of each kind of certificate, in terms of the nature of services which the holder is permitted to render, is regulated by rules of the State Board of Education. The kinds of certificates available are:

(1) Administrative certificate

(A) Elementary principal (Grades Pre-Kindergarten (Pre-K) through eight (8))

(B) Middle level principal (Grades five (5) through nine (9) (optional))

(C) Secondary principal (Grades five (5) through twelve (12))

(D) Superintendent (Grades Pre-Kindergarten (Pre-K) through twelve (12))

(2) Early childhood education certificate (Grades Pre-Kindergarten (Pre-K) through three (3))

(3) Elementary school certificate (Grades one (1) through eight (8))

(4) Middle level certificate (Grades five (5) through eight (8) (optional))

(5) Pre-Kindergarten - secondary certificate (Grades Pre-Kindergarten (Pre-K) through twelve (12))

(6) Secondary school certificate (Grades five (5) through twelve (12))

(7) Other certified personnel certificate (Grades Pre-Kindergarten (Pre-K) through twelve (12))

(8) Career technology certificate (Grades five (5) through twelve (12))

(b) **Types of certificates.** The endorsement indicates the type of license/certificate issued.

(c) **Classes of certificates.** The class determines the term of validity. The classes of certificates are:

~~(1) License issued to beginning teachers with zero years of experience for a period of one (1) year validity~~

(~~2~~1) Standard certificate - valid for five (5) years and renewal upon compliance with prescribed conditions

(~~3~~2) Provisional certificate - term of validity varies depending upon regulatory basis for issuance

(d) **Processing fees of certificates.**

(1) Certificate $50.00

(2) Renewals $50.00

~~(3) License $50.00~~

(~~4~~3) Alternative Placement Application/Evaluation $50.00

(~~5~~4) All other transactions will be $50 or less

[OAR Docket #16-454; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-456]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-91. Application for new ~~licenses/~~certificates [AMENDED]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-190; State Board of Education

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's Declaration on June 9, 2016

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June 9, 2016

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August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The rule governing the issuance of new teaching certificates is being amended to incorporate statutory changes. Senate Bill 20 (2015) directs the State Board of Education to issue teaching certificates to persons who hold valid teaching certifications from other states. The certificate issued to an out-of-state applicant will only be for those subject areas and grade levels most closely aligned to the subject areas and grade levels recognized on the out-of-state certificate. An out-of-state teacher with at least five (5) years of teaching experience will not be required to take any competency examinations, and an out-of-state teacher with fewer than five (5) years of experience will have to pass the same subject area competency examinations that are required for in-state applicants for a new certificate.

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-91. Application for new ~~licenses/~~certificates

The application processes for individuals seeking new ~~licenses/~~certificates are described separately for individuals completing requirements at an in-state college or an out-of-state college.

(1) **Graduates of Oklahoma colleges and universities.** The application process for graduates of Oklahoma colleges and universities is as follows:

(A) The completed application may be submitted to the director of teacher education at the recommending college or sent directly to the State Department of Education along with an official up-to-date transcript(s) and the appropriate processing fee. See 210:20-9-9 (d)

(B) The signature of the director of teacher education verifies that the applicant has met the requirements of the institution's approved teacher education program for the license/certificate sought and that the applicant possesses the character and general fitness to be a teacher. Application approval by the State Department of Education verifies that the applicant has met an approved program.

(i) Vocational ~~license/~~certificate applicants: The director of teacher education at the recommending institution or the applicant will forward the application to the appropriate state supervisor at the ~~State~~Oklahoma Department of ~~Vocational-Technical Education~~Career and Technology Education. After approving the application the state supervisor will send it, along with supporting documents, to the State Department of Education.

(ii) Nonvocational ~~license/~~certificate applicants: The director of teacher education at the recommending institution ~~may~~shall forward the approved application, along with supporting documents, to the State Department of Education.

(2) **Graduates of out-of-state colleges and universities.** The application process for graduates of out-of-state colleges and universities is as follows:

(A) The applicant will submit the following items to the State Department of Education as part of the application process:

(i) the completed application form

(ii) official up-to-date transcripts of all college course work

(iii) ~~a copy of a valid out-of-state teaching certificate in the area sought~~documentation the applicant has completed an accredited teacher preparation program

~~(iv) verification of out-of-state teaching experience~~

(iv) the appropriate processing fee for each class of certificate sought. See 210:20-9-9 (d)

(B) For vocational ~~license/~~certificate applications, the applicant will submit all items in (2) (A) of this section directly to the State Department of Education.

~~(C) All teachers certified out-of-state after submitting requested items in (2) (A) of this section as well as out-of-state applicants who have held a certificate and hold a master's degree and have accumulated an additional 15 or more semester hours in a teaching field may obtain certification through one of the following options:~~

~~(i) Option I - have a current certificate issued by the National Board for Professional Teaching Standards.~~

~~(ii) Option II - receive a two-year certificate allowing the applicant to meet requirements I and II for Standard Certification:~~

~~(I) Meet the following requirements: successfully complete the residency program as a licensed teacher, if applicable; and successfully complete one year of employment in an Oklahoma accredited school or, if not subject to the Residency program, employment may be in an accredited college or university. An administrator will provide supervision and a teacher or appropriate colleague will provide assistance as needed. Ultimately, certification is contingent on the district or college/university level evaluation of the candidate.~~

~~(II) Meet requirements of section (a) of 210:20-9-10.1, ". . . shall pass the applicable state competency examination(s)."~~

(3) **Applicants who are certified out-of-state.** The following provisions apply to applicants for Oklahoma teaching certificates who already hold certificates issued by another state:

(A) The State Board of Education shall issue a certificate to an applicant who submits a valid out-of-state teaching certificate, and has on file with the State Department of Education a current Oklahoma criminal history record check from the Oklahoma State Bureau of Investigation and a national criminal history record check as defined in 74 O.S. § 150.9. The applicant shall be responsible for the costs of the criminal history record checks. The Oklahoma certificate shall be valid only for the subject areas and grade levels most closely aligned to those recognized on the applicant's out-of-state certificate.

(B) An applicant who submits documentation of five (5) years or more of successful teaching experience as a certified teacher in an accredited school shall not be required to take any competency examinations in the subject areas and grade levels most closely aligned to those recognized on the applicant's out-of-state certificate. An applicant with fewer than five (5) years of successful teaching experience as a certified teacher in an accredited school must attain a passing score on the Oklahoma Subject Area Test (OSAT) for each area in which certification is sought.

[OAR Docket #16-456; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-457]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-94. Period of validity of certificates [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments remove language that referred to a certification category which is no longer in use, a former one year license for first-year teachers. A provision is also added to the subsection on emergency certification. The amendment to the emergency certification subsection provides that the one (1) year validity period of an emergency teaching certificate may be extended for one (1) additional year at the request of the superintendent of the employing district.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-94. Period of validity of certificates

(a) Standard certificates normally have a validity period of five (5) years. The standard certificate will expire five (5) years from the nearest thirtieth day of June either preceding or following the effective date of the certificate.

~~(b) A license normally has a validity period of one (1) school year. The license will expire the thirtieth day of June of the school year for which it was issued.~~

(~~c~~b) Provisional certificates, vocational and/or nonvocational, will have a validity period established by the State Department of Education.

(~~d~~c) Emergency certificates normally have a validity period of one (1) school year. The certificate will expire the thirtieth day of June of the school year for which it was issued. The validity period for an emergency certificate may be extended for one (1) additional school year at the request of the superintendent of the employing district, subject to the approval of the State Board of Education. The maximum validity period for an emergency certificate extended by State Board approval will be two (2) years.

[OAR Docket #16-457; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-458]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-95. Effective date of teaching certificates ~~and licenses~~ [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's Declaration on June 9, 2016
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Superseded rules:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-95. Effective date of teaching certificates and licenses [AMENDED]
Gubernatorial approval:
September 14, 2015
Register publication:
33 Ok Reg 63

Docket number:
15-804
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Senate Bill 29 (2015) established new effective dates for renewed teaching certificates, which required an emergency amendment to update this rule accordingly. The permanent version also aligns the effective dates of newly issued teaching certificates with the dates established for renewed certificates under SB 29. Under these amendments, the certificate of an applicant who completes all requirements for certification and submits an application and supporting documentation between May 1 and December 31 will have an effective date of July 1. The certificate of an applicant who submits the required documentation between January 1 and April 30 will be dated the first day of the month in which the application and documents are received.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-95. Effective date of teaching certificates ~~and licenses~~

(a) **New ~~licenses/~~certificates.** A ~~license/~~certificate issued to an applicant who completes all requirements and applies for the ~~license/~~certificate between May 1 and ~~September 1~~December 31 will be dated and become effective July 1 of the year the application and all supporting documentation are received, provided that an applicant may be employed for a maximum of sixty (60) days pending receipt of results of a national criminal history record check pursuant to 70 O.S. § 5-142. A ~~license/~~certificate issued to an applicant who completes all requirements and applies for the ~~license/~~certificate between ~~September~~January 1 and ~~May 1~~April 30 will be dated and become effective the first day of the month in which the application and all supporting documents are received by the State Board of Education.

(b) **Renewal of standard certificates and licenses.** Renewed standard certificates ~~and licenses~~ will become effective July 1 following receipt of the application provided the application is made prior to the expiration of the certificate~~/license. If the application for renewal is made after the certificate/license has expired, the renewed certificate/license will be dated the first day of the month in which the application and all supporting documents are received.~~ If a certificate has expired and a renewal application is submitted by December 31 of the year in which the certificate expired, the certificate shall be renewed with an effective date of July 1 of the year in which it expired. If a certificate has expired and a renewal application is submitted after December 31 of the year in which the certificate expired, the renewed certificate will be dated the first day of the month in which the application and all supporting documents are received. In the event an educator's certificate~~/license~~ cannot be renewed due to failure to comply with Oklahoma's tax laws, the renewed certificate~~/license~~ will be dated the date the State Department of Education receives notice from the Tax Commission that the educator has come into compliance.

[OAR Docket #16-458; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-459]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-96. Requirements for renewal or reissuance of certificates [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule that lists requirements for the renewal of teaching certificates contains outdated references to a specific "license" category for first-year teachers, a certification status no longer in use. The proposed amendments strike references to this obsolete category, and also to a "Professional certificate" category that has also been discontinued.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-96. Requirements for renewal or reissuance of certificates

(a) **Standard certificate.**

(1) To renew a standard certificate a teacher must submit the appropriate application, pay the appropriate processing fee specified in subsection 210:20-9-9 (d) and complete one of the following options:

(A) Option I--the applicant shall have completed a minimum of three (3) years of school experience in an accredited school during the five (5) year validity of the standard certificate. Applicants who have completed fewer than three (3) years of school experience may substitute coursework in professional education and/or specialization from an accredited college or university for each year of experience they are lacking at the following rate: with two (2) years of experience, complete three (3) semester hours; with one (1) year of experience, complete four (4) semester hours; or with zero (0) years of experience, complete five (5) semester hours. College credit must be completed within the five (5) year period immediately preceding the date of application for renewal. Teachers who teach one-half day in an accredited school each school year for the five (5) year validity period of their certificate may renew a standard certificate. The following provisions apply if the certificate has been expired more than five (5) years: If the certificate has been expired for more than five years and the teacher was certified in and teaching in another state and has three years of experience within the five year period immediately preceding the date of application for renewal the experience will apply toward renewal.

(B) Option II--a teacher or administrator who is not employed as a teacher or administrator and holds a valid Oklahoma Standard Teaching Certificate may satisfy requirements for renewal of the Standard Teacher Certificate by completing seventy-five (75) points in professional development programs, conferences and seminars approved by a public school district. A combination of professional development points, higher education credits and/or teaching experience may also be used for renewal of a valid standard teaching certificate. Only programs, conferences and seminars recognized for professional development credit by an Oklahoma public school district at the time the teacher attends the programs, conferences or seminars may be used to fulfill the renewal requirement. The individual seeking certification renewal is responsible to maintain his/her professional development attendance forms to submit to the State Department of Education. Exact combinations of professional development points, college credit hours and years of teaching experience will be determined by the Professional Standards Section of the State Department of Education.

(C) Option III--Issue a two-year certificate immediately and then complete the following requirement. Successful employment for one year in an Oklahoma accredited school or accredited college or university. An administrator will provide supervision and a teacher or appropriate colleague will provide assistance as needed. Ultimately, certification is contingent on the district or college/university-level evaluation of the candidate.

(2) School experience, for purposes of renewing a standard certificate, is experience as a teacher, supervisor, or administrator in a school, college, or university accredited by either a state board of education or state board of regents.

(3) If a standard certificate has been expired for one (1) year or more, the applicant must undergo a new criminal history record check, as provided for at 70 O.S. § 5-142. Applicant is responsible for any fees associated with the criminal history record check.

~~(b) **Professional certificates.** A professional certificate may be renewed if it has not been expired for more than five (5) years and renewal requirements are met.~~

~~(1) To renew a professional certificate the applicant must submit the appropriate application and pay the appropriate processing fee. See 210:20-9-9 (d).~~

~~(2) The applicant must have completed a minimum of five (5) years of school experience in an accredited school during the seven (7) year validity period of the certificate. Applicants who have fewer than five (5) years of school experience during the validity period of their professional certificate may substitute coursework in professional education or specialization from an accredited college or university for each year of school experience they are lacking at the following rate:~~

~~(A) with four (4) years of experience, complete three (3) semester hours;~~

~~(B) with three (3) years of experience, complete four (4) semester hours;~~

~~(C) with two (2) years of experience, complete five (5) semester hours;~~

~~(D) with one (1) year of experience, complete six (6) semester hours; or~~

~~(E) with zero (0) years of experience, complete seven (7) semester hours.~~

~~(3) Teachers who teach one half day in an accredited school each school year for the seven (7) year validity period of their certificate may renew a professional certificate.~~

~~(4) The issuance of new professional certificates will be discontinued after December 31, 1988.~~

~~(5) Individuals holding a valid professional certificate on December 31, 1988, will be allowed to retain that certificate by meeting renewal requirements.~~

~~(6) School experience, for purposes of renewing a standard certificate, is experience as a teacher, supervisor, or~~

~~administrator in a school, college, or university accredited by either a state board of education or state board of regents.~~

~~(7) If a professional certificate has been expired for one (1) year or more, the applicant must undergo a new criminal history record check, as provided for at 70 O.S. § 5-142. Applicant is responsible for any fees associated with the criminal history record check.~~

(~~c~~b) **~~Licenses, provisional~~Provisional certificates.**

~~(1) **Licenses.**~~

~~(A) A license will be in renewable status until conclusion of the Residency Program, at which time a recommendation regarding certification will be made. A license cannot be reissued to an individual who has served two (2) years in the residency program without receiving the residency committee's recommendation for a certificate.~~

~~(B) Application for reissuance of a license shall be submitted directly to the State Department of Education along with the appropriate processing fee. See 210:20-9-9 (d).~~

(~~2~~1) **Nonvocational provisional certificates.** Nonvocational provisional certificates may be renewed if requirements outlined by the State Department of Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(~~3~~2) **Vocational provisional certificates.** Vocational provisional certificates may be renewed if requirements outlined by the State Department of Education and/or the Oklahoma Department of Vocational and Technical Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(~~d~~c) **Supplemental renewal regulations.**

(1) Experience as a professional employee of a state education agency or professional educational organization is considered valid experience for the renewal of a standard or professional certificate.

(2) Teachers who teach one-half day in an accredited school (nursery--higher education) each year for the validity period of their certificate may renew a standard or professional certificate.

(3) Teaching experience with the Oklahoma Department of Corrections Educational System, the Oklahoma Department of Human Services as a vocational rehabilitation counselor, with optional/special function schools in Oklahoma accredited by the North Central Association of Colleges and Schools, experience in the Head Start Program, full-time active military service, or experience as a member of the Oklahoma Legislature may be accepted in meeting requirements for renewal of a standard or professional certificate.

(4) The State Board of Education shall recognize full-time service as a member of the staff of the house of representatives, the senate or the legislative service bureau in an area related to education as valid experience for renewal of the standard certificate. This experience is calculated at the same rate as it is for other teachers.

(5) Any person who is receiving retirement compensation from the Teacher Retirement System may renew the last standard or professional certificate for the purpose of substitute teaching.

(6) A minimum of two-thirds of a school year (120 days) acquired in not more than two (2) contractual school years during the validity of the certificate in accredited schools may be considered as one (1) year of school experience.

(7) A teacher who has taught more than one-half of a day for 120 days or more will be considered as having had one year of experience.

(8) Substitute teachers, unless under contract, may count experience acquired in not more than two (2) consecutive years during the validity of the certificate.

(9) Student teaching, experience in nonaccredited schools, experience while not holding a valid certificate, and experience while providing contracted services will not be accepted as school experience for purposes of renewal.

(10) Applications for renewal of standard ~~or professional~~ certificates ~~or reissuance of licenses~~ will not be accepted prior to January 1 of the year in which the certificate ~~or license~~ expires.

[OAR Docket #16-459; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-460]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-98. Administrative requirements of teacher certification [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 56 O.S. § 71; 8 U.S.C. § 1621; State Board of Education
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Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
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Register publication:
33 Ok Reg 64
Docket number:
15-805
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments update the rule on the administrative requirements for teacher certification to reflect changes in federal and state law since the rule was drafted. In federal law, 8 U.S.C. § 1621 classifies a professional license issued by a state agency as a "State or local public benefit". In Oklahoma law, 56 O.S. § 71 provides that "every agency...of this state shall verify the lawful presence in the United States of any natural person...who has applied for state or local public benefits, as defined in 8 U.S.C., Section 1621". The rule is updated with language providing for this verification. References to teaching "licenses" are also stricken, because that certification category is no longer in use.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-98. Administrative requirements of teacher certification

(a) **Evaluation of foreign credentials.** Foreign credentials must be either analyzed by a recognized translation service or an Oklahoma college before the State Department of Education will accept them.

(b) **Noncitizens of the United States.** Requirements for noncitizens seeking an Oklahoma teaching credential are as follows:

(1) Noncitizens of the United States will be required to submit ~~an unexpired United States Citizenship and Immigration Services (USCIS) employment authorization document~~documentation proving lawful presence with the application before an Oklahoma teaching credential may be issued~~.~~or reissued.

(2) The Oklahoma teaching credential may be issued/reissued for no longer than the validity of the ~~employment authorization document.~~documentation proving lawful presence. If the documentation proving lawful presence does not have an expiration date that affects the duration of a noncitizen's lawful presence, then the teaching credential shall have the same validity period as the teaching credential of a U.S. citizen.

(c) **Noncitizen Visiting Teacher Certification.** The State Board of Education may, upon request of a local school district, issue an international visiting teacher certification pursuant to 70 O.S. § 3-104(6).

(1) An international visiting teacher certification may be issued to applicants who meet the following criteria:

(A) Applicant presents a document from an accredited public school district in this state offering employment following certification;

(B) Applicant must be a citizen of a country other than the United States and hold a J-1 visa issued by the United States Department of State;

(C) Applicant holds the equivalent of a bachelor's degree or higher from an accredited college or university in the subject area the applicant intends to teach and in the case of world languages, if the applicant is not a proficient native speaker of the target language to be taught, applicant has completed a major in the target language to be taught;

(D) Applicants who seek to teach world languages must have a minimum of three years of teaching experience in the target language requested to be taught unless the applicant is a proficient native speaker of the target language to be taught;

(E) Applicant is a participant in a visiting teacher program approved by the Oklahoma State Department of Education;

(F) Applicant must demonstrate proficiency at the advanced-low level of the American Council on the Teaching of Foreign Languages' (ACTFL) proficiency scale in both spoken and written English; and

(G) Applicant must complete an orientation program prior to employment and must be assigned a mentor teacher by the district.

(2) Applicants meeting all qualifications shall be granted a one-year teaching credential which may be renewed on a year-to-year basis for a maximum of three years upon request of the employing district.

(d) **Native American Language Teacher Certification.** The State Board of Education may, upon application, issue a teacher certification in Native American Languages. For purposes of this subchapter, a "Native American Language" means the historical, traditional languages spoken by Native Americans. For purposes of this subchapter, "Native American" shall have the meaning set forth in 25 U.S.C § 2902(1)-(2).

(1) A Native American language certification may be issued to applicants who meet the qualifications set forth in 210:20-9-104(b) and provide documentation that the applicant has met the following criteria:

(A) Applicant has obtained a certification of proficiency in the language sought to be certified in accordance with the provisions of 210:20-9-104(b);

(B) Applicant has completed a background check conducted by the State Department of Education in

accordance with the provisions of 70 O.S. § 5-142; and

(C) Applicant has submitted a portfolio documenting applicant's experience in teaching the Native American language in which the applicant has been certified by a tribe and any other experience related to education.

(D) Any applicant who does not hold an Oklahoma traditional or alternative teaching credential must complete a school orientation program prior to employment and must be assigned a mentor teacher by the district.

(2) Applicants meeting all of the criteria set forth in this subsection shall be granted a provisional Native Language teacher certification for a period of one year. After the expiration of the one year provisional term, the Native Language teacher certification may be renewed in accordance with the following provisions:

(A) For an applicant who does not hold an Oklahoma traditional or alternative teaching credential, the Native Language certification may be renewed on a year-to-year basis if:

(i) Renewal is requested by the employing district; and

(ii) As a condition of the first two renewals of the teaching certificate, applicant provides evidence of completion of 60 clock hours/points of a professional teaching development program each year. For purposes of (ii) of this subparagraph, a professional teaching development program may include:

(I) Programs, seminars, or conferences recognized for professional development credit by an Oklahoma public school district at the time the teacher attends; or

(II) Higher education coursework in teacher education from an accredited college or university.

(B) For an applicant who holds an Oklahoma traditional or alternative teaching certificate, the Native Language teacher certification may be renewed for a five (5) year period.

(e) **Privacy and access.** Any person, with proper identification, that makes a written or oral request, will be informed of the certification status of any individual subject to certification. No other information will be given to a third party without the written consent of the person about whom the information is sought.

(1) College transcripts and other supporting documents will neither be duplicated by nor released by the State Department of Education.

(2) An original out-of-state teaching certificate may be returned, upon written request, to the applicant.

(f) **Multiple applications.** When application is made at the same time for two (2) or more certificates of the same class, only a single processing fee will be charged.

(1) Applications may be made for multiple classes of certificates on one (1) form. There is a fee for each class.

(2) When application is made at different times for two (2) or more certificates, a fee will be charged for each certificate requested.

(g) **Duplicate/update certificates.** A certificate~~/license~~ may be duplicated or updated by submitting a written request and paying the fee.

(h) **Change of name.** A legal change of last name on a certificate~~/license~~ may be accomplished at any time upon written request and paying the fee.

(i) **Refusal of certification.** No certificate~~/license~~ will be issued unless all requirements for the certificate~~/license~~ in question are fully met. In addition, no certificate~~/license~~ will be issued if the attempt to become certified is based on misrepresentation, forgery, or fraud.

(j) **Grounds for cancellation of certificates.** Any certificate~~/license~~, credential, or endorsement obtained by misrepresentation, forgery, fraud, or issued by error will be cancelled. Upon written request the holder must surrender the certificate~~/license~~ in question to the State Department of Education.

(k) **Felony as grounds for noncertification.** No person shall receive an Oklahoma certificate~~/license~~ who has been convicted of a felony, any crime involving moral turpitude, or a felony violation of the narcotics laws of the United States or the State of Oklahoma, provided the conviction was entered within the ten (10) year period immediately preceding application for teacher certification.

(l) **Revocation of teaching certificate.** Teaching certificates~~/licenses~~ issued by authority of the Oklahoma State Board of Education may be revoked by the board for willful violation of any rule or regulation of the board or any federal or state law or other proper cause. A certificate~~/license~~ will be revoked only after a sufficient hearing has been given to the teacher before the State Board of Education in accordance with the hearing procedures set forth at 210:1-5-6.

(1) No person whose certificate~~/license~~ has been revoked in Oklahoma or any other state shall be issued an Oklahoma certificate~~/license~~ unless the revoked certificate~~/license~~ has been fully reinstated by the revoking state and grounds for the revocation do not conflict with Oklahoma law.

(2) A person who has either voluntarily surrendered a teaching certificate in another state, been denied certification~~/licensure~~ in another state or has had a certificate suspended in another state is not eligible for Oklahoma certification until an investigation has resolved the issues surrounding the surrender, denial, or suspension of certification.

(m) **Extending provisional certificates.** A request for extension of validity of any expired provisional certificate will be presented to the State Board of Education only when extenuating circumstances seem to justify its consideration. These requests shall be submitted in writing by the employing superintendent. A superintendent who holds an expired provisional certificate needs to have the president of the local board of education make the written request.

(n) **Degree/college credit accepted for certification regulations.** Only degrees conferred by state or regionally accredited colleges and universities recognized by the Oklahoma State Board of Education will be accepted by the Professional Standards Section as part of the requirements for teacher certification. Only work completed in state and regionally accredited colleges and universities, or transfer credit validated by them, will be accepted as a basis for teacher certification. For purposes of Oklahoma certification, state-accredited colleges and universities are considered to be colleges and universities accredited by the Oklahoma State Regents for Higher Education or their counterpart in other states (a statewide higher education coordinating board/agency of control). Regionally accredited colleges and universities are considered to be colleges and universities accredited by regional institutional accrediting bodies recognized by the United States Department of Education.

(o) **Fee for duplicate ~~licenses and~~ certificates.** The State Board of Education shall charge and collect reasonable fees for the issuance and duplication of ~~licenses and~~ certificates.

[OAR Docket #16-460; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-461]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-100. Teacher Competency Review Panel [REVOKED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-202; State Board of Education
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Approved by Governor's Declaration on June 9, 2016
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This rule has been revoked because the authorizing statute was repealed. The Teacher Competency Review Panel that was described by 70 O.S. § 6-202 is no longer in place, so the accompanying regulations must be revoked.

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-100. Teacher Competency Review Panel [REVOKED]

~~(a) The Teacher Competency Review Panel shall meet at the call of the State Superintendent. Applicants to the Alternative Placement Program who have completed the requirements in law and State Board of Education rules shall submit one copy of the following items to the Teacher Competency Review Panel for evaluation of qualifications and career accomplishments pursuant to 70 O.S. Supp. 2001 § 6-202:~~

~~(1) résumé of experience,~~

~~(2) written explanation of why the applicant wants to become a teacher, and~~

~~(3) criminal background history check conducted by the Oklahoma State Bureau of Investigation.~~

~~(b) An interview with the Teacher Competency Review Panel is required.~~

~~(c) The Teacher Competency Review Panel shall notify applicants in writing of the panel's recommendation to license or not to license. If the Teacher Competency Review Panel's recommendation is not to license an applicant, the panel shall state the reasons for the recommendation in the letter to the applicant.~~

~~(d) Any applicant to the alternative placement program who does not receive a favorable recommendation from the panel may submit a letter to the Oklahoma State Board of Education within 90 days of the panel's recommendation to appeal the recommendation.~~

~~(e) The State Board of Education may access and review any documents or materials relevant to the applicant's initial application and appeal.~~

~~(f) The State Board of Education may accept the panel's recommendation not to license or may reverse the recommendation and issue a license to applicant.~~

~~(g) Notice of the State Board of Education's decision shall be sent to the applicant.~~

[OAR Docket #16-461; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-462]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-102. Career development program for paraprofessionals [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-127A; State Board of Education
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The rule governing the paraprofessional career development program provides that a person seeking a provisional or standard teaching certificate through the paraprofessional program must complete one full school year of relevant employment at a public school. The amendment adds language to provide that the teaching experience applicants are required to document may include teaching in either a public or accredited private school. The same teacher certification requirements that apply to public schools in Oklahoma apply to accredited private schools, so this teaching experience should appropriately apply toward the requirements of the paraprofessional program.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-102. Career development program for paraprofessionals

(a) **Paraprofessional credential.** The State Department of Education shall issue a paraprofessional credential to an applicant who meets all of the following requirements:

(1) Has a high school diploma or a General Educational Development (GED) Diploma;

(2) Has met a career development paraprofessional program approved by the State Board of Education; and

(3) Has on file with the Board a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary credential which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a credential shall be responsible for the cost of the criminal history records.

(b) **Provisional teaching certificates - paraprofessional.** The State Department of Education shall issue a one-year provisional teaching certificate, renewable for up to three years, in early childhood, elementary education, or special education to a paraprofessional who meets all of the following requirements:

(1) Has been employed for one full school year (i.e., two consecutive semesters, three consecutive trimesters, or four consecutive quarters) ~~with a~~in an accredited public or private school as a paraprofessional in the area for which a ~~license~~certificate is being pursued. For purposes of this paragraph, experience obtained while teaching with a non-traditional certification in special education issued in accordance with the provisions of 210:20-9-105 shall not count toward the one year experience requirement;

(2) Has earned at least a bachelor's degree from a college or university whose accreditation is recognized by the Oklahoma State Regents for Higher Education and has attained a cumulative grade point average of not less than 2.5 on a 4.0 scale;

(3) Has passed all of the following teacher competency examinations adopted by the Oklahoma Commission for Teacher Preparation prior to July 1, 2014, or adopted by the Commission for Educational Quality and Accountability on and after July 1, 2014:

(A) The Oklahoma General Education Test (OGET);

(B) The Oklahoma Subject Area Test (OSAT) in Early Childhood, Elementary Education, or Special Education; and

(C) The Oklahoma Professional Teaching Exam (OPTE) (PK-8);

(4) Has on file with the State Board of Education a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary credential which shall be effective until receipt

of the national fingerprint-based criminal history record. The person applying for a credential shall be responsible for the cost of the criminal history records;

(5) Has made application to the Oklahoma State Department of Education.

(c) **Standard teaching certificate - paraprofessional.** The State Department of Education shall issue a standard teaching certificate to individuals who have met all of the requirements of (b) of this section and met all of the following requirements:

(1) The applicant has successfully completed at least one (1) full school year (i.e., two consecutive semesters, three consecutive trimesters, or four consecutive quarters) of teaching service in a public or private school accredited by the State Board of Education or a private school accrediting organization approved by the Board;

(2) The applicant provides at least two (2) favorable recommendations for granting a standard teaching certificate to the applicant from:

(A) A school district board of education; and

(B) The chair or director of the accredited teacher preparation program in which the applicant completed the coursework requirements set forth in (3) of this subsection.

(3) Within three (3) years of initial issuance of the provisional teaching certificate in accordance with the provisions of (b) of this Section, the applicant has successfully completed twelve (12) semester hours of professional education coursework from an institution of higher education whose accreditation is recognized by the Oklahoma State Regents for Higher Education. The twelve (12) hours of coursework required by this paragraph shall consist of coursework that:

(A) Is offered in a teacher preparation program that has been accredited by the Oklahoma Commission for Teacher Preparation prior to July 1, 2014 or accredited by the Commission for Educational Quality and Accountability on and after July 1, 2014;

(B) Is related to the area of teacher certification sought;

(C) Includes a minimum of three (3) semester hours in reading instruction.

(d) **Reporting.** Any individual who has been issued a provisional certificate in accordance with the provisions of (b) of this Section shall be reported on the certified personnel report and be considered as any other certified employee.

[OAR Docket #16-462; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #16-463]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Support Personnel
210:20-27-1. Support personnel; reporting requirements [AMENDED]
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70 O.S. § 3-104; State Board of Education
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The rule governing school district reporting requirements for support personnel is updated to incorporate changes made in 2015 to the reporting dates in the certified personnel rule. The submission deadlines for the first and final support personnel reports of the year are shifted later, to align with the newly established submission dates for the certified personnel reports. The names of two of the reports are also updated to reflect the changes made to the certified personnel rule in 2015. The list of required elements for the support personnel report is also simplified.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 27. SUPPORT PERSONNEL

210:20-27-1. Support personnel; reporting requirements

(a) **Reporting requirements.**

(1) No later than October ~~1~~15 of each year, all public school districts must file ~~a~~an ~~"Preliminary (Pre-Print)~~Initial Support Personnel Report~~"~~ with the State Department of Education. The report shall list all support employees in their employ.

(2) No later than February 1 of each year, all public school districts must file a revised ~~"Final~~Mid-Year Support Personnel Report~~"~~ with the State Department of Education. The report shall contain any corrections, deletions, and additions that have occurred since the ~~preliminary~~initial report was filed so that more accurate information is available for state aid calculations, legislative projections and other statistical requirements. State Aid funds shall be withheld from any school district that does not submit the ~~"Final~~Mid-Year Support Personnel

Report~~"~~ by February 1. Only after the report has been received by the State Department of Education shall the withheld State Aid funds be released to the school district.

(3) No later than ~~June 1~~July 15 of each year, all public school districts must file a "Supplemental Support Personnel Report" with the State Department of Education showing the changes for support personnel previously listed as well as all information required on any new support employees not previously listed. This report shall contain any corrections or changes to be made to the ~~"Final~~Mid-Year Support Personnel Report.~~"~~

(b) **Information to be reported.** ~~The following information is required on the Support Personnel Reports:~~

~~(1) Name~~

~~(2) Social Security Number~~

~~(3) Building site code~~

~~(4) Gender~~

~~(5) Race~~

~~(6) Position(s) and salary~~

~~(7) Months, hours per day, and estimated hours per year assigned~~

~~(8) Other information as deemed necessary~~

~~(9) Job code and function~~

~~(A) 01 Noncertified Business Manager, District Treasurer and Administrative Assistant~~

~~(B) 02 Secretarial and Clerical~~

~~(C) 03 Teacher's Assistant~~

~~(D) 04 Maintenance and Plant Operation~~

~~(E) 05 Food Service~~

~~(F) 06 Regular Bus Drivers~~

~~(G) 07 Substitute and Activity Drivers~~

~~(H) 08 Noncertified Health Care, i.e. LPN, etc.~~

~~(I) 09 Technicians, such as occupations requiring knowledge and manual skills which can be obtained by approximately two years post high school education (programmers, draftsman, inspectors, etc.)~~

~~(J) 10 Skilled Crafts, such as mechanics, electrician, etc.~~

~~(K) 11 Other Personnel~~

~~(L) 12 Early Childhood/CDA~~

~~(M) 13 OPAT Teacher (Oklahoma Parents As Teachers)~~

~~(N) 14 Physical Therapist (state licensed, but not certified by the State Department of Education)~~

~~(O) 15 Occupational Therapist (state licensed, but not certified by the State Department of Education)~~

~~(P) 16 Security~~

~~(Q) 17 Library Support Staff~~The report shall list all support personnel in the district and shall list for each person their demographic information, salary and fringe benefits received by job class, hours worked per day, number of days employed, and other information as deemed necessary by the State Department of Education.

[OAR Docket #16-463; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #16-464]

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Subchapter 3. Funding Criteria
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33 Ok Reg 144
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15-828
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n/a
ANALYSIS:
The amendment removes language that too broadly stated a certain category of teachers' eligibility for credit granted 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.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-4. Personnel

(a) Teachers who have not yet received their degrees shall be considered as having a degree if all requirements have been completed except participation in graduation exercises.

(b) A teacher who has taught more than one-half of a day for 120 days or more shall be considered as having had one year of experience. A teacher who has taught the equivalent of 120 days within not more than two contractual years shall be considered as having had one year of experience. Experience shall be counted if the individual was legally employed and paid from funds under the supervision of a school board of education or any school accredited by the State Board of Education. Practice teaching or a practicum in a teacher-training institution shall not be considered as experience. Veterans Agricultural training instructors or any teacher employed full-time by an accredited college or university shall be considered as having one (1) year of teaching experience for each year of service after July 1, 1945, if such teaching experience is approved by the State Board of Education, provided such teacher held a bachelor's degree at the time these services were performed and was eligible to have been issued a teaching certificate.

(c) Any district identified as contracting with a teacher, or administrator without a valid certificate shall be penalized in state aid. The state aid penalty amount shall be the salary amount paid by the district for the number of days the teacher or administrator taught without a valid certificate in excess of allowable substitute days.

(d) All teachers must have an official transcript on file with the Professional Standards Section showing the degree completed.

(e) The timeframe for submitting Initial Personnel Reports shall be open from September 1 through October 1 of each year. No later than October 1, all public school districts must file an accurate Initial Personnel Report with the State Department of Education. The report shall list all personnel in the district and shall list for each person the position code, compensation, degree, certification information, years of qualified experience, number of days employed and other information as deemed necessary. Beginning with the 2004-2005 school year the school district will report to the State Department of Education the salary and benefit information disaggregated as required by law. For each employee not returning from the previous year, a reason for no return code shall be recorded. The Initial Personnel Report must be certified no later than October 15.

(f) From November 1 through December 15 of each year, a school district superintendent shall have access to the district's Initial Personnel Report. During this period, the superintendent will be permitted to make necessary corrections and updates to the report. Any changes made by a superintendent to the school district's Initial Personnel Report must be submitted no later than December 15. Reports are to be recertified after updates are complete.

(g) The timeframe for submitting Mid-Year Personnel Reports shall be open from January 1 through February 1 of each year. No later than February 1, all public school districts must file an accurate revised Mid-Year Personnel Report with the State Department of Education. The report shall contain any corrections, departures, and additions that have occurred since the October 1 Initial Personnel Report was filed so that more accurate information is available for state aid calculations, legislative projections and other statistical requirements. State Aid funds shall be withheld from any school district that does not submit the Mid-Year Personnel Report by February 1. Only after the accurate report has been received by the State Department of Education shall the withheld State Aid funds be released to the school district.

(h) From February 15 through May 15 of each year, a school district superintendent shall have access to the district's Mid-Year Personnel Report. During this period, the superintendent will be permitted to make necessary corrections and updates to the report. Any changes made by a superintendent to the school district's Mid-Year Personnel Report must be submitted no later than May 15. Reports are to be recertified after updates are complete.

(i) All public school districts must file an accurate End-of-Year Supplemental Personnel Report showing the changes for personnel previously listed as well as all information required on any new employees not previously listed. This report shall contain any corrections or changes to be made to the February 1 Mid-Year Personnel Report. All employees that departed the school district prior to completion of the school year shall be given a "Reason-For-Leaving" code and have salary and days employed adjusted. School districts shall also file the Certified Substitute Teachers Report listing the number of days taught in the school year by all certified substitute teachers. The timeframe for submitting End-of-Year Supplemental Personnel Reports and Certified Substitute Teachers Reports shall be open from June 1 to July 15 of each year. These two reports shall be filed with the State Department of Education not later than July 15.

(j) If the district pays a teacher less than the minimum salary required by law, the difference shall be deducted from the next payment of state aid, or a claim shall be filed by the Director of Finance to recover any such overpayment to the school district.

(1) The School Personnel Records Section will notify the school superintendent of all potentially underpaid teachers after the Mid-Year Personnel Reports are filed with the State Department of Education in February. The school superintendent shall notify the School Personnel Records Section of the district's intent to pay the teacher the underpaid amount or to dispute the amount. If disputed, the school superintendent is responsible for providing documentation to the School Personnel Records Section to show the teacher was not underpaid based on the state minimum salary schedule. The State Aid Section shall withhold from state aid the amount underpaid by October 1 in the school year following the year in which the underpayment occurred.

(2) The method for calculating teacher salaries to ensure state minimums are met shall be determined by the School Personnel Records Section.

(k) If a teacher asserts that the school district he or she is employed by and was employed by the previous year, (or if

underpayment occurred prior to July 1, 2002, and the teacher filed an action to recover an underpayment in a court of competent jurisdiction before July 1, 2002), has reduced the salary and/or fringe benefit level without a proportionate reduction in hours or duties, the teacher may file a complaint with the State Department of Education's School Personnel Records Section. The complaint must be accompanied by documentation sufficient to justify the allegations in the complaint. The teacher shall also send a copy of the complaint and supporting documentation to the superintendent of the school district. The documentation shall include, but not be limited to, the teacher's salary and benefit amount for each year in question. The superintendent shall be given an opportunity to submit documentation to refute the teacher's claim within 20 calendar days of receipt of the complaint. The School Personnel Records Section shall review all the documentation presented and present the complaint to the State Board of Education for determination of whether the school district willfully reduced the teacher's salary and benefits in violation of the law. If the school district does not provide a response and supporting documentation to the complaint, the complaint shall be upheld. In the event the review of the documents reveals that the complaint is valid, the State Board of Education shall withhold the amount underpaid from the district's state aid as a penalty. Additionally, the same amount shall be withheld and that amount shall be sent to the teacher.

(l) Any superintendent, principal, or teacher shall not be considered as having received their minimum salary unless such salary is paid by school district warrants issued by the board of education or the school district.

(m) Personnel on the staff of the Oklahoma Department of Career and Technology Education shall be approved by the State Board of Education for increment purposes.

(n) Certified personnel teaching in Manpower Skill Centers and other Manpower Development Training Programs approved by the Oklahoma Department of Career and Technology Education shall be considered as teaching in a school approved by the State Board of Education for increment purposes as provided by Oklahoma School Law.

~~(o) Certified personnel teaching in virtual charter schools shall be considered as teaching in a school approved by the State Board of Education for increment purposes as provided for by Oklahoma School Law.~~

[OAR Docket #16-464; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #16-465]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Budgeting and Business Management
Part 1. Implementation
210:25-5-5. Auditing [AMENDED]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 22-101 et seq.; 2 C.F.R. Part 200; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2015
COMMENT PERIOD:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 9, 2016
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EFFECTIVE:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Auditing rule is amended to reflect changes to federal regulations. Office of Management and Budget Circular A 133 has been replaced by the Uniform Administrative Requirements in 2 C.F.R. Part 200, and the rule is updated to incorporate the new reference. The proposed amendments also clarify that when submitting an annual audit report to the State Department of Education, a school district must include any written correspondence from the auditor.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. BUDGETING AND BUSINESS MANAGEMENT

PART 1. IMPLEMENTATION

210:25-5-5. Auditing

(a) The statutes of the State of Oklahoma require the board of education of each school district to cause an annual audit of the district's financial activity. The audit must be made in accordance with State Statutes, State Board of Education Regulations and ~~Federal Office of Management and Budget (OMB) Circular A-133.~~ the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200). The State Board of Education shall examine each audit report and demand corrections of any existing deficiencies. It is mandatory that State Aid payments be withheld during noncompliance with the "School Audit Law" at 70 O.S. § 22-101 et seq.

(b) Auditing is process of examining documents, reports, systems of internal control, accounting and financial procedures, and other evidence to ascertain:

(1) That the statements prepared from the accounts present fairly the financial position and results of financial operations of each of the school's funds;

(2) That the school administration has properly complied with statutory requirements and the rules and regulations of the State Board of Education in the conduct of its financial transactions;

(3) That the school's financial transactions have been conducted with mathematical accuracy and have been properly recorded;

(4) That the school has complied with the terms of grants and special agreements;

(5) That adequate stewardship has been exercised by the school board, its officers and employees in the conduct of their duties in the administration of school assets.

(c) The audit must encompass all of the school district's funds. The requirements in (b) of this Section form the basis for the reporting of the school's general, special revenue, capital projects and debt service funds. School activity funds, including school lunch funds, and other trust or fiduciary funds must also be included in the audit report.

(d) The accounting principles by which all audits will be performed are as follows:

(1) The school district's accounting system must conform with the laws of the State of Oklahoma and the rules and regulations of the State Board of Education.

(2) The school district's accounting system shall make it possible to demonstrate compliance with legal provisions.

(3) The school district's accounting system shall clearly reflect the financial operations of the school district.

(4) If accounting principles, procedures, or standards conflict with legal or regulatory provisions, the legal or regulatory provisions shall take precedence.

(5) The accounting system shall be kept in the manner prescribed by the State Board of Education or in the manner of an accounting system approved by the State Board of Education.

(6) The school district shall establish the funds prescribed or authorized by law and necessitated by sound financial judgment. The classification of funds shall be faithfully followed in the Estimate of Needs, Accounting System, ~~and~~ Financial Reports~~.~~, and Audits.

(7) A complete self-balancing group of accounts shall be established for each fund. Each such group will include all the accounts necessary to set forth the financial operations of the fund and to reflect compliance with legal and regulatory provisions.

(8) If a fixed asset fund is maintained, the accounts shall be kept on the basis of original cost, or the estimated cost if the original cost is not available, or in the case of gifts, the appraised value at the time received.

(9) The accounting system shall provide for budgetary control for both revenues and expenditures, and the financial statements will reflect, among other things, budgetary information.

(10) The accounts, except activity funds, shall be maintained on a modified cash basis in accordance with the laws of the State of Oklahoma or a school district may elect to file an application with the State Board of Education to convert to Generally Accepted Accounting Principles (GAAP) accounting. The State Board of Education will approve or reject the application based on the district's ability to implement the practice.

(11) Revenue and expenditures shall be classified in accordance with State Board of Education regulations in order to provide uniform accounting and consistent statistics.

(12) A cost accounting system is required. Cost accounting is in addition to a required financial accounting system, however, and must not be allowed to interfere with its uniform application. Although depreciation is not included in a required accounting system, it should be considered in determining unit cost when a cost accounting system is used.

(13) A common terminology and classification based upon that prescribed by State Board of Education rules and regulations, shall be used consistently throughout the estimate of needs, accounts, and financial reports.

(e) Primary audit procedures will consist of the following:

(1) Each Local Education Agency (LEA) will engage an independent auditor, approved by the Oklahoma State Auditor and Inspector, to examine its financial statements. Each LEA superintendent shall notify the State Board of Education, prior to the end of the fiscal year to be audited, of the independent auditor who has been engaged to conduct the audit.

(2) Where there are differences in state and federal standards due to the statutory and regulatory requirements in both levels of government, the LEA and the auditor will examine and adhere to both in order to be in total compliance.

(3) The Oklahoma State Department of Education will establish and maintain a monitoring system to assure that federal and state audit requirements are met. The Oklahoma State Department of Education will review each audit report and notify the appropriate federal program administrator of any deficiencies reported by the independent auditor regarding federal programs. The administrator will implement the procedures deemed necessary to resolve the exceptions noted by the auditor. The final result of the action taken will be filed with the audit report no later than 90 days after the program administrator has been advised of the auditor's findings.

(4) The State Board of Education may make inquiries and request additional documentation and response related to exceptions, recommendations or comments noted by an auditor.

(f) Audit report requirements are as follows:

(1) Audit reports may be presented in the following formats:

(A) Schools which have obtained prior approval from the State Board of Education to use generally accepted accounting principles (GAAP), must use a straight GAAP Governmental Accounting Standards Board (GASB) No. 34 compliant presentation.

(B) Schools using the regulatory basis of accounting as defined by Oklahoma Statutes may use GASB 34 compliant audit report presentations.

(C) Schools using the regulatory basis of accounting as defined by Oklahoma Statutes may use another comprehensive basis of accounting as prescribed by the Oklahoma State Department of Education. An example of a school district single audit report presented in conformity with another comprehensive basis of accounting as prescribed by the Oklahoma State Department of Education is available in the Financial Accounting Section, State Department of Education. Schools need only present the funds and note disclosures that apply to the specific district. The example is not intended to take precedence over professional reporting standards and requirements.

(2) Informational statements will specify

(A) Board members and officers

(B) Statutory bonds

(C) Other fidelity or honesty bonds

(D) Insurance coverage

(E) Other desirable statements

(3) Size of audit report will conform to the specified dimensions:

(A) Length = Maximum, 11"

(B) Width = Maximum, 8 1/2"

(4) Each audit report shall be presented to and reviewed with the local board of education in a public meeting as required by law. Each audit report must contain a signed Acknowledgement Page on a form supplied by the State Department of Education. The Acknowledgement Page will verify who presented the audit to the school board, the date the audit was reviewed with the local school board as well as the school board's acknowledgement that as the governing body of the district responsible for the district's financial and compliance operations the audit findings, ~~and~~ exceptions, and any written correspondence from the auditor relating to the audit have been presented to them.

(g) Requirements specific to Federal programs must be included in each audit.

(1) Federal regulations (~~OMB Circular A-133,~~Uniform Administrative Requirements at 2 C.F.R. Part 200 and OMB Compliance Supplement) require a financial and compliance audit of programs receiving federal funds. These regulations (in accordance with P.L. 98-502) ensure that audits be made on an organization-wide basis rather than a grant-by-grant basis and according to the standards and procedures expressed therein. The Oklahoma State Department of Education shall serve as the recipient agency for ~~A-133~~these purposes for the local education agencies. Overclaim assessments may be levied where necessary when there has been a lack of compliance and treated as a current expenditure.

(2) This rule and the adoption of the standards and regulations for audits of local boards of education does not limit the authority of federal or state agencies to make audits of programs in the local education agencies, and is in keeping with ~~OMB Circular A-133~~Uniform Administrative Requirements, 2 C.F.R. Part 200. Some state and local governmental units in Oklahoma prepare their financial statements in conformity with a comprehensive basis of accounting other than generally accepted accounting principles. ~~A-133~~The Uniform Administrative Requirements ~~does~~do not prohibit such practice; nonetheless, ~~it~~they~~requires~~require, as do generally accepted auditing standards, that auditors state in their report the departures from generally accepted accounting principles. However, any additional audit work must build on the work already done.

(3) The auditor should clearly understand that ~~A-133~~Uniform Administrative Requirements audits require the expression of opinions and inclusion of comments in audit reports which go beyond the standard opinions and comments usually presented. Specifically, the audit report shall include:

(A) Financial statements, including footnotes, of the recipient organization.

(B) The auditors' comments on the financial statements which should:

(i) Identify the statements examined, and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(iii) Identify by a schedule showing receipts and disbursements for each grant program.

(iv) State that the audit was done in accordance with the "General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(v) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(C) The auditors' comments on compliance and internal control should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or

regulations that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(D) Comments on the accuracy and completeness of financial reports and claims submitted to state or federal agencies for federal fund advances or reimbursements.

(E) Comments on corrective action taken or planned by the recipient.

(F) Comments as to whether the indirect cost rates are appropriately calculated and applied.

(G) Audit findings should be reported in accordance with 2 C.F.R. § 200.516, "Audit findings."

(4) These requirements are common to nearly all state and local funds and federal programs:

(A) Funds disbursed by other governments were received and properly identified.

(B) Interest earned on idle funds was credited to the proper funds.

(C) Unexpended funds or unearned federal funds advanced or overpaid were correctly accounted for.

(D) A system of encumbrance accounting was maintained which reported the amount obligated, disbursed, remaining unobligated balance, and outstanding unliquidated obligations for each fund and program.

(E) Obligations reported were actually incurred during the fiscal year or approved program period, and, upon liquidation, were properly adjusted.

(F) Payments reported: Were actually made to the vendors, contractors and employees; were supported by adequate evidence of delivery of goods or performance of services; and conformed to applicable laws and regulations, including procurement requirements.

(G) Refunds, discount, etc., were properly applied as reductions of the gross expenditures of the specific funds or programs.

(H) Costs, direct and indirect, were correctly prorated to the proper funds or programs.

(I) The same expenditure was not claimed under more than one program or reported as an expenditure for two fiscal or program years.

(J) Inventory requirements for materials and equipment purchased with federal funds were maintained.

[OAR Docket #16-465; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #16-466]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Classification of Financial Transactions
210:25-7-1. Oklahoma Cost Accounting System [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 2 C.F.R. § 200.33; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 25, 2015
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
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.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 7. CLASSIFICATION OF FINANCIAL TRANSACTIONS

210:25-7-1. Oklahoma Cost Accounting System

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

(1) **"Equipment"** means an article of nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of at least

~~$2,500~~$5,000 as established by the State Department of Education.

(2) **"Fiscal year"** means a twelve month period of time, from July 1, through June 30, to which the annual budget applies and at the end of which the district determines its financial position and the results of its operations.

(3) **"Function"** means the activity being performed for which a service or material object is required.

(4) **"Fund"** means a fiscal and accounting entity, with a self-balancing set of accounts recording resources, liabilities, residual balances or changes therein.

(5) **"Job Classification"** means a classification used to identify expenditures for salaries and employee benefits by employee's job.

(6) **"Object"** means the service or goods obtained.

(7) **"Operational Unit"** means a classification used to identify the accredited instructional site according to grade span or the non-accredited/non-instructional site at which personnel serve the entire district.

(8) **"Program"** means the plan of activities and procedures designed to accomplish a predetermined objective.

(9) **"Project Reporting"** means a reporting dimension which permits LEAs to accumulate expenditures to meet a variety of specialized management and reporting requirements, regardless of whether they are district, state, or federal. Expenditures and revenues may be accumulated under individual projects with the flexibility of accommodating additional projects that LEAs might wish to account for on a permanent or temporary basis.

(10) **"Source of Revenue"** means a segregation of revenues by source. The primary classification differentiates district, intermediate, State and Federal revenue sources. Revenues from restricted sources would be further classified using the Project/Reporting dimension.

(11) **"Subject"** means a group of related subjects which allows accumulation of costs in particular academic or curricular subject areas.

(b) **Source; interpretation.** The Oklahoma Cost Accounting System uses the account classification system developed by the National Center for Education Statistics in the handbook FINANCIAL ACCOUNTING FOR LOCAL AND STATE SCHOOL SYSTEMS, ~~1990~~2014 Edition. Specific account codes by name and number are published in the State Department of Education publication OKLAHOMA COST ACCOUNTING SYSTEM MANUAL. A current edition of this publication shall be available from the administrative head of the Finance Division and on the Financial Accounting website.

(c) **Dimension codes.** Dimension codes are divided into expenditures and revenues. Each is further subdivided into the following codes.

(1) Expenditure dimensions include:
- (A) Fiscal year
- (B) Fund
- (C) Project reporting
- (D) Function
- (E) Object
- (F) Program
- (G) Subject
- (H) Job classification
- (I) Operational unit

(2) Revenue dimensions include:
- (A) Fiscal year
- (B) Fund
- (C) Project reporting
- (D) Source of revenue
- (E) Program
- (F) Operational unit

[OAR Docket #16-466; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #16-467]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 23. Standard XII: Deregulation, Waivers, and the School District Empowerment Program–Rules and Procedures
210:35-3-228. Required application criteria to be considered for requests for deregulations, waivers of statutory requirements, and participation in the School District Empowerment Program [AMENDED]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-124 et seq.; 70 O.S. § 3-129.1 et seq.; State Board of Education

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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June 9, 2016

EFFECTIVE:
August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The amendment to the rule governing statutory waivers and rule deregulations changes the maximum duration of a waiver or deregulation granted by the State Board of Education from one (1) year to three (3) years. The new timeframe aligns with the duration available for School District Empowerment Program requests, and is intended to reduce the administrative burden on school districts which currently must apply annually for each deregulation requested.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 23. STANDARD XII: DEREGULATION, WAIVERS, AND THE SCHOOL DISTRICT EMPOWERMENT PROGRAM–RULES AND PROCEDURES

210:35-3-228. Required application criteria to be considered for requests for deregulations, waivers of statutory requirements, and participation in the School District Empowerment Program

(a) **Applications.** The State Department of Education shall develop an application for use by school districts in seeking approval from the State Board of Education of requests for:

(1) Waivers from a statutory requirement;

(2) Deregulation from a State Department of Education regulation; or

(3) Participation in the School District Empowerment Program, by obtaining a waiver from all statutory requirements and State Board of Education rules from which charter schools are exempt under the Oklahoma Charter Schools Act.

(b) **Criteria for applications for deregulation, waivers, or participation in the School District Empowerment Program.** The application submitted shall meet all of the following requirements:

(1) **Alternate strategies.** The application shall clearly state the alternate strategy(ies) which the school district proposes to utilize and the needed resources to meet clearly stated objectives as a result of the proposed deregulation, waiver, or participation in the School District Empowerment Program. The specific objectives to be focused on as a result of deregulated status shall be clearly delineated.

(2) **Student performance.** The application shall clearly specify and describe the expected student performance levels to be demonstrated and evaluated as a result of the proposed deregulation, waiver, or participation in the School District Empowerment Program.

(3) **Standard(s) to be deregulated or statutes to be waived.** The application shall clearly identify/state the regulation(s) from which the school district is proposing to be deregulated or the statute(s) for which the school district seeks a waiver.

(4) **Financial impact.** The application shall clearly delineate the projected financial impact the proposed deregulation, waiver, or participation in the School District Empowerment Program would create.

(5) **Timeline(s).** The application shall clearly delineate the proposed timeline(s) which, if approved, will apply to the deregulation, waiver, or participation in the School District Empowerment Program. The proposed timeline for implementation shall include:

(A) The date(s) the school district proposes to implement the deregulation, waiver, or participation in the School District Empowerment Program; and

(B) The date(s) proposed to terminate the deregulation, waiver, or participation in the School District Empowerment Program, which shall be no longer than:

(i) Waivers and deregulations: ~~One~~Three (~~1~~3) ~~year~~years from the date of implementation of a waiver or deregulation;

(ii) School District Empowerment Program: Three (3) years from the date of implementation of the district's empowerment plan.

(6) **Local board approval.** The application shall contain the original signature of the school district superintendent and the president of the local board of education certifying that the local board of education has approved the application for deregulation, waiver, or participation in the School District Empowerment Program in accordance with the provisions in the bylaws, policies, and/or procedures of the school board governing transaction of business.

(c) **Applications for School District Empowerment Program.** In addition to the requirements set forth in (b) of this Section, all applications by the school district for participation in the School District Empowerment Program shall submit a comprehensive plan which identifies the goals sought to be achieved through deregulation and the anticipated educational and fiscal benefits, impacts, and outcomes for all schools in the district resulting from participation in the School District Empowerment Program. Applications for participation in the School District Empowerment Program shall be submitted and reviewed in accordance with the procedures set forth in 210:35-3-229.

[OAR Docket #16-467; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #16-468]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Additional Standards for Middle Level Schools
Part 9. Standard V: The School Staff
210:35-7-41. Staffing: pupil/professional staff ratio [AMENDED]
Subchapter 9. Additional Standards for Secondary Schools
Part 9. Standard V: The School Staff
210:35-9-41. Staffing: pupil/professional staff ratio [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 18-113.1 et seq.; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 30, 2015
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August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to the pupil/professional staff ratio rules provide that a teacher and school district may agree in writing to waive the minimum weekly teacher planning time established by the rules, as long as the teacher is compensated with a stipend. School districts were previously required to request exceptions to the minimum weekly planning time through the deregulation process, which requires applying directly to the State Board of Education. Providing for the mutually agreed exception directly in the rules will reduce the administrative burden on school districts and the State Board, as well as the State Department of Education offices that process deregulation applications.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 7. ADDITIONAL STANDARDS FOR MIDDLE LEVEL SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-7-41. Staffing: pupil/professional staff ratio

(a) For the purpose of computing and paying state-appropriated funds, if a school district groups its grades as grades 1 through 5, grades 6 through 8, and grades 9 through 12, then as to such district the class size provisions for grades 7 through 9 in 70~~:~~ O.S. §18-113.3 shall apply to grade 6. ~~[Reference: 70:18-113.1 (D)]~~

(b) No teacher who is counted in class size computation for grades 6, 7, 8, and 9 shall be responsible for the instruction of more than one hundred forty (140) students on any ~~given 6 hour~~full length school day. ~~[Reference: 70:18-113.3 (C)]~~

(c) Classes in Physical Education, Chorus, Band, Orchestra, and other similar music classes shall not be subject to the class size limitations. ~~[Reference: 70:18-113.1 (C)]~~

(d) To enhance the safety of students enrolled in industrial arts/technology education classes, other than drafting, consideration should be given to the facilities and only the number of students equal to the work stations shall be enrolled. No more than twenty-five (25) students shall be assigned to any class.

(e) A minimum of two hundred (200) minutes of scheduled time shall be provided each week for each classroom teacher for individual planning and/or preparation and consultation~~.~~, unless otherwise voluntarily agreed in writing between the teacher and the school district, with a stipend being provided to any teacher who forgoes planning time.

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-9-41. Staffing: pupil/professional staff ratio

(a) No teacher who is counted in class size computation for grades 9, 10, 11, and 12 shall be responsible for the instruction of more than one hundred forty (140) students on any ~~given 6 hour~~full length school day. ~~[70:18-113.3 (C)]~~

(b) Classes in Physical Education, Chorus, Band, Orchestra, and other similar music classes shall not be subject to the class size limitations. ~~[Reference: 70:18-113.1 (C)]~~

(c) To enhance the safety of students enrolled in industrial arts/technology education classes, other than drafting, consideration should be given to the facilities and only the number of students equal to the work stations shall be enrolled. No more than twenty-five (25) students shall be assigned to any class.

(d) A minimum of two hundred twenty-five (225) minutes of scheduled time shall be provided each week for each classroom teacher for individual planning and/or preparation and consultation during the instructional day~~.~~, unless otherwise voluntarily agreed in writing between the teacher and the school district, with a stipend being provided to any teacher who forgoes planning time.

[OAR Docket #16-468; filed 6-14-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #16-469]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Additional Standards for Secondary Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate
210:35-9-31. Program of studies and graduation requirements [AMENDED]
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70 O.S. § 3-104; 70 O.S. § 11-103.6f; State Board of Education
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Subchapter 9. Additional Standards for Secondary Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate
210:35-9-31. Program of studies and graduation requirements [AMENDED]
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33 Ok Reg 66
Docket number:
15-806
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
House Bill 1330 (2015) directed the State Board of Education to adopt rules implementing a waiver of the Oklahoma History graduation requirement for children of military families by December 1, 2015. The amendment adds a provision to the graduation requirements rule that directs school district boards of education to waive the Oklahoma History requirement for children of military families who have already completed a similar history class in another state.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

210:35-9-31. Program of studies and graduation requirements

(a) **General provisions.** Every student at every high school shall have the opportunity to acquire all the competencies to matriculate at a comprehensive graduate institution of the Oklahoma State System of Higher Education without the necessity of enrolling at the university in secondary-level courses. Each student will have the opportunity to attain proficiency in the Priority Academic Student Skills.

(b) **Definitions.** The following definitions shall apply to this subsection:

(1) **"Contextual methodology"** means academic content and skills taught by utilizing real-world problems and projects in a way that helps students understand the application of that knowledge.

(2) **"Courses approved for college admission requirements"** means courses which are approved by the Oklahoma State Regents for Higher Education for admission to an institution within the Oklahoma State System of Higher Education.

(3) **"Qualified agricultural courses"** means courses that have been determined by the State Board of Education to offer the sets of competencies set forth in the Oklahoma Academic Standards for one or more science content areas and which correspond to academic science courses and are taught by teacher who is certified and considered "highly qualified" to teach in the science course taught. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.

(4) **"Rigor"** means a level of difficulty that is appropriate for the grade level and that meets state and/or national standards;

(5) **"Sets of competencies"** means instruction in those skills and competencies that are specified skills and competencies adopted by the State Board of Education without regard to specified instructional time;

(6) **"Unit"** means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.

(c) **Total minimum graduation requirements.** In order to graduate with a standard diploma from a public high school accredited by the State Board of Education, students shall complete twenty-three (23) units or sets of competencies in grades nine (9) through twelve (12), which shall include either:

(1) Seventeen (17) units or sets of competencies of the college preparatory/work ready curriculum requirements set forth in (d) of this Section, plus six (6) elective units or sets of competencies; or

(2) Fifteen (15) units or sets of competencies of the core curriculum requirements set forth in (e) of this Section, plus eight (8) elective units or sets of competencies.

(d) **College preparatory/work ready curriculum requirements.** In order to graduate with a standard diploma from a public high school accredited by the State Board of Education, students shall complete the following college preparatory/work ready curriculum units or sets of competencies at the secondary level:

(1) Four (4) units or sets of competencies of English to include:

(A) Grammar;

(B) Composition;

(C) Literature; or

(D) Any English course approved for college admission requirements;

(2) Three (3) units or sets of competencies of mathematics, limited to:

(A) Algebra I;

(B) Algebra II;

(C) Geometry;

(D) Trigonometry;

(E) Math Analysis;

(F) Calculus;

(G) Advanced Placement Statistics; or

(H) Any mathematics course with content and/or rigor above Algebra I and approved for college admission requirements;

(3) Three (3) units or sets of competencies of laboratory science, limited to:

(A) Biology;

(B) Chemistry;

(C) Physics; or

(D) Any laboratory science course with content and/or rigor equal to or above Biology and approved for college admission requirements;

(4) Three (3) units or sets of competencies of history and citizenship skills, including:

(A) One (1) unit of American History;

(B) One-half (1/2) unit of Oklahoma History;

(C) One-half (1/2) unit of United State Government; and

(D) One (1) unit of a course that has been approved for college admission requirements in one of the following subjects:

(i) History;

(ii) Government;

(iii) Geography;

(iv) Economics;

(v) Civics; or

(vi) Non-Western culture;

(5) Two (2) units or sets of competencies in one (1) of the following:

(A) Two (2) units of the same foreign, Native American, or non-English language; or

(B) Two (2) units of computer technology approved for college admission requirements, whether taught at a high school or a technology center school, including:

(i) Computer programming;

(ii) Computer hardware;

(iii) Business computer applications (excluding keyboarding or typing courses) such as:

(I) Word processing;

(II) Databases;

(III) Spreadsheets;

(IV) Graphics;

(6) One (1) additional unit or set of competencies selected from:

(A) The categories of units or sets of competencies set forth in (1) through (5) of this subsection; or

(B) Career and technology courses approved for college admission requirements;

(7) One (1) unit or set of competencies of

(A) Fine arts such as music, art, or drama; or

(B) Speech.

(e) **Core curriculum requirements in lieu of college/work ready curriculum requirements.** Upon written approval of the parent or legal guardian of a student, a student may enroll in the core curriculum requirements in lieu of the college/work ready curriculum requirements set forth in (d) of this Section. The fifteen (15) units of credit required for high school graduation with a standard diploma in accordance with the provisions of this subsection are:

(~~A~~1) Language Arts: Four (4) units or sets of competencies, to consist of:

(~~i~~A) One (1) unit or set of competencies of grammar and composition; and

(~~ii~~B) Three (3) units or sets of competencies which may include, but are not limited to, the following courses:

(~~I~~i) American Literature;

(~~II~~ii) English Literature;

(~~III~~iii) World Literature; or

(~~IV~~iv) Advanced English Courses or

(~~V~~v) Any other English courses with content and/or rigor equal to or above grammar and composition;

(~~B~~2) Mathematics: Three (3) units or sets of competencies, to consist of:

(~~i~~A) One (1) unit or set of competencies of Algebra I or Algebra I taught in a contextual methodology; and

(~~ii~~B) Two (2) units or sets of competencies which may include, but are not limited to, the following courses:

(~~I~~i) Algebra II;

(~~II~~ii) Geometry or Geometry taught in a contextual methodology;

(~~III~~iii) Trigonometry;

(~~IV~~iv) Math Analysis or Precalculus;

(~~V~~v) Calculus;

(~~VI~~vi) Statistics and/or Probability;

(~~VII~~vii) Computer Science, if taught by a teacher who is certified to teach mathematics;

(~~VIII~~viii) Other contextual mathematics courses which enhance technology preparation taught at a comprehensive high school;

(~~IX~~ix) Other contextual mathematics courses which enhance technology preparation taught at a technology center school by a teacher certified in the secondary subject area, when taken in the eleventh (11th) or twelfth (12th) grade, and approved by the State Board of Education and the independent district board of education; or

(~~X~~x) Any other mathematics courses with content and/or rigor equal to or above Algebra I.

(~~C~~3) Science: Three (3) units or sets of competencies, to consist of;

(~~i~~A) One (1) unit or set of competencies of Biology I or Biology I taught in a contextual methodology; and

(~~ii~~B) Two (2) units or sets of competencies in the areas of life, physical, or earth science or technology which may include, but are not limited to, the following courses:

(~~I~~i) Chemistry I;

(~~II~~ii) Physics;

(~~III~~iii) Biology II;

(~~IV~~iv) Chemistry II;

(~~V~~v) Physical Science;

(~~VI~~vi) Earth Science;

(~~VII~~vii) Botany;

(~~VIII~~viii) Zoology;

(~~IX~~ix) Physiology;

(~~X~~x) Astronomy;

(~~XI~~xi) Applied Biology/Chemistry;

(~~XII~~xii) Applied Physics;

(~~XIII~~xiii) Principles of Technology;,

(~~XIV~~xiv) Qualified agricultural education courses; or

(~~XV~~xv) Other contextual science courses which enhance technology preparation taught at a comprehensive high school;

(~~XVI~~xvi) Other contextual science courses which enhance technology preparation taught at a technology center school when taken in the eleventh (11th) or twelfth (12th) grade, taught by a certified teacher, and approved by the State Board of Education and the independent district board of education;

(~~XV~~xvii) Other science courses with content and/or rigor equal to or above Biology I.

(~~D~~4) Social Studies: Three (3) units or sets of competencies, to consist of:

(~~i~~A) One (1) unit or set of competencies of United States History;

(~~ii~~B) One-half (1/2) to one (1) unit or set of competencies of United States Government;

(~~iii~~C) One-half (1/2) unit or set of competencies of Oklahoma History; and

(~~iv~~D) One-half (1/2) to one (1) unit or set of competencies which may include, but are not limited to, the following courses:

(~~I~~i) World History;

(~~II~~ii) Geography;

(~~III~~iii) Economics;

(~~IV~~iv) Anthropology; or

(~~V~~v) Other social studies courses with content and/or rigor equal to or above United States History, United States Government, and Oklahoma History; and

(~~E~~5) Arts: Two (2) units or sets of competencies which may include, but are not limited to, courses in Visual Arts and General Music.

(f) **Other curriculum requirements.** In addition to the curriculum requirements set forth in (c) through (e) of this subsection, each secondary school shall ensure that the following curriculum requirements are met:

(1) **Personal Financial Literacy Passport.** Beginning with the seventh grade, students shall fulfill the requirements for a Personal Financial Literacy Passport in order to graduate with a standard diploma from a public high school accredited by the State Board of Education.

(A) The requirements for a Personal Financial Literacy Passport shall be the satisfactory completion and demonstration of satisfactory knowledge in all fourteen (14) areas of instruction during grades seven (7) through twelve (12). The fourteen (14) areas of instruction are:

(i) Understanding interest, credit card debt, and online commerce;

(ii) Rights and responsibilities of renting or buying a home;

(iii) Savings and investing;

(iv) Planning for retirement;

(v) Bankruptcy;

(vi) Banking and financial services;

(vii) Balancing a checkbook;

(viii) Understanding loans and borrowing money, including predatory lending and payday loans;

(ix) Understanding insurance;

(x) Identity fraud and theft;

(xi) Charitable giving;

(xii) Understanding the financial impact and consequences of gambling;

(xiii) Earning an income; and

(xiv) Understanding state and federal taxes.

(B) Instruction in these fourteen areas must align and meet the Personal Financial Literacy academic standards as adopted by the Oklahoma State Board of Education.

(C) School districts shall have the option of determining when each of the fourteen (14) areas of instruction listed above shall be presented to students in grades seven (7) through twelve (12). Options include:

(i) Integration into one or more existing courses of study;

(ii) A separate Personal Financial Literacy course;and/or

(iii) Use of State Department of Education Personal Financial Literacy online modules of learning.

(D) The Oklahoma State Department of Education online modules of learning and the assessments shall be available to all students as determined by the local school district.

(E) In order to facilitate the monitoring of student progress towards achieving the Personal Financial Literacy Passport, districts shall maintain a Personal Financial Literacy Passport cumulative record. The Personal Financial Literacy Passport cumulative record shall be a uniform document used by all school districts within the state. The State Department of Education shall provide an electronic version of the Personal Financial Literacy Passport cumulative record to the districts. Completion of the fourteen (14) areas of instruction of Personal Financial Literacy shall be documented on the student's high school transcript. The Personal Financial Literacy Passport cumulative record shall accompany the student when transferring to a new district.

(F) Elementary districts, PK-8, may enter into a vertical articulated curriculum agreement with an independent district, PK-12, for facilitating and sharing of the personal financial literacy curriculum and instruction.

(G) Teachers providing instruction in personal financial literacy shall be certifiedin accordance with the provisions of the Passport to Financial Literacy Act at 70 O.S. § 11-103.6h.

(H) School districts shall assess the knowledge of all students who transfer into an Oklahoma school district from out of state after the seventh grade.

(i) If the school district determines that the transferred student has successfully completed instruction in any or all of the areas of personal financial literacy instruction at the previous school in which the student was enrolled, or if the student demonstrates satisfactory knowledge of any or all of the areas of personal financial literacy instruction through an assessment approved by the State Department of Education, the school district may exempt the student from completing instruction in that area of personal financial literacy instruction.

(ii) Students who transfer into an Oklahoma school district from out of state after the junior year of high school may be granted an exception from the requirements of the personal financial literacy passport in accordance with the provisions of 70 O.S. 11-103.6.

(2) **Recommended curriculum.** School districts shall strongly encourage students to complete two units or sets of competencies of foreign languages and two units or sets of competencies of physical and health education.

(3) **Credit toward graduation requirements.** Credits for meeting curriculum requirements toward graduation shall be determined in accordance with all of the following provisions:

(A) No student shall receive credit for high school graduation more than once for completion of the same unit or set of competencies to satisfy the core curriculum requirements.

(B) Credit for all units or sets of competencies required in (d) and (e) of this Section shall be given when such units or sets of competencies are taken prior to ninth (9th) grade if:

(i) The teachers are certified or authorized to teach the subjects for high school credit; and

(ii) The required rigor of the course is maintained.

(C) Notwithstanding the provisions of (3)(B) of this subsection, the three units or sets of competencies in mathematics required in (d) or (e) of this Section shall be completed in the ninth (9th) through twelfth (12th) grades. If a student completes any required courses or sets of competencies in mathematics prior to ninth grade, the student may take any other mathematics courses or sets of competencies to fulfill the requirement to complete three (3) units or sets of competencies in grades nine (9) through twelve (12) after the student has satisfied the requirements of subsection (d) or (e) of this Section.

(D) Successful completion of an alternative assessment set forth in 210:10-13-16(b)(7)-(8) shall not constitute a basis for awarding a student credit for any course in which a student has failed the end-of-instruction exam and failed to attend in accordance with local district attendance policies.

(4) **Achieving Classroom Excellence Act.** The curriculum requirements for graduation set forth in (c) through (f) of this Section and 70 O.S. § 11-103.6 are in addition to and separate from the requirements of the Achieving Classroom Excellence Act set forth at 70 O.S. § 1210.523 and the accompanying regulation at 210:10-13-16. Students must fulfill the applicable requirements (or, in some cases, qualify for applicable exceptions or exemptions) of both statutes to be eligible to be awarded a standard diploma.

(g) **Additional accreditation requirements.** In addition to the curriculum requirements set forth in (c) through (f) of this Section, all public school districts shall ensure that its schools' secondary programs are designed to meet all of the following requirements:

(1) As a condition of receiving accreditation from the State Board of Education, all school districts shall require all students in grades nine (9) through twelve (12) to enroll in a minimum of six periods, or the equivalent in block scheduling or other scheduling structure that allows for instruction in sets of competencies, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes. However, students re-enrolled in high school solely for the purpose of receiving

ACE remediation in accordance with the provisions of 210:10-13-16(g) shall be exempt from this requirement.

(2) Each high school's academic program shall be designed to prepare all students for employment and/or post-secondary education. The secondary academic program shall be designed to provide the teaching and learning of the skills and knowledge in the Priority Academic Student Skills. All high schools accredited by the State Department of Education shall offer the college preparatory/work ready curriculum required for the students to earn a standard diploma during grades nine (9) through twelve (12). To meet graduation requirements, local options may include courses taken by advanced placement, concurrent enrollment, correspondence courses, supplemental online courses, or courses bearing different titles.

(3) The secondary academic programs may also provide the traditional units of credit to be offered in grades nine (9) through twelve (12) with each secondary school offering and teaching at least thirty-eight (38) units or their equivalent each school year. Four (4) of these units may be offered on a two-year alternating plan with thirty-four (34) units or their equivalent to be taught in the current school year. In schools with other than a four-year organization, these units shall be offered and taught in conjunction with the affiliated schools containing those grade levels. Career and technology center courses in which secondary students are enrolled may count toward the thirty-eight (38) required units of credit or their equivalent.

(4) District boards of education can make exceptions to state high school graduation curriculum requirements for students who move to this state from another state after their junior year of high school.

(A) After a student from another state enrolls in an accredited Oklahoma high school the school board can make an exception to the high school graduation curriculum requirements of 70 O.S. §11-103.63. Individual exceptions can only be made when there are differing graduation requirements between the two states and completing Oklahoma graduation requirements will extend the student's date of graduation beyond the graduation date for the student's class.

(B) The district must report all exceptions made to state graduation requirements for these senior students to the State Department of Education each school year. All exceptions made at each district high school will be forwarded to the State Department of Education on or before July 1 of each year. Districts may report the information on the Annual Statistical Report. This reporting provision does not include students who have individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA) and who satisfy graduation requirements through the individualized education program.

(5) District boards of education shall waive the Oklahoma History graduation requirement for children of military families who transition with the military from another state and who have satisfactorily completed a similar state history class in another state. "Children of military families", as defined in 70 O.S. § 510.1, means "a school-aged child(ren), enrolled in Kindergarten through Twelfth grade, in the household of an active duty member".

(~~5~~6) In order for a course offered by a supplemental educational organization to be counted for purposes of student academic credit and towards graduation requirements, the local board of education must verify that the course meets all requirements in 70 O.S. § 11-103.6.) Upon verification, the local school board of education's request for course approval shall be submitted to the State Board of Education for final approval.

[OAR Docket #16-469; filed 6-14-16]

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

[OAR Docket #16-470]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 75. Parent Education Programs
210:40-75-2. Definitions [AMENDED]
210:40-75-4. ~~Program requirements~~Requirements for the ~~Oklahoma Parents as Teachers Program~~program of parent education [AMENDED]
210:40-75-6. Funding [AMENDED]
210:40-75-7. Solicitation, acceptance, and evaluation of district applications for state-funded ~~Oklahoma Parents as Teachers (OPAT) Grants~~grants for programs of parent eduction [AMENDED]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-162; 70 O.S. § 10-105.3; State Board of Education

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n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

Senate Bill 285 (2015) changed the name of the program formerly known as the Oklahoma Parents as Teachers (OPAT) program, and shifted program authority from the State Board of Education to the State Department of Education. The amendments to Subchapter 75 implement changes to the name of the program, and are updated to note that program authority rests with the State Department of Education.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 75. PARENT EDUCATION PROGRAMS

210:40-75-2. Definitions

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

"Community Advisory Committee" means a local school district committee whose membership includes interested citizens representing a variety of community organizations.

"Consortium" means one or more school districts joined together to total a minimum of 500 students.

"Internal Coordinating Committee" means a committee comprised of local school district personnel whose membership shares with the parent education program administrator the ongoing responsibility for successful implementation of the program.

~~**"Parent Coordinator"**~~ **"Family Support Provider"** means a person who has completed training ~~and certification~~approved by the Oklahoma State Department of Education ~~through the National Parents As Teachers Center~~. The ~~coordinator~~Family Support Provider plans and implements the ~~Oklahoma Parents As Teachers~~ program of parent education in accordance with the guidelines and the rules and regulations of the Oklahoma State Department of Education. In some situations the ~~coordinator~~Family Support Provider may serve as a part-time parent educator.

"Parent Education Program Administrator" means a person employed by the local school district who is designated as responsible for the implementation of the program.

"Parent Educator" means a person employed through the local school district who has completed training ~~and certification~~ approved by the Oklahoma State Department of Education.

210:40-75-4. ~~Program requirements~~ Requirements for the ~~Oklahoma Parents As Teachers Program~~ program of parent education

(a) Programs funded by the State Department of Education with funds provided in support of the parent education program legislation (~~HB 1017, Section 35A and B~~70 O.S. § 10-105.3)~~,~~ must meet the following basic program requirements. The ~~Oklahoma Parents As Teachers Program must~~program of parent education must:

(1) Be voluntary and free to parents.

(2) Employ as parent educator(s), persons who have earned a minimum of sixty hours of college credit and completed training ~~and certification~~ approved by the Oklahoma State Department of Education. ~~It is recommended that each part-time parent educator serve a maximum of 30-35 children.~~

(3) Employ a ~~coordinator~~Family Support Provider who has a minimum of a bachelor's degree in early childhood development or related field and has completed training ~~and certification~~ approved by the State Department of Education, if more than one parent educator is required. In some situations, the ~~coordinator~~Family Support Provider may serve as a part-time parent educator.

(4) Implement the curriculum approved by the State Department of Education.

(5) Be conducted a minimum of 10 months of the year.

(6) Include ten personalized contacts per year with each parent/family group involved in the program, including:

(A) monthly home visits to each parent/family group involved in the program, and scheduled at the convenience of the parent/family group (during evening hours or on Saturday, if necessary)~~,~~; and

(B) monthly ~~parent group meetings~~Family Support Meetings.

(7) Include an internal coordinating committee and a community advisory committee.

(8) Provide evidence of coordination of services with other community programs with similar purposes.

(9) Be open to all parents in the community, with a demonstrated effort to balance participation among various groups through active encouragement of the involvement of first time parents, teen parents, and high challenge families.

(10) Conduct child developmental screening, including but not limited to, vision, hearing, the understanding and use of language, motor development and eye-hand coordination, and health and physical development, use forms designated by the State Department of Education.

(11) Serve parents with children from birth to age 3 (0-36 months).

(12) Provide reports and program information as determined necessary by the State Department of Education.

(13) Designate a room, or space in an existing room, for parenting and child growth and development materials for use by parents and children participating in the program.

(14) Be operated by the district or the district may contract with private, nonprofit corporations or associations

or with any public or private agency or institution (i.e., Head Start).

(b) School district must have an enrollment of at least 500 students or form a consortium with other districts to total a minimum of 500 students for the development and operation of ~~an OPAT~~a program of parent education.

210:40-75-6. Funding

(a) In order to receive state funds for the development and operation of ~~an Oklahoma Parents As Teachers~~ a program of parent education or a Parent Education Training Program, a local board of education shall submit to the State Department of Education an application and description of the program.

(b) The application and description shall be prepared in such form and manner as the State ~~Board~~Department of Education shall require and shall be submitted at a time determined and specified by State ~~Board~~Department of Education.

(c) In the application for state funds the applicant must assure that he/she is aware that this grant is to be spent between July 1 and June 30 of the current fiscal year.

210:40-75-7. Solicitation, acceptance, and evaluation of district applications for state-funded ~~Oklahoma Parents as Teachers (OPAT) Grants~~grants for programs of parent education

(a) **Purpose; ~~OPAT~~ Grants to serve eligible school districts.** ~~OPAT grants~~Grants for programs of parent education shall be awarded to local school districts or consortia for programs serving school districts approved by the State ~~Board~~Department of Education.

(b) The State Department of Education shall notify all school districts of the eligibility and availability of ~~OPAT~~ grant funds for programs of parent education and of the deadline for submitting grant applications.

(c) ~~OPAT programs~~Programs shall address the following: composition of the ~~OPAT~~ advisory committee, assessment of needs, community(ies) to be served, goals and objectives, proposed activities and implementation plan, and proposed budget.

(d) ~~OPAT grant~~Grant applications shall be reviewed by a committee and approved by the State ~~Board~~Department of Education.

(e) ~~OPAT grant~~Grant recipients shall identify a program administrator or ~~coordinator~~Family Support Provider, and shall maintain financial records according to the Oklahoma Cost Accounting System (OCAS).

(f) Each funded school district shall agree to abide by the guidelines, rules, and regulations of the Oklahoma State Department of Education (OSDE) in implementing the ~~OPAT~~ grant program, and shall provide program and budget reports as required by the OSDE.

(g) The amount of funding available for each school district will be determined based on the annual appropriation and the following categories:

(1) Districts/Consortia with ADM of 30,000 or more students;

(2) Districts/Consortia with ADM of 18,000 or more students;

(3) Districts/Consortia with ADM of 3,000 or more students

(4) Districts/Consortia with ADM of 1,000 or more students;

(5) Districts/Consortia with ADM of 500 or more students.

[OAR Docket #16-470; filed 6-14-16]

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

[OAR Docket #16-471]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 87. Rules for Payments to Charter Schools
210:40-87-5. Charter school application [AMENDED]
210:40-87-7. Charter school contracts [NEW]
210:40-87-8. Appeals for sponsorship to the State Board of Education [NEW]
210:40-87-9. Applications for renewal of charter school contracts [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-130 et seq.; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
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n/a
ANALYSIS:
Updates to the charter school rules were required due to extensive statutory changes. Senate Bill 782 (2015) made several changes to the Oklahoma Charter Schools Act, including adding authorized sponsors and laying out detailed application and contract requirements. The charter school rule update adds guidance on the new provisions of the Oklahoma Charter Schools Act, and establishes a procedure for submitting a sponsorship appeal to the State Board of Education if a school district has denied a proposed charter school's application for sponsorship. The update also adds guidelines for renewing an existing charter school contract.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 87. RULES FOR PAYMENTS TO CHARTER SCHOOLS

210:40-87-5. Charter school application

(a) **Training.** Prior to submission of any additional applications to a proposed sponsor to establish a charter school, the prospective charter school applicant shall complete training as provided by the State Department of Education. The training shall include but not be limited to the following:

(1) Process and requirements for establishing a charter school

(2) Relevant Rules and Statutes pertaining to Charter Schools

(3) Child Nutrition/Free and Reduced Lunch

(4) Audits/State Aid/OCAS Reporting

(5) School Personnel/Transportation

(6) Curriculum/Gifted and Talented/Student Assessment

(7) The WAVE Requirements

(8) Open Meeting/Open Records/Ethics

(9) Special Education

(b) **Establishment of a new charter school.** A new charter school will be considered established when a charter school application complies with 70 O.S. § 3-134 and is approved by the governing board of a sponsoring entity set forth in 70 O.S. § 3-132~~.~~, or by the State Board of Education following a successful appeal under the procedure established pursuant to state law.

(c) **Processing the receipt of approved charter school applications.** All charter schools ~~established pursuant to 70 O.S. Supp 2007 § 3-132(3)(4)~~ must file charter documents with the State Department of Education~~,~~ Office of Accreditation~~Legal Services Section~~. The following documents must be filed:

(1) ~~a~~A copy of the sponsor's board minutes approving the charter school application~~,~~; ~~and~~

(2) ~~a~~A copy of the completed charter school application;

(3) A copy of the approved contract for the new charter school~~.~~; and

(4) A letter addressed to the Office of Accreditation that includes the following:

(A) A request for the school to be assigned a county code, district code, and site code;

(B) The physical and mailing addresses of the charter school;

(C) Contact information for the school administrator or a designee;

(D) Grades served; and

(E) The month and year the charter school will begin operation.

~~(d) **Determining the number of new charter schools.** Determinations regarding the statutory maximum number of new charter schools established annually shall be made by the Oklahoma State Department of Education based upon the order of receipt of the documents referenced in section c of this rule. Funding for a new charter school shall not be allocated if the establishment of a new charter school exceeds the statutory limit referenced in 70 O.S. § 3-142.~~

(d) **Application requirements.** An applicant seeking to establish a charter school shall submit a written application to the proposed sponsor. The application must include all statutorily required items listed in 70 O.S. § 3-134(B).

(e) **School district sponsors.** A school district may sponsor a charter school located within the geographic boundaries of the sponsoring district, subject to the virtual education restrictions of 70 O.S. § 3-145.6. Pursuant to 70 O.S. § 3-132(A)(8), an applicant that has been denied a charter by the local school district in which it seeks to operate shall be eligible to appeal to the State Board of Education under the provisions of 210:40-87-8.

(f) **Other sponsors.** A non-school-district sponsor shall give priority to applicants that have demonstrated a record of operating at least one school or similar program that demonstrates academic success and organizational viability and serves student populations similar to those the proposed charter school seeks to serve. In making this assessment, a sponsor must consider the statutory factors listed in 70 O.S. § 3-132(C).

(g) **Arbitration available if non-school-district sponsor denies application.** If a non-school-district sponsor rejects an application which has been revised and re-submitted pursuant to 70 O.S. § 3-134(E), the applicant may proceed to binding arbitration under the commercial rules of the American Arbitration Association. The costs of arbitration will be borne by the proposed sponsor. Arbitration is not available to applicants for charter schools proposed to be sponsored by school district boards of education, which may appeal to the State Board under the provisions of 210:40-87-8 if the proposed district sponsor rejects an application which has been revised pursuant to 70 O.S. § 3-134(E).

210:40-87-7. Charter school contracts

(a) **Contract requirement.** The sponsor of a charter school must enter into a written contract with the governing body of the charter school. The initial contract for sponsorship shall be for a period of five (5) years. The contract must meet all statutory requirements listed in 70 O.S. § 3-135(A). A charter contract may provide for one or more schools by the same applicant, to the extent approved by the sponsor and consistent with applicable law. An applicant or the governing board of an applicant may hold one or more charter contracts. Each charter school that is part of a charter contract shall be separate and distinct from any other charter school under the same charter contract, and the sponsor shall evaluate each charter school's performance separately.

(b) **Written procedure for consideration, approval, and disapproval.** Sponsors shall establish a written procedure and criteria for accepting, approving, and disapproving charter school applications in accordance with 70 O.S. § 3-134(E). A copy of this procedure and criteria shall be made available on

request to charter school applicants, potential applicants, and members of the public.

(c) **Performance provisions.** Each charter contract shall contain performance provisions based on a performance framework that sets forth the academic and operational performance indicators, measures, and metrics that will guide the sponsor's evaluations of the charter school. The sponsor shall not request any metric or data from a charter school that it does not produce or publish for all school sites in the district or under its sponsorship, unless the metric or data is unique to the charter school. To avoid duplication of administrative efforts, the sponsor shall require that data submitted under the performance provisions must be submitted by the charter school in the exact format required for submission of data to the Oklahoma State Department of Education (OSDE). Alternately, a sponsor may allow a charter school to provide permission to OSDE to share data required by the performance framework with the sponsor of the school. The performance framework must include measures that indicate, at a minimum:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both proficiency and growth among major student subgroups;

(4) Student attendance;

(5) Recurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma;

(6) In the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma;

(7) In the case of high schools, postsecondary readiness;

(8) Financial performance and sustainability; and

(9) Governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(d) **Copies of all modified contracts to be sent to State Department of Education.** A charter school must provide the OSDE Office of Accreditation with a copy of any modified contract within thirty (30) calendar days of execution. The requirement to send a copy of any modified charter contract to the OSDE Office of Accreditation applies to any change in terms, not only to changes that could potentially affect state funding.

210:40-87-8. Appeals for sponsorship to the State Board of Education

(a) **Circumstances permitting appeal.** When an applicant has been denied a charter by the local school district in which it seeks to operate following submission of a revised application, the applicant may apply to the State Board of Education for sponsorship, subject to the limitations on number of State Board sponsored charter schools under 70 O.S. § 3-132(A)(8).

(b) **Submission of an appeal to the State Board.** A charter school applicant that has been denied a charter by a school district and wishes to appeal to the State Board for sponsorship must submit a request in writing to the Executive Secretary of the Board within thirty (30) days of the denial. In considering whether the conditions for State Board sponsorship have been met, the Board will not conduct a de novo consideration of the application, but will review the record on appeal. The written request submitted by the applicant must therefore include, at a minimum:

(1) The original charter application, the revised application submitted pursuant to 70 O.S. § 3-134(E), and all supporting documentation submitted by the applicant to the sponsor; and

(2) The written record of the local board of education's decision.

(c) **Timeframe for hearing appeal.** The State Board of Education shall hear the appeal no later than sixty (60) calendar days from the date received by the Executive Secretary. Appeals may be considered at any regular or special meeting of the Board.

(d) **Determination of the number of new charter schools sponsored by the State Board.** The county code assigned to the school district by the Oklahoma State Department of Education (OSDE) Office of Accreditation shall be the basis for determining whether the district is located in a county with a population of fewer than five hundred thousand (500,000). The State Board is authorized to sponsor no more than five (5) charter schools per year in counties with a population of fewer than five hundred thousand (500,000), with no more than one (1) new charter school sponsored in a single school district per year. Requests for appeal that meet the requirements in subsection (b) shall be scheduled for hearing in the order in which they are received by the Executive Secretary of the State Board. There is no annual limitation on the number of charter schools the State Board is authorized to sponsor in counties with a population greater than five hundred thousand (500,000).

(e) **Conditions required for State Board sponsorship.** In order to authorize a charter school that has been denied a charter by the local district, the State Board must find evidence of the following:

(1) A thorough and high-quality charter school application from the applicant, based on the authorizing standards in 70 O.S. § 3-134(B);

(2) A clear demonstration of community support for the charter school; and

(3) The grounds and basis of objection by the school district for denying the operation of the charter are not supported by the greater weight of evidence and the strength of the application.

210:40-87-9. Applications for renewal of charter school contracts

(a) **General requirements.** All applications for renewal of a charter contract must meet the requirements of 70 O.S. § 3-137. Every charter contract renewed after August 20, 2015, must incorporate the requirements of 70 O.S. § 3-135 as amended by Senate Bill 782 (2015), even if the original contract was entered prior to August 20, 2015. Prior to the beginning of the next-to-last year of operation of a charter school under its existing contract, the sponsor shall issue a charter school performance report and renewal application guidance to the school and the charter school board. Prior to

the beginning of the last year of operation under its existing contract, the charter school may apply for renewal of the contract with the sponsor.

(b) **Duration of renewed charter contract.** A charter contract may be renewed for successive five (5) year terms of duration. The sponsor may also vary the renewal term to a period other than five (5) years based on the performance, demonstrated capacities, and particular circumstances of each charter school. If the sponsor determines that a duration other than five (5) years is appropriate for a renewal contract, the renewal contract shall state the reason(s) for the varied term.

(c) **Renewal with conditions.** A sponsor may grant renewal with specific conditions for necessary improvements to a charter school. If a sponsor grants a renewal under which specific conditions must be met, the conditions shall be explicitly stated in the renewal contract.

(d) **Performance report requirements.** A charter school shall have forty-five (45) calendar days to respond to the performance report and submit any corrections or clarifications to the sponsor. The charter school performance report issued by the sponsor prior to the next-to-last year of operation shall provide to the charter school:

(1) A summary of the performance record of the charter school to date, based on the data required by the Oklahoma Charter Schools Act and the charter contract, and taking into consideration the percentage of at-risk students enrolled in the school; and

(2) Notice of any weaknesses or concerns perceived by the sponsor that may jeopardize the charter school's position in seeking renewal if not timely rectified.

(e) **Renewal application guidance requirements.** The renewal application guidance issued by the sponsor to the charter school prior to the next-to-last year of operation shall include or explicitly refer to the criteria that will guide the renewal decisions of the sponsor, which shall be based on the performance framework set forth in the charter contract and consistent with the Oklahoma Charter Schools Act. The renewal application guidance shall, at a minimum, provide an opportunity for the charter school to:

(1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(2) Describe improvements undertaken or planned for the school; and

(3) Detail the plan for the next charter term for the school.

(f) **Guidelines for renewal decisions.** A sponsor which does not intend to renew a charter contract must give written notice of its intent to deny a request for renewal at least eight (8) months prior to the expiration of the contract. In making renewal decisions, a sponsor shall:

(1) Ground decisions on evidence of the school's performance over the term of the charter contract, evaluated in accordance with the performance framework set forth in the contract, and taking into consideration the school's percentage of at-risk students;

(2) Grant renewal to schools that have achieved the standards and performance expectations set forth in the contract, are organizationally and fiscally viable, and have been faithful to the terms of the contract and all applicable laws and administrative rules;

(3) Ensure that data used in making renewal decisions are available to the school and the public; and

(4) Provide a public report summarizing the evidence used as the basis for the decision.

(g) **Binding arbitration upon request of charter school denied renewal.** If a sponsor other than a school district has denied a charter school's request for renewal, the school may request that the governing board of the sponsor proceed to binding arbitration as provided for in 70 O.S. § 3-134(G). If a school district sponsor has denied a charter school's request for renewal, the school may appeal to the State Board of Education under the procedure set forth in 210:40-87-8.

[OAR Docket #16-471; filed 6-14-16]

TITLE 218. OFFICE OF EDUCATIONAL QUALITY AND ACCOUNTABILITY CHAPTER 10. EDUCATIONAL QUALITY

[OAR Docket #16-446]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Educator Preparation Program Accreditation
218:10-5-1 [AMENDED]
218:10-5-3 [AMENDED]
218:10-5-4 [AMENDED]
Subchapter 7. Educator Assessment
218:10-7-1 [AMENDED]
Appendix A. Competency Exam Requirements by Certification Areas [REVOKED]
Appendix A. Competency Exam Requirements by Certification Areas [NEW]
AUTHORITY:
Office of Educational Quality and Accountability; 70 O.S. Supp. 1998, §6-180 et seq;
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Adopted rules align the educator preparation program accreditation processes with those of the Council for Accreditation of Educator Preparation and reflect changes in assessment requirements for out-of-state certified educators.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. EDUCATOR PREPARATION PROGRAM ACCREDITATION

218:10-5-1. Educator preparation program accreditation and review process

(a) Oklahoma educator preparation institutions function under an 'accreditation program' system which requires the evaluation of teacher education units and programs on a periodic basis.

(b) Effective July 1, 2014 the Commission of Educational Quality and Accountability, hereafter referred to as the CEQA, shall assume responsibility for accrediting educator preparation programs in Oklahoma's public and private institutions of higher education.

(c) The program accreditation system shall be a multifaceted system based on:

(1) A competency-based educator preparation program built around the standards for Oklahoma educator preparation programs (See 218:10-5-3 and 218:10-5-4);

(2) ~~Institution plans~~Self-studies as outlined in the standards for state accreditation;

(3) On-site accreditation review team visits to the campuses of the institutions of higher education;

(4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;

(5) Analysis of student satisfaction data;

(6) Analysis of student/teacher candidate portfolios.

(d) Prior to being accredited each institution must meet the Council for Accreditation of Educator Preparation, ~~herein~~hereafter referred to as CAEP, preconditions for accreditation and all requirements of the CEQA, and/or receive the approval of the Oklahoma State Regents for Higher Education, Hereafter referred to as the OSRHE, when applicable, and provide required documentation for each precondition.

(1) All initial plans will be reviewed by the Office of Educational Quality and Accountability, hereafter referred to as OEQA~~,~~.OEQA ~~who~~ will determine accreditation ~~for seven years, accreditation for two years with a focused visit, accreditation for two years with a full visit, defer decision or denial of accreditation.~~ eligibility and CEQA will determine candidacy for accreditation status.

(2) Performance-based training will be conducted by the CAEP and/or their designee.

(3) Any ~~OEQA~~CEQA member or OEQA appointee who is involved in any evaluation and/or accreditation decision related to any educator preparation unit and/or program must complete the performance-based training related to the review and accreditation of educator preparation units and/or programs prior to voting and/or participating on any accreditation decisions.

(e) The ~~CEQA~~OEQA is a performance-based partner with the ~~Oklahoma State Regents for Higher Education (State Regents)~~OSRHE and CAEP. All educator preparation programs shall be expected to meet all CAEP unit and program standards, ~~SDE~~State Department of Education competencies, OSRHE teacher education policies as well as all additional standards established by the CEQA.

(1) Application form. The application form containing the required information will be completed by the director of educator preparation at the institution seeking CEQA accreditation for the educator preparation certificate programs.

(2) ~~Institutional plan.~~Self-study. The ~~institutional plan~~self-study shall be utilized by the CEQA for state accreditation, ~~State Regents~~ OSRHE program review, and CAEP accreditation as stipulated in OS 70 sections 6-180.

(3) Records to be kept on file at the institution. The following items and records shall be kept on file at the institution with the director/dean of teacher education.

(A) Copy of the ~~institution plan~~self-study;

(B) Copy of annual report to the CEQA;

(C) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and

(D) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.

(E) Copies of program review reports.

(F) Candidate CEOE scores.

(4) OEQA personnel will establish an accreditation visit schedule that will adhere to CAEP accreditation timelines.

(5) Selection of accreditation review team. Selection of the accreditation review team will be coordinated by the OEQA staff after the visitation dates are set. Selection of the accreditation review team shall be based on the following:

(A) All team members must have been trained by CAEP staff and/or their designee in the application of CAEP standards and on the process for evaluating programs for the CEQA.

(B) Accreditation team for first accreditation. The membership of a first accreditation review team shall be as follows:

(i) Three to six ~~representatives from the CAEP Board of Examiners (for CAEP accredited institutions).~~CAEP site visitors (for institutions seeking national accreditation)

(ii) State ~~representatives~~site visitors appointed by the OEQA including: One

~~(iii)~~ P-12 ~~representative~~site visitor;

~~(iv)~~ One ~~representative~~site visitor from higher education who is a member of ~~a~~an educator preparation unit. For accreditation of private institutions

the ~~representative~~site visitor shall be from a private institution; for public institutions this ~~representative~~site visitor shall be from a public institution;

~~(v)~~ One ~~representative~~site visitor from the OEQA serving as State Consultant;

~~(vi)~~ One additional at-large ~~member~~site visitor;

(~~I~~iii) For any institution requesting accreditation of a career technology program(s) an additional ~~accreditation review team member~~site visitor may be recommended by the State Director of Career and Technology Education.

(~~II~~iv) The OEQA ~~will determine~~may invite observers ~~from representatives of~~representing the Oklahoma State Regents for Higher Education, Oklahoma State Department of Education, Oklahoma Department for Career and Technology Education, professional organizations, and the community-at-large.

(~~III~~v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist, but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(~~IV~~vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(~~V~~vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(~~VI~~viii) The OEQA shall collaborate with the director of educator preparation at the institution requesting state accreditation ~~to determine~~ regarding the team representation.

(ix) State site visitors will number one less than the CAEP site visitors.

(C) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:

(i) CAEP ~~representatives~~site visitors as determined by CAEP (for CAEP accredited institutions);

(ii) State ~~representatives~~site visitors which will number one less than the CAEP representatives;

(iii) The OEQA shall collaborate with the director of educator preparation at the institution being reviewed ~~to determine~~regarding the state ~~committee~~team representation;

(iv) The OEQA ~~will determine~~may invite observers ~~from representatives of the~~representing Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education may nominate a ~~team member~~site visitor for any institution requesting accreditation of career and technology program(s);

(v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(D) Accreditation teams for non-CAEP accredited institutions shall be composed of state ~~representatives.~~ site visitors.

(6) Logistics for CAEP/State accreditation visits shall adhere to the CAEP and State guidelines.

(A) The completed accreditation review team report will be presented to the CEQA and CAEP (as applicable).

(B) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit.

(7) Preparation of the team report. The accreditation review team work will culminate in preparation of a report outlining the findings of the team following CAEP guidelines. The report will reflect the team consensus on the review.

(A) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include ~~findings for each standard and state requirement including areas for improvement.~~ an evaluation of the completeness, quality, and strength of evidence for each standard and state requirement.

(B) The completed CAEP and OEQA reports will follow the CAEP timelines for submission; and

(C) The ~~recommendation~~summary evaluation ~~of the accreditation review team regarding the program~~ will be ~~made~~presented to the CEQA for determination of final state accreditation decision. For CAEP accredited institutions, final accreditation decisions will be made after ~~the~~ CAEP ~~Commission~~ has forwarded its accreditation decision to the CEQA.

(8) ~~The rejoinder process will adhere to the CAEP requirements regarding institutional rejoinders.~~

~~(A)~~ Final action on the reports and institutional accreditation will proceed according to CAEP and state ~~Guidelines~~guidelines.

(~~B~~A) Final action by the CEQA may include the following actions:

(i) ~~First and Continuing Accreditation for seven years.~~ Initial Accreditation. This accreditation action accredits an educator preparation program initially for a period of seven years with all standards met.~~First Accreditation or Continuing Accreditation for seven years is granted to the education unit and program(s) if the CEQA finds that standards have been adequately addressed to merit accreditation. This accreditation decision indicates that the unit meets each of the CAEP standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its annual report the institution will be expected to address progress on the areas for improvement cited in the accreditation report.~~

(I) Educator preparation programs are denied accreditation if they fail to meet one or more of the standards.

(II) Educator preparation programs for which a stipulation(s) (critical deficiency related to one or more components of a standard) has been cited must remove the stipulation(s) within two years to maintain its accreditation for an additional five years. Educator preparation programs must provide documented evidence in order for a stipulation(s) to be removed.

(III) Identified areas for improvement (a weakness in evidence for a component or a standard) shall be addressed in the educator preparation program's annual report. When the CEQA has determined that an education unit is not making progress toward the removal of the areas for improvements cited during their visit, the institution will be notified that the unit will be required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas for improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be reviewed, annually, by the OEQA. ~~First accreditation is retroactive to the semester in which the accreditation visit occurred.~~

(ii) ~~Accreditation for two years with a focused visit.~~ Continuing Accreditation. This accreditation action reaccredits an educator preparation program that was previously accredited by CAEP, NCATE or the state, for a period of seven years with all standards met.

~~(I) This accreditation decision indicates that the unit has not met one or more of the standards. When the CEQA renders this decision, the unit has or maintains its accredited status; but must satisfy provisions by meeting previously unmet standard(s) within an established time period.~~

~~(II) If Accreditation for two years with a focused visit is granted, the CEQA will require a focused visit on the unmet standard(s) within two years of the semester of the accreditation decision. After a focused visit, the CEQA will (1) grant accreditation or (2) revoke accreditation.~~

~~(III) If accreditation is granted, the next on-site visit is scheduled for seven years following the semester in which the accreditation visit preceding the focused visit occurred.~~

(I) Educator preparation programs for which a stipulation(s) has been cited must remove the stipulation(s) within two years to maintain its accreditation for an additional five years. Educator preparation programs must provide documented evidence in order for a stipulation(s) to be removed.

(II) Identified areas for improvement shall be addressed in the educator preparation program's annual report. When the CEQA has determined that an education unit is not making progress toward the removal of the areas for improvement, the institution will be notified that the unit is required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas for improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be annually reviewed by the OEQA.

(iii) ~~Accreditation for two years with a full visit.~~ Probationary Accreditation. This accreditation action reaccredits an educator preparation program for a period of two years when the program was previously accredited by CAEP, NCATE, or State but now failing to meet no more than one CAEP standard.

~~(I) This accreditation decision indicates that the unit has not met one or more of the CAEP standards, and serious problems exist across standards. When the CEQA renders this decision, the unit has or maintains its accredited status, but must satisfy conditions by meeting the previously unmet standard(s) within an established time period.~~

~~(II) If accreditation for two years with a full visit is granted, the CEQA will require a full~~

~~visit on the unmet standard(s) within two years of the accreditation decision. After a full visit, the CEQA will (1) continue accreditation or (2) revoke accreditation.~~

~~(III) If accreditation is granted, the next on site visit is scheduled for seven years following the semester in which the continuing accreditation visit occurred.~~

(I) To extend accreditation beyond the two-year period, an educator preparation program is required to submit a self-study report addressing the identified stipulations, followed by a focused site visit and subsequent CAEP/CEQA decision. The decision can be to accredit for five additional years or to return the educator preparation program to candidate status.

(II) Identified areas for improvement shall be addressed in the educator preparation program's annual report. When the CEQA has determined that an education unit is not making progress toward the removal of the area for improvement, the institution will be notified that the unit is required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas of improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be annually reviewed by the OEQA.

~~(iv) Defer Decision.~~

~~(I) The CAEP Commission or CEQA will make this decision if the BOE team recommended that any standard(s) was met for which the CAEP Commission or CEQA did not accept the team's recommendation.~~

~~(II) A supplemental rejoinder related to the new unmet standard(s) may be submitted for review by the CAEP Commission or CEQA. The supplemental rejoinder must be based on evidence available at the time of the visit. The institution will be required to submit said documentation to the CAEP Commission or CEQA as applicable.~~

~~(III) For CAEP/State institutions, the CEQA will defer decision until the next CAEP Commission meeting. For State only institutions, the CEQA will defer decision for no more than sixty (60) days.~~

~~(IV) If the standard(s) continues to be unmet after the supplemental rejoinder, accreditation will be granted for 18 months with either a focused or full visit.~~

(~~v~~iv) ~~Denial of accreditation (First)~~Denial. This accreditation action denies accreditation for an educator preparation program applying for First Accreditation whereby one or more standards were deemed not met.

~~(I) Denial of accreditation is rendered when the CEQA finds that the professional education unit and/or programs have severe and/or numerous areas for improvement that limits its capacity to offer quality programs.~~

(~~II~~I) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the CAEP or CEQA decision, as to the denial of program accreditation of the unit and programs.

(~~III~~II) Institutions that are denied accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is denied.

(III) In the event that accreditation is denied, an institution may reapply for initial accreditation following a two year waiting period. All procedures for initial accreditation will be followed during the reapplication process.

(~~vi~~v) Revocation ~~of accreditation (Continuing).~~ This accreditation action revokes a previous accreditation decision following submission of documented evidence on stipulations and/or focus visit whereby stipulations and/or areas for improvement were determined not corrected. Accreditation will be terminated at the end of the semester in which the CEQA or CAEP revokes accreditation.

(I) ~~Revocation of accreditation terminates current accreditation after a two-year visit if the CEQA finds that critical areas for improvement are not corrected. Accreditation will be terminated at the end of the semester in which the CEQA revokes accreditation.~~

~~(II)~~ All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the CAEP or CEQA decision, as to the revocation of accreditation of the unit and programs.

(~~III~~II) Institutions that lose their state accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

~~(IV) An on-site interim accreditation visit may be requested by the Appeals Board, hereinafter referred to as AB, acting on behalf of the CEQA. This visit would result from the committee's determination that compelling reasons exist to authorize reexamination of the accreditation of an institution's professional education unit and/or programs. If the AB determines that a complaint received by the committee needs~~

~~to be investigated, the committee will authorize an interim accreditation review team visit to the campus. The interim accreditation review team will consist of one member from the first or continuing accreditation review team and the remainder of the members will be appointed by the CEQA.~~

(III) In the event that accreditation is revoked, an institution may reapply for first accreditation following a two-year waiting period. Reapplication shall occur based on the state accreditation standards. All procedures for first accreditation will be followed during the reapplication process.

~~(V) The interim accreditation review team will prepare a report for the CEQA. At the next CEQA meeting following such a visit, the interim review team will recommend the institution's accreditation status to the CEQA.~~

~~(VI) The CEQA may revoke accreditation if the unit and/or program(s) (a) no longer meets the state accreditation standards, (b) fails to submit annual reports and other documents required for accreditation; (c) misrepresents its accreditation status to the public; (d) fails to meet timelines of conditional or probationary accreditation or (e) fails over a three-year period to meet and maintain teacher candidate performance standards on the competency based assessments as established by the CEQA.~~

~~(VII) All accreditation decisions shall be reported annually in the CEQA annual report.~~

~~(VIII) In the event that accreditation is denied or revoked, an institution may reapply for first accreditation following a three-year waiting period. Before a first visit may occur, a minimum of three years must have lapsed since accreditation was denied. Reapplication shall occur based on the state accreditation standards. All procedures for first accreditation will be followed during the reapplication process.~~

(vi) Exemplary designation. This is a recognition by CAEP or CEQA for an "exemplary" level of performance.

(B) All final actions shall be reported annually in the OEQA annual report.

(9) **Appeals Board.**

(A) ~~For CAEP accredited units the AB shall consider the recommendations of the CAEP appeals board for unit accreditation;~~ For appeals related to national accreditation the CAEP Appeals Board shall consider the recommendations of the CAEP Commission of the Accreditation Council; hereafter referred to as the Council;

(B) For appeals related to program(s) and ~~non-CAEP accredited institutions the following procedures shall be followed.~~ state accreditation the CEQA shall consider the recommendation of the CEQA Appeals Board whose membership shall include:

(C) Membership of CEQA Appeals Board shall be:

(i) CEQA chair. The CEQA Chair shall be the Chair of the Appeals Board;

(ii) Representative from OEQA with State Consultant experience;

(iii) Program subject matter and/or standards expert(s). If the appeal is related to a specific program, the program expert shall be in the area(s) being appealed;

(iv) One P-12 school classroom teacher;

(v) One member trained as a site visitor (when applicable);

(vi) One ~~teacher~~ educator preparation faculty representative; and

(vii) One representative from the arts and sciences faculty or from school administration.

(10) **~~Conditions for appeals.~~Appeal of an accreditation adverse action.**

(A) ~~Any institution that is the object of an adverse decision, as determined by the CEQA, may appeal that decision to the CEQA Appeals Board.~~ An educator preparation program may formally appeal an adverse action (denial or revocation of accreditation) to CAEP or CEQA by indicating its intent in writing within 15 days of receipt of its accreditation letter and action report. The program shall submit its petition within 30 days after its letter of intent.

(B) ~~An adverse decision is defined as the denial or revocation of program(s) or unit accreditation.~~ CAEP or CEQA may affirm, amend, or reverse the accreditation decision. The decisions of CAEP and the CEQA are final. While the appeal is pending, the educator preparation program's prior status remains in effect.

(C) ~~An institution may also appeal, in writing, accreditation for two years with a focused visit, accreditation for two years with a full visit, and defer decision accreditation decisions. An adverse decision may be appealed only on the following grounds:~~ The basis for appeal of an accreditation adverse action is:

(i) ~~Stated procedures were not followed;~~ CAEP/OEQA procedures not followed by visitor teams, Commissioners, the Council, or CAEP/OEQA staff;

(ii) ~~Evidence favorable to the institution was provided to the accreditation review team but was not considered;~~ A conflict of interest or prejudice by members of visitor teams, Commissioners, the Council, CAEP/OEQA staff that influenced the accreditation decision;

(iii) ~~Evidence was presented to the appropriate board in the form of a rejoinder or stipulation response but was not considered;~~ The accreditation decision is not supported adequately or is contrary to facts presented and known at the time of the decision;

~~(iv) If a college or university believes that one or more of these conditions was a factor in its accreditation, the only available means of redress is through the appeals process; or~~

~~(v) There was a lack of the full number of team members due to last minute emergencies; however, that factor alone is not sufficient to uphold an appeal.~~

~~(I) The institution must convincingly demonstrate that this fact made a difference in the accreditation decision.~~

~~(II) The institution shall prove actual prejudice to it and that the prejudice changed the accreditation decision.~~

~~(III) The fact that the institution did not recommend canceling the visit would be evidence that it, at least before the visit, believed that the assembled team would be sufficient to conduct a fair and complete visit.~~

~~(D) The findings and recommendations of the AB are received by the CEQA at its first meeting following the meeting of the AB.~~

~~(E) Subsequent actions shall be based on grounds upheld by the CEQA and may include, but are not limited to:~~

~~(i) Assigning another accreditation review team to revisit an institution;~~

~~(ii) Reinstating accreditation or~~

~~(iii) Upholding the initial recommendation for denial or revocation of accreditation.~~

~~(F) The status of the appellant at the time of the visit remains unchanged until the appeals process has been exhausted.~~

(11) ~~**Process for appeal. The following provisions govern the appellate process:**~~ **Reconsideration of a stipulation or a probationary accreditation decision.**

(A) ~~Within 15 days of receiving notice of the adverse decision, an institution electing to appeal an adverse decision of the CEQA must present the OEQA Executive Director and the CEQA written notification of its intention to appeal.~~ An educator preparation program may ask for reconsideration of a CAEP or CEQA stipulation or conditional term decision. An educator preparation program may, by a formally documented petition, request reconsideration of any decision that cites a stipulation or grants a conditional term for accreditation. CAEP/OEQA staff will undertake a preliminary review of petitions with the educator preparation program and take the request to the CAEP Council Chair and Vice Chairs or CEQA chair to determine whether to submit the request to the full Council or to the CEQA.

(B) ~~No later than 30 days from the date that it submits its notification, the institution must submit a brief to the Executive Director which sets forth the specifics of its appeal and includes full documentation.~~The basis for reconsideration of a stipulation or a conditional term decision is:

(i) CAEP/OEQA procedures not followed by visitor teams, Commissioners, the Council, or CAEP/OEQA staff;

(ii) A conflict of interest or prejudice by members of visitor teams, Commissioners, the Council or CAEP/OEQA staff that influenced the accreditation decision;

(iii) The accreditation decision is not supported adequately or is contrary to facts presented and known at the time of the decision.

~~(C) The CEQA Chair shall convene the AB within 60 days after an appeal brief has been filed. The AB will hear and act on the appeal within this time frame.~~

~~(D) The appellant shall have the right to present a 30 minute oral argument on its brief. The appellant shall also have the right to be represented by counsel during the appeal, but may not call witnesses or introduce new evidence on its own behalf.~~

~~(E) If the decision appealed is accreditation for two years with a focus visit, accreditation for two years with a full visit or defer decision the appellant's right to appeal is limited to the submission of written documentation.~~

~~(F) In the case of an accreditation decision review, the AB has the right to seek clarification of the accreditation review team report from the state team chair, and clarification of the CEQA deliberations from the chair of the CEQA.~~

~~(G) In the case of an accreditation decision review, all evidence presented in the appellant's brief and considered by the AB must be confined to conditions existing at the time of the accreditation review team visit as cited in the final report, or in the case of a petition for stipulation removal, to conditions existing at the time the petition for stipulation removal was submitted.~~

(12) **Cost of review.**

(A) If the appeal leads to an affirmation of the CEQA's original decision, the appellant will be liable for the expenses of the ~~AB~~CEQA Appeals Board, the second accreditation review team visit, and all expenses related to the review. All expenses will be reimbursed according to state travel reimbursement guidelines.

(B) If the ~~AB~~CEQA Appeals Board finds in favor of the institution, the CEQA will be liable for expenses of the AB and second accreditation review team. All expenses will be reimbursed according to state travel reimbursement guidelines.

218:10-5-3. Specific state standards for program accreditation

(a) The following standards apply to both undergraduate and graduate programs. The governance and administration of the total educator preparation program standard is based on the premise that there must be a recognizable and functioning governance entity within the institution's administrative structure which has responsibility for designing, approving and

continuously evaluating and developing educator preparation programs. This governing unit may be a council, committee, department, school, college, or any other recognizable entity, which includes the administration of educator preparation as one of its functions. The governing unit membership and responsibilities include the following:

(~~I~~1) Membership on the educator preparation governing unit shall be defined by written policy to include:

(A) A majority of the members who have a minimum of three years teaching experience in public schools;

(B) A majority of the members in the governance unit who are currently teacher education faculty members;

(C) Some faculty members who shall represent the arts and sciences;

(D) A designated director of educator preparation defined as the institution's official representative for educator preparation. The authority and responsibilities of this individual shall be clearly defined in written policies; and

(E) A clearly defined process whereby faculty members and administrators become members and the terms of office.

(~~II~~2) The responsibilities of the educator preparation governing unit shall be defined by written policy to include:

(A) Responsibilities of the officers of the unit;

(B) Responsibilities of the unit's standing committees; and

(C) Responsibilities in the following areas as they are related to educator preparation:

(i) Admission/retention in educator preparation;

(ii) Field experience and student teaching (admission and placement);

(iii) Development of courses and program curricula; and program review, evaluation and planning.

(~~III~~3) Program review, evaluation and revision responsibilities include:

(A) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all educator preparation programs within each accreditation period;

(B) Periodic program reviews and revisions shall be based on, but not limited to, stated goals and objectives; and

(C) The process for conducting program review, evaluation, and revision shall include, but not be limited to, participation by the following:

(i) Educator preparation faculty and arts and science faculty;

(ii) Graduates of the programs;

(iii) Students currently in the program;

(iv) Teachers and administrators from the public schools;

(v) Parents of P-12 students and business and community leaders who are actively involved in assisting P-12 schools.

(~~IV~~4) Documentation related to the budget-making process and level of financial support shall include the following:

(A) A clearly defined budget-making process for all teacher education programs; and

(B) An analysis showing that the institution's financial support for programs in educator preparation are maintained at a level appropriate for a professional preparation program.

(b) Educator preparation faculty ~~standards are to be consistent with accreditation standards.~~ workload policies, including class-size and online course delivery, should allow faculty members to be effectively engaged in teaching, scholarship, assessment, advisement, collaborative work in P-12 schools, and service. Faculty loads for teaching on campus and online generally do not exceed 12 hours for undergraduate teaching and nine hours for graduate teaching per semester or the equivalent. Supervision of clinical practice does not generally exceed 18 candidates for each full-time equivalent faculty member per semester or the equivalent.

(c) Candidate-related standards are to be consistent with accreditation standards.

(d) Program decisions of the professional education unit are to be guided by a conceptual framework, which establishes the shared vision for the preparation of teacher candidates.

(1) The conceptual framework ~~must include the following structural elements: The mission of the institution and the educator preparation program;~~ application for state initial accreditation.

~~(A) The program's philosophy, purposes, professional commitments and dispositions;~~

~~(B) A knowledge base that provides the foundation for the framework;~~

~~(C) Performance expectations for candidates that align with professional, state and institutional standards; and~~

~~(D) A system by which candidate performance is regularly assessed.~~

(2) ~~A description of the conceptual framework shall be submitted along with the institution's preconditions report by any institution seeking first accreditation.~~ The conceptual framework shall consist of:

(A) The program's philosophy, purposes, professional commitments and dispositions;

(B) A knowledge base that provides the foundation for the framework;

(C) Performance expectations for candidates that align with professional, state and institutional standards; and

(D) A system by which candidate performance is regularly assessed.

~~(3) A description of the conceptual framework shall be included in all institutional reports submitted prior to first and continuing accreditation visits.~~

(e) The following guidelines are to be used to collect and maintain data on each institution's educator preparation program:

(1) The institution shall establish a process which seeks information and program input from educator preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within the educator preparation program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.

(2) The institution shall establish procedures to inform the public regarding the educator preparation program and to solicit and receive public input.

(3) The ~~institutional plan~~self-study shall be accessible to any interested party under the Oklahoma Open Records Act.

(4) The submitted institutional plan must be approved by the institution's governing board.

(5) Annual reviews and reports indicating program changes.

(f) The following policies, procedures and guidelines are used to direct the content and candidates' experiences of each institution's teacher preparation program.

(1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English.

(2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.

(3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.

(4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full Subject Matter Competencies for Teacher Licensure and Certification.

(5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.

(6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.

(7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies as identified in the CAEP professional learned societies' standards and State Department of Education Full Subject Matter Competencies for early childhood, elementary and special education.

(8) Teacher candidate coursework includes the study of substance abuse symptoms identification and prevention; mental illness symptoms identification and mental health issues; classroom management skills; and classroom safety and discipline issues.

(9) Effective September 1, 2015 teacher candidates must have a minimum of 60 hours of diverse field experiences prior to their student teaching experience.

(10) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunities for certification and employment. At a minimum, teacher candidates are provided information on the latest supply and demand information concerning teacher employment, state salary structure, and teaching shortage areas.

(11) Substantive collaboration and classroom interaction with students accompanies theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.

(12) Instruction integrates pedagogical competencies or skills with experiences in the school setting.

(13) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.

(14) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the CAEP national (professional) learned societies' standards.

(15) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion adhering to all rules and regulations established by the Oklahoma State Department of Education.

(16) A candidate's mastery of a program's stated exit criteria or competencies is assessed through the use of multiple sources of data such as culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests and course grades.

(17) Effective September 1, 2015 mentor teachers are required to have minimum of three years of teaching experience in the area in which they are certified.

(g) The following guidelines are to be used to facilitate the professional learning of faculty: Teacher education faculty continue their professional learning during their tenure at an institution of higher education to ensure that the future teachers of Oklahoma are taught by professional educators fully trained in their areas of expertise. Professional development for teacher educators and arts and sciences faculty should be focused on the faculty members' ability to model such effective teaching strategies as inquiry, group discussions and collaborative learning.

(h) The following policies are to be used to evaluate individual program areas at each institution:

(1) The institution shall submit program reviews for each required program area based upon the CAEP/State guidelines and accreditation schedule.

(2) Following the completion of each program evaluation, the institution will receive written notification of each program's status. Recognition decisions will include

the following categories: recognized, recognized with conditions, recognized with probation, further development required, and not recognized.

(3) If the program is recognized, it will retain its status through the semester and year of the institution's next accreditation visit. To retain recognition, another program report must be submitted before that review.

(4) If the program is recognized with conditions, a report addressing the conditions to recognition must be submitted within 18 months of the date of the status report. The report must address the conditions specified by the reviewers. Once acceptable data has been submitted, the condition(s) will be removed. If the program does not submit acceptable information within the designated timeframe, the decision reverts to "not recognized."

(5) If the program decision is recognized with probation or further development required, a revised report addressing the issues identified by the reviewers must be submitted within 12 months, or the unit may submit a new program report for recognition within 12 months. If the revised report adequately addresses the concerns cited by reviewers, the program decision will be changed to "recognized" or "recognized with conditions." If the program is unsuccessful after two attempts, the program status will be changed to "not recognized."

(6) A program can receive a decision of "not recognized" only after two submissions are unsuccessful in reaching either "recognized" or "recognized with conditions." If the program is not recognized, a revised report addressing unmet standards may be submitted within 12 months of the date of the recognition report. [This report will be sent to the original team if possible.] If the program does not receive a recognized decision within 12 months, admission of new candidates will not be allowed. The unit may elect to submit a new program report for recognition within 12 months. [This report will be sent to a new team of reviewers].

(7) Programs which are required to submit through CAEP and receive an initial decision of "recognized with probation" or "further development required" may apply to OEQA for state recognition and thus recommend teacher candidates for certification under the following conditions:

(A) The program must have an aggregated pass rate of all candidates on the Oklahoma Subject Area Test (OSAT) of 80% or more over a three-year period. An application for program recognition must be submitted to OEQA containing basic program information as well as current recognition status and future submission deadlines; however an additional review will not be required.

(B) Institutions must submit a revised program report according to applicable CAEP/SPA or OEQA guidelines as appropriate addressing concerns cited in the review. If the revised report is not recognized, the unit must submit additional revised reports according to guidelines. The unit must exhaust all available CAEP options for revision.

(C) Programs which do not meet the required 80% pass rate on the OSAT may apply to OEQA for state recognition only after the unit has exhausted all available CAEP options for revision. The application for state recognition must address concerns cited by reviewers in the final report.

(D) Programs receiving state recognition under these conditions will maintain recognition until the submission period prior to the unit's next scheduled accreditation visit, at which time the unit will be expected to submit a program review to CAEP or OEQA, as appropriate.

(8) Units may receive conditional approval for new programs. These programs must undergo reviews as outlined in the New Certification Program Procedures for Established Units guidelines before receiving full recognition. ~~Recognition~~State recognition will be retained through the semester and year of the unit's next accreditation visit. Programs with national Specialized Professional Association's are required to submit to CAEP within 18 months of receiving a recognized with conditions decision.

(9) Programs that do not comply with the procedures detailed in items (h)3-7 will no longer be eligible to recommend candidates for licensure and certification.

(10) An institution with a non-compliant program may apply to the CEQA for a waiver if there is evidence that the non-compliant status of a program is due to transitioning national standards.

218:10-5-4. Standards for Oklahoma educator preparation programs

(a) ~~The following standards as defined by the National Council for Accreditation of Teacher Education shall apply to undergraduate and graduate programs through August 31, 2016.~~ Effective September 1, 2016 standards as defined by CAEP shall apply to undergraduate and graduate programs.

(1) Standard One: ~~Candidate Knowledge, Skills and Dispositions.~~ Content and pedagogical knowledge. The educator preparation program ensures that candidates develop a deep understanding of the critical concepts and principles of their discipline and, by completion, are able to use discipline-specific practices flexibly to advance the learning of all students toward attainment of college- and career-readiness standards.

~~(A) Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.~~

~~(B) Elements for Standard One include content, pedagogical and professional knowledge; dispositions for all candidates; and student learning for all candidates.~~

(2) Standard Two: ~~Assessment System and Unit Evaluation.~~ Clinical partnerships and practice. The educator preparation program ensures that effective partnerships and high-quality clinical practice are central to preparation so that candidates develop the knowledge, skills, and professional dispositions necessary to demonstrate positive impact on all P-12 students' learning and development.

~~(A) The unit has an assessment system that collects and analyzes data on the qualifications of applicants, the performance of candidates and graduates, and unit operations to evaluate and improve the unit and its programs.~~

~~(B) Elements of Standard Two include data collection, analysis, and evaluation; and use of data for program improvement.~~

(3) Standard Three: ~~Field Experiences and Clinical Practice.~~ Candidate quality, recruitment, and selectivity. The educator preparation program demonstrates that the quality of candidates is a continuing and purposeful part of its responsibility from recruitment, at admission, through the progression of courses and clinical experiences and to decisions that completers are prepared to teach effectively and are recommended for certification. The educator preparation program demonstrates that development of candidate quality is the goal of educator preparation in all phases of the program. This process is ultimately determined by a program's meeting of Standard 4.

~~(A) The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.~~

~~(B) Elements of Standard Three include collaboration between the unit and school partner; design, implementation, and evaluation of field experiences and clinical practice; and candidates' demonstrations of the knowledge, skills and dispositions necessary for student learning.~~

(4) Standard Four: ~~Diversity.~~ Program impact. The educator preparation program demonstrates the impact of its completers on P-12 student learning and development, classroom instruction, schools, and the satisfaction of its completers with the relevance and effectiveness of their preparation.

~~(A) The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.~~

~~(B) Elements of Standard Four include design, implementation, and evaluation of candidate experiences relevant to diversity.~~

(5) Standard Five: ~~Faculty Qualifications, Performance, and Development.~~ Educator preparation program quality assurance and continuous improvement. The educator preparation program maintains a quality assurance system comprised of valid data from multiple measures, including evidence of candidates' and completers' positive impact on P-12 student learning and development. The educator preparation program supports continuous improvement that is sustained and evidence-based and that evaluates the effectiveness of its completers. The educator preparation program uses the results of inquiry and data collection to establish priorities, enhance program elements and capacity and test innovations to improve completers' impact on P-12 student learning and development.

~~(A) Faculty are qualified and model best professional practices in scholarship, service and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.~~

~~(B) Elements of Standard Five include hiring of qualified faculty, modeling of best professional practices, ongoing evaluation and professional development and collaboration.~~

~~(6) Standard Six: Unit Governance and Resources.~~

~~(A) The unit has the leadership, authority, budget, personnel, facilities, and resources, including information technology resources, for the preparation of candidates to meet professional, state and institutional standards.~~

~~(B) Elements of Standard Six include evidence of leadership within the unit and across the institution, the unit budget, personnel and other resources.~~

~~(b) **Effective September 1, 2016 standards as defined by CAEP shall apply to undergraduate and graduate programs.**~~

(~~c~~b) **Teacher candidate portfolios.**

(1) Institutions shall require all initial and advanced certification program(s) students to develop a portfolio following the guidelines outlined in this section.

(2) A portfolio is a documented profile of an individual's accomplishments, learning, and strengths related to the competencies, state and national standards, and outcomes established by the CEQA, ~~State Regents~~ OSRHE, ~~SDE~~State Department of Education and institution.

(3) The portfolio, for purposes related to institutional accreditation is a unit of measure which presents evidence that the institution is providing initial, on-going, and focused opportunities and avenues which lead to student achievement of competencies, state and national standards and outcomes determined by the CEQA, ~~State Regents~~ OSRHE, ~~SDE~~ State Department of Education and institution.

(4) Institutions will provide for review during each regularly scheduled accreditation visit:

(A) The unit's portfolio handbook containing a written philosophy related to portfolio development

and assessment which is consistent with the institution's and unit's mission and conceptual framework, as well as written policies, criteria, and institutional rubric(s) related to the assessment of the portfolio as a whole or individual artifacts contained in the portfolios for all individuals enrolled in initial and advanced programs.

(B) Two representative candidate portfolios for each program offered. OEQA will randomly select one candidate portfolio in each program area and the second will be selected by the unit. Portfolios should represent candidates at the final transition point.

(C) In addition, annual reports must include any revision in the institution's portfolio process.

(5) Institution's pre-service and/or advanced portfolio process. The teacher education unit and programs shall:

(A) Require the portfolio development process to begin with enrollment into the professional education course work;

(B) Have a written portfolio handbook(s) containing a written philosophy related to portfolio development and assessment which is consistent with the institutions and unit's mission and conceptual framework(s);

(C) Have written policies, criteria, and institutional rubrics related to the portfolio assessment(s) of individual(s) enrolled in initial and advanced certification programs.

(~~d~~c) **Annual report.** Each Oklahoma educator preparation unit shall submit an annual report to the OEQA. This report will satisfy the requirements for the CEQA, ~~State Regents for Higher Education~~ OSRHE, State Department of Education, and CAEP/AACTE. The following information will be included in the report:

(1) Changes that occurred in implementation of the standards outlined in the Institution Plan as a result of local and statewide evaluations/assessments, public hearings or other reasons;

(2) Progress made in addressing the areas for improvement, if any, identified by the most recent on-site visit by the on-site accreditation review team;

(3) Quantitative data related to the unit's programs as required in the AACTE/CAEP Annual Report. These data shall reflect information pertaining to supply and demand for teacher candidates;

(4) Program changes being implemented for OEQA and CAEP continued accreditation;

(5) Report on resources devoted to technology;

(6) Report on professional development activities of faculty;

(7) Report on the number of hours each faculty member taught or were in direct contact with students in public schools;

(8) Report on the number of graduate students admitted conditionally and the success rates.

(9) Report on the results of the assessment of teaching skills in the area of reading instruction as administered to candidates in elementary, early childhood education, and special education.

(10) Report on the participation in the alternative placement programs offered by the institution.

(11) Report on the procedures used to inform the public regarding the institution's teacher education program and the manner through which public input is solicited and received.

(12) Annually, the OEQA shall provide feedback to any institution if their annual report indicates that progress is not being made in addressing areas for improvement.

(13) Complete copies of the annual reports for public institutions will be distributed to OSRHE and summary data for all institutions will be distributed to constituents based on reporting requirements outlined in 70 O.S., Section 6-186.

(14) The OEQA will produce a report describing the accreditation status of each institution. This report will devote a section to each institution separately and include a summary of CAEP and OEQA review findings.

SUBCHAPTER 7. EDUCATOR ASSESSMENT

218:10-7-1. Educator assessment regulations

(a) **Examinees - initial licensure and certification.**

(1) Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the OEQA. The competency examination is made up of three components: The Oklahoma General Education Test (OGET), the Oklahoma Subject Area Test (OSAT) and the Oklahoma Professional Teaching Exam (OPTE).

(2) See Appendix A for competency exam requirements by certification area and test codes.

(b) **Examinees - additional certification.**

(1) Individuals wishing to add a certification area to an existing teaching credential must successfully complete the Oklahoma Subject Area Test for the field of the desired certification.

(2) Individuals wishing to add a teaching certification area to an existing license or standard certificate in Speech Language Pathologist, School Nurse, School Psychometrist and/or School Psychologist must successfully complete the Oklahoma Subject Area Test and the Oklahoma Professional Teaching Exam for the field of the desired certification.

(3) See Appendix A for competency exam requirements by certification area and test codes

(c) **Examinees - alternative placement program.**

(1) Individuals seeking a teaching license via the Alternative Placement Program must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test. A licensed teacher via the Alternative Placement Program seeking a standard certificate must successfully complete the Oklahoma Professional Teaching Exam.

(2) See Appendix A for competency exam requirements by certification area and test codes.

(d) **Examinees-out of state certification.** Individuals seeking an Oklahoma license/certification who are certified educators in another state(s) shall meet the same assessment requirements as all other individuals seeking initial licensure/certification. Individuals having successfully completed comparable examination(s), as determined by OEQA, shall be exempt from the corresponding part(s) of Oklahoma's assessment requirement. Certified out-of-state educators, with 5 years of successful teaching experience in out-of-state accredited schools and seeking Oklahoma certification, will be exempt from meeting the Oklahoma educator assessment requirements for the subject/grade levels most closely aligned with their out-of-state certification.~~Certified out-of-state educators who have taught a minimum of five (5) years in an accredited P-12 school may be exempt from the OGET requirement.~~

(e) **Examinees - testing conditions and requirements compliance.**

(1) If an examinee fails to comply with the conditions and requirements specified or referenced on the *Certification Examinations for Oklahoma Educators Test*website, including the *Conditions of Test Participation,* or take any prohibited actions, the test results may be voided, no refund will be issued, no portion of the testing fee can be applied toward the cost of any future test administrations and/or the examinee's registration may be cancelled.

(2) If an examinee's test score is found to be unverifiable by either the testing company or the OEQA, the examinee will be allowed one (1) retake under controlled conditions at no cost to the examinee.

APPENDIX A. COMPETENCY REQUIREMENTS BY CERTIFICATION AREAS [REVOKED]

APPENDIX A. COMPETENCY REQUIREMENTS BY CERTIFICATION AREAS [NEW]

	Test Codes		
Subject Area and Grade Level	**OGET**	**OSAT**	**OPTE**
Advanced Mathematics			
6-12	74	11	72 or 76
Agricultural Education			
6-12	74	42	72 or 76
Art			
PK-3	74	2	70
1-8	74	2	71
6-12	74	2	72
PK-12	74	2	73 or 75 or 76
Biological Sciences			
6-12	74	10	72 or 76
Blind/Visual Impairment			
PK-3	74	28	70
1-8	74	28	71

6-12	74	28	72
PK-12	74	28	73 or 75 or 76
Business Education			
6-12	74	40	72 or 76
Chemistry			
6-12	74	4	72 or 76
Cherokee			
PK-12	74	79	73 or 75 or 76
Chinese			
PK-12	74	80	73 or 75 or 76
Computer Science			
PK-12	74	81	73 or 75 or 76
Dance			
PK-12	74	78	73 or 75 or 76
Deaf/Hard of Hearing			
PK-3	74	28	70
1-8	74	28	71
6-12	74	28	72
PK-12	74	28	73 or 75 or 76
Driver/Safety Education			
6-12	74	36	72 or 76
Early Childhood Education			
PK-3	74	05	70 or 75
Earth Science			

6-12	74	08	72 or 76
Elementary Math Specialist	74	082 050 & 051 (or 006) or 005	72 or 75
Elementary Education			
1-8	74	06 or 50 & 51	71 or 75
English			
6-12	74	07	72 or 76
English as a Second Language			
PK-12	74	77	73 or 75 or 76
Family/Consumer Science			
6-12	74	09	72 or 76
French			
PK-3	74	20	70
1-8	74	20	71
6-12	74	20	72
PK-12	74	20	73 or 75 or 76
German			
PK-3	74	21	70
1-8	74	21	71
6-12	74	21	72

PK-12	74	21	73 or 75 or 76
Instrumental Music			
PK-3	74	01	70
1-8	74	01	71
6-12	74	01	72
PK-12	74	01	73 or 75 or 76
Intermediate Mathematics			
6-12	74	25	72 or 76
Journalism			
6-12	74	37	72 or 76
Latin			
PK-3	74	23	70
1-8	74	23	71
6-12	74	23	72
PK-12	74	23	73 or 75 or 76
Marketing Education			
6-12	74	41	72 or 76
Middle Level English			
5-8	74	24	71 or 72 or 75 or 76
Middle Level Math			
5-8	74	25	71 or 72 or 75 or 76
Middle Level Science			

5-8	74	26	71 or 72 or 75 or 76
Middle Level Social Studies			
5-8	74	27	71 or 72 or 75 or 76
Mild-Moderate Disabilities			
PK-3	74	29	70
1-8	74	29	71
6-12	74	29	72
PK-12	74	29	73 or 75 or 76
Physical Education/Health/Safety			
PK-3	74	12	70
1-8	74	12	71
6-12	74	12	72
PK-12	74	12	73 or 75 or 76
Physical Science			
6-12	74	13	72 or 76
Physics			
6-12	74	14	72 or 76
Psychology/Sociology			
6-12	74	32	72 or 76
Russian			
PK-3	74	22	70
1-8	74	22	71

6-12	74	22	72
PK-12	74	22	73 or 75 or 76
Severe-Profound/Multiple Disabilities			
PK-3	74	31	70
1-8	74	31	71
6-12	74	31	72
PK-12	74	31	73 or 75 or 76
Spanish			
PK-3	74	19	70
1-8	74	19	71
6-12	74	19	72
PK-12	74	19	73 or 75 or 76
Speech/Drama/Debate			
6-12	74	16	72 or 76
Technology Education			
6-12	74	43	72 or 76
US History/US Govt/OK Hist/Econ			
6-12	74	17	72 or 76
Vocal Music			
PK-3	74	03	70
1-8	74	03	71
6-12	74	03	72
PK-12	74	03	73 or 75 or 76
Vocational Business Education			

6-12	74	40	72 or 76
Vocational Family and Consumer Sciences			
6-12	74	09	72 or 76
World History/Geography			
6-12	74	17	72 or 76
Advanced Certification Areas (without a current teacher certificate)	**OGET**	**OSAT**	**OPTE**
Library-Media Specialist	74	38	73 or 75 or 76
Psychometrist	74	34	73 or 75 or 76
Reading Specialist	74	15	73 or 75 or 76
School Counselor***	74	39	73 or 75 or 76
School Psychologist**	74	33	73 or 75 or 76
Speech-Language Pathologist*		35	
Advanced Certification Areas (with a current teacher certificate)			
Library-Media Specialist		38	
Psychometrist		34	
Reading Specialist		15	
School Counselor***		39	
School Psychologist**		33	
Speech-Language Pathologist*		35	

Administrator Certification Areas			
Elementary Principal		44 and 45 *Effective September1, 2015:* 45	
Middle Level Principal		44 and 46 *Effective September1, 2015:* 46	
Secondary Principal		44 and 47 *Effective September1, 2015:* 47	
Superintendent		48	

*Candidates seeking a Certificate of Clinical Competence (CCC) who have successfully completed the Praxis exam for Speech Pathology are exempt from Oklahoma assessment requirements.

**Candidates seeking National School Psychologists Certification (NSPC) who have successfully completed the Praxis exam for School Psychologist are exempt from Oklahoma assessment requirements.

***Candidates with the Nationally Certified School Counselor (NCSC) credential are exempt from Oklahoma assessment requirements.

TEST CODES

Test (OSAT)	*Test Code*
Advanced Mathematics	11
Agricultural Education	42
Art	02
Biological Sciences	10
Blind/Visual Impairment	28
Business Education	40
Chemistry	04
Cherokee	79
Chinese	80
Computer Science	81
Dance	78
Deaf/Hard of Hearing	30
Driver/Safety Education	36
Early Childhood Education	05
Earth Science	08
Elementary Education Subtest – Reading/Lang Arts/Soc Studies (50) Subtest – Math/Science/Health/Fine Arts (51)	06 or 50 & 51
Elementary Math Specialist	82

English	07
English as a Second Language	77
Family and Consumer Sciences	09
French	20
German	21
Instrumental/General Music	01
Journalism	37
Latin	23
Marketing Education	41
Middle Level English	24
Middle Level/Intermediate Mathematics	25
Middle Level Science	26
Middle Level Social Studies	27
Mild-Moderate Disabilities	29
Physical Education/Health/Safety	12
Physical Science	13
Physics	14
Psychology/Sociology	32
Russian	22
Severe-Profound/Multiple Disabilities	31
Spanish	19
Speech/Drama/Debate	16
Superintendent	48
Technology Education	43

US History/OK History/Government/Economics	17
Vocal/General Music	03
Vocational Business Education	40
Vocational Family and Consumer Sciences	09
World History/Geography	18
Test (OSAT – Advanced Programs)	***Test Code***
Library-Media Specialist	38
Psychometrist	34
Reading Specialist	*15*
School Counselor	*39*
School Psychologist	33
Speech-Language Pathologist	*35*
Test (OSAT-Administrator)	***Test Code***
Principal Common Core	44
Elementary Principal Specialty Test	*45*
Middle Level Principal Specialty Test	*46*
Secondary Principal Specialty Test	47
Superintendent	48
Test (OGET)	***Test Code***
Oklahoma General Education Test	74

Test (OPTE)	Test Code
OPTE: Early Childhood (PK-3)	70
OPTE: Elementary/Middle Level (1-8 or 5-8)	71
OPTE: Middle Level/Secondary (6-12 or 5-8)	72
OPTE: PK-12	73
OPTE: PK-8	75
OPTE: 6-12	76

[OAR Docket #16-446; filed 6-14-16]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 20. OKLAHOMA EMPLOYEES INSURANCE AND BENEFITS BOARD

[OAR Docket #16-472]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:20-1-4. Special meetings [AMENDED]
260:20-1-9. Minutes of the Board [AMENDED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 62. O.S. §34.28; 62 O.S. §34.3.1; 74 O.S. §1304.1; 74 O.S. §1305.1; §1308.1(1) and §1332(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2015
COMENT PERIOD:
December 15, 2015 through January 15, 2016
PUBLIC HEARING:
January 15, 2016
ADOPTION:
February 18, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.
CONTACT PERSON:
Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

260:20-1-4. Special meetings

Special meetings may be called upon written notice of the Chair or by agreement of any four [4] members of the Board. Notice of a special meeting is to be delivered to all members in person or by ~~registered or certified~~electronic mail not less than ~~seven [7] days~~forty-eight [48] hours prior to the fixed date of the meeting, unless waived.

260:20-1-9. Minutes of the Board

A summary shall be made of all proceedings before the Board which shall show those members present and absent, all matters considered, all actions taken, and the vote of each member on any motion, and shall be open to public inspection, as prescribed in ~~260:20-1-20~~260:20-1-8.

[OAR Docket #16-472; filed 6-14-16]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 25. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #16-473]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Position Allocation and Employee Classification System
Part 4. Assignment of Job Family Levels
260:25-5-44. Determination of appropriate job family level [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rate of Pay
260:25-7-3. Entrance salary [AMENDED]
260:25-7-4. Rate of pay upon reinstatement to the classified service [AMENDED]
260:25-7-13. Adjustments in rates of pay when pay bands are changed [AMENDED]
260:25-7-14. Rate of pay upon reclassification, promotion, career progression, demotion, and transfer [AMENDED]
260:25-7-17. Rate of pay upon detail to special duty [AMENDED]
260:25-7-22. Salary adjustments upon completion of initial probation or trial period
Subchapter 11. Employee Actions
Part 3. Probationary Employees
260:25-11-30. Probationary employees; general provisions [AMENDED]
260:25-11-36. Leave of absence ~~without pay~~ for probationary employees: Adjustment of probationary period [AMENDED]
Part 5. Promotions
260:25-11-55. Trial period and probationary period for promoted employees
Part 13. Resignations
260:25-11-132. Method of resignation [AMENDED]
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
260:25-15-45. Family and medical leave [AMENDED]
AUTHORITY:
Office of Management and Enterprise Services Human Capital Management Division; 74 O.S. Section 840-1.6A; 74 O.S. Section 840-2.17; 74 O.S. Section 840-2.9; 74 O.S. Section 840-2.20; 74 O.S. Section 840-3.2; 74 O.S. Section 840-3.5; 74 O.S. 840-4.3; 74 O.S. Section 840-4.6; 74 O.S. Section 840-4.12; 740 O.S. Section 840-4.13; 74 O.S. Section 840-4.17; The Director of the Office of Management and Enterprise Services; 62 O.S. §34.28; 62 O.S. §34.3.1; 62 O.S. §34.6(8).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2015
COMMENT PERIOD:
December 15, 2015 through January 21, 2016
PUBLIC HEARING:
January 21, 2016
ADOPTION:
February 18, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE DATE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to 260:25-5-44 removes unnecessary references to the Position Description Questionnaire form number; the proposed amendment to 260:25-7-3 removes a grammatically incorrect sentence fragment; the proposed amendment to 260:25-7-4 is necessary to clarify that the salary referenced by the rule means "base salary" as defined by 260:25-1-2 and that reinstatement only applies to the same agency the classified employee recently vacated; the proposed amendments to 260:25-7-13, 260:25-7-14, 260:25-7-17 and 260:25-7-22 are necessary to make it clear that the salary referenced by these rules means "base salary" as defined by 260:25-1-2; the proposed amendment to 260:25-11-30 is necessary to clarify that an employee does not have to be in "leave without pay" status in order for the probationary period to be adjusted; the proposed amendments to 260:25-11-36 and 260:25-11-55 are necessary to promote greater administrative efficiency in the probationary and/or trial period adjustment process by using more than thirty days of continuous absence, not simply more than five days of "leave without pay"; the amendments to 260:25-11-132 are necessary to clarify that Appointing Authorities may choose whether or not to accept verbal resignations and allows Appointing Authorities to fill an abandoned position in a more timely manner; the amendment to 260:25-15-45 is necessary to clarify that Appointing Authorities may require employees on family and medical leave to use all available paid leave prior to recording the absence as leave without pay.
CONTACT PERSON:
Matt Stewart, Deputy General Counsel, (405) 522-0663

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. POSITION ALLOCATION AND EMPLOYEE CLASSIFICATION SYSTEM

PART 4. ASSIGNMENT OF JOB FAMILY LEVELS

260:25-5-44. Determination of appropriate job family level

(a) Appointing Authorities shall use job family descriptors and the job family allocation made by the Administrator in assigning positions to job family levels. In determining the job family level to which a position shall be assigned, Appointing Authorities shall interpret and apply the Position Description Questionnaire ~~(HCM 39)~~, and the job family descriptor as a composite picture of positions the job family level includes [74:840 4.3]. Appointing Authorities may also use a Supplemental Position Description Questionnaire ~~(HCM 39A)~~ in assigning positions to job family levels.

(b) Relevant information about the position shall be considered. This may include, but is not limited to, individual position descriptions, information submitted by the Appointing Authority and employee, job audit reports, organizational charts, and lists of accountabilities to be used in appraising performance in the position.

(c) Consideration shall be given to the specific tasks and duties, levels of authority and responsibility, supervision received and exercised, discretion and judgment required, management of work processes and programs, organizational relationships to other positions, and any other factors which assist in the proper allocation of the position.
(d) Appointing Authorities may consider the relationship of positions to gain a better understanding of the duties and responsibilities of a position in assigning a position to a job family level.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATE OF PAY

260:25-7-3. Entrance salary

(a) Appointing Authorities may establish the hiring rate for a classified job at any point between the minimum and maximum of the pay band for the job family level without prior approval of the Administrator. ~~Upon approval of the salary administration plan by the Administrator.~~ Hiring rates shall not be established below the minimum or above the maximum rate of pay established for a pay band.
(b) Appointing Authorities shall establish hiring rates for jobs included in a pay band based on the work performed, the duties and responsibilities assigned, and other relevant factors. This may include consideration of recruitment and retention issues, internal pay equity, market rates, previous hiring rates, and the training and qualifications of the employee being appointed.

260:25-7-4. Rate of pay upon reinstatement to the classified service

(a) When an Appointing Authority reinstates a person to the classified service in accordance with 260:25-9-102, the Appointing Authority may set the person's base salary at any point within the pay band for the job to which the person is reinstated which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors, except as provided in Subsection (b).
(b) When an Appointing Authority reinstates a person within the same agency to the classified service in accordance with 260:25-9-102 to a position in the same job family level as the employee's previous position after less than a 30-day break in service, the Appointing Authority shall set the employee's base salary at any rate within the pay band that does not exceed the employee's previous base salary.

260:25-7-13. Adjustments in rates of pay when pay bands are changed

When a pay band is changed for a job family level, all employees in that classification, including persons whose base rate of pay exceeds the maximum of the old pay band, shall receive an adjustment to the new pay band. No person's base salary may be reduced as a result of such a change. All employees of an agency in that job shall be given uniform treatment using one of the following methods: providing adjustment to the minimum of the new pay band~~;~~, providing a percent increase given to each employee, which shall not exceed the percent of difference between the minimum of the old pay band and the minimum of the new pay band; or any other uniform method of adjustment approved by the Administrator. At the discretion of the Appointing Authority, no change in employee base salary need occur provided that all affected salaries fall within the new pay band. OAC 260:25-7-10 does not apply to adjustments made in accordance with this Section.

260:25-7-14. Rate of pay upon reclassification, promotion, career progression, demotion, and transfer

(a) **Rate of pay when incumbent is reclassified directly.** When an employee is reclassified directly under 260:25-5-90, the base rate of pay shall be fixed in accordance with 260:25-7-13.
(b) **Rate of pay upon promotion or career progression.**
(1) An Appointing Authority shall adopt objective written criteria for the amount of salary advancements on promotion or career progression. These criteria shall be a part of the agency salary administration plan established under 260:25-7-1.1 and shall be consistent with state and federal statutes prohibiting discrimination.
(2) The Appointing Authority shall set an employee's base salary on promotion or career progression at no less than 5% and no more than the maximum of the assigned pay band.
(3) The Appointing Authority shall not lower the base salary of an employee on promotion or career progression. If the employee's base salary before promotion or career progression exceeds the maximum of the new pay band, the employee's base salary shall remain the same.
(c) **Rate of pay when demoted.** The base rate of pay of an employee who is demoted shall be set by the Appointing Authority at any rate of pay within the pay band for the job to which demoted, which does not exceed that employee's last base rate of pay. An Appointing Authority may delay setting the base rate of pay upon demotion for up to **1** year when the demotion is due to an agency reorganization. For the purposes of this subsection, "agency reorganization" means the reclassification of employees in lieu of reduction-in-force.
(d) **Rate of pay upon intra-agency lateral transfer.** An Appointing Authority may provide up to a 5% increase in ~~salary~~base rate of pay, not to exceed the maximum rate of pay for the pay band, for an employee upon intra-agency lateral transfer to a position in the same job family and level or another job family and level with the same pay band assignment, based on the needs of the agency. [74:840-2.17]
(e) **Rate of pay upon interagency lateral transfer.** An Appointing Authority may set the base rate of pay for an employee on an interagency lateral transfer at any rate of pay within the pay band for the job to which the person is transferred which is consistent with the hiring range established for the job, salaries

paid to other individuals performing similar work, or other relevant factors.

260:25-7-17. Rate of pay upon detail to special duty

The pay of an employee who is detailed to special duty in accordance with ~~260:10-11-110~~ 260:25-11-110 shall not be reduced, but must be increased to at least the minimum base rate but not more than the maximum base rate the employee could receive upon promotion to that job family and level, provided:

(1) any such temporary increase shall not affect eligibility for increase in the regular job family and level which the Appointing Authority could grant if the employee had not been detailed.

(2) at the conclusion of the detail, pay shall revert to the authorized base rate of pay in the employee's regular job family and level.

260:25-7-22. Salary adjustments upon completion of initial probation or trial period

An Appointing Authority may provide base salary adjustments not to exceed 5% to probationary classified employees achieving permanent status following the initial probationary period. An Appointing Authority may also provide this base salary adjustment to employees reinstated to the classified service after a break in service upon completion of a probationary period, and to permanent classified employees successfully completing trial periods after intra-agency lateral transfer or promotion to a different job family level or career progression to a different job family level. [74:840-2.17]

SUBCHAPTER 11. EMPLOYEE ACTIONS

PART 3. PROBATIONARY EMPLOYEES

260:25-11-30. Probationary employees; general provisions

(a) All original appointments to classified positions shall be made from certificates, except as provided elsewhere in the Merit Rules or by statute, for a probationary period of 1 year, unless the length of the probationary period is reduced according to the provisions of this Section [74:840-4.13]. At the end of the probationary period, the employee shall automatically become permanent [74:840-4.13]. At any time after the probationary employee has served 6 months, the Appointing Authority may waive the remainder of the probationary period by notifying the employee and the Human Capital Management Division in writing as to the waiver and the reasons for it [74:840-4.13]. The Appointing Authority may not extend the probationary period, but may adjust the probationary period due to ~~leave without pay~~extended absence as provided in 260:25-11-36. The final working day of the probationary period shall be made known to the employee at the time of entry on duty and at the time of any adjustment or waiver of the probationary period. Some positions may have statutory probationary periods that differ from the conditions of this Section.

(b) Except as provided in 260:25-9-102, the provisions of this Part apply to probationary periods made in accordance with those Merit Rules.

(c) An employee on an original probationary appointment with the agency or any adjustment of the original probationary appointment, or on a probationary period with the agency after reinstatement, or an adjustment of such a probationary period may be released or dismissed in accordance with 260:25-11-32.

(d) The Appointing Authority may establish a written policy describing any agency standard for waiving the probationary period after 6 months and the reasons for the standard.

260:25-11-36. Leave of absence ~~without pay~~ for probationary employees: Adjustment of probationary period

(a) Upon written request, a probationary employee may be granted leave of absence without pay from the agency in accordance with 260:25-15-47, Leave of absence without pay, or 260:25-15-49, Leave because of absence due to job related illness or injury.

(b) ~~If the total amount of leave without pay exceeds 5 working days, the date of the final working day of the probationary period shall be adjusted by the number of working days the probationary employee was on leave without pay in excess of 5 working days. Notification of such leave to the Human Capital Management Division and the employee shall include the scheduled date of the final working day of the adjusted probationary period.~~If a probationary employee is absent from work in excess of 30 continuous calendar days, the probationary period shall be adjusted by the number of calendar days the probationary employee was absent. The employee shall be notified at the earliest date that the probationary period is to be extended. Upon the employee's return to work, notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the probationary period.

PART 5. PROMOTIONS

260:25-11-55. Trial period and probationary period for promoted employees

(a) **Trial period after intra-agency promotions.**

(1) When a classified employee is promoted intra-agency, the employee shall serve a 6 month trial period in the job to which the employee has been promoted unless the Appointing Authority waives the trial period according to the provisions of this Section. The Appointing Authority may waive the trial period at any time by giving the employee written notice of the cancellation. Waiver of the trial period makes the promotion final.

(2) If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to the former position or another in the same job family level, at the salary the employee would have

received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. [T]he employee shall not have the right to appeal [74:840-4.12].

(3) The promotion shall automatically become permanent at the end of the final working day of the trial period.

(4) The Appointing Authority may establish a written policy describing any agency standard for waiving the trial period and the reasons for the standard.

(b) **Trial period after interagency promotion.**

(1) An employee who is promoted interagency may, at the discretion of the receiving Appointing Authority, be required to serve a **6** month trial period in the new job only if the receiving agency has the job family from which the employee was promoted in its classification plan.

(2) The trial period may be canceled at any time, making the promotion final. Before the effective date of the promotion, the employee shall be informed in writing by the Appointing Authority whether the employee will be required to serve a trial period before such promotion becomes final. The promotion shall be permanent if the Appointing Authority fails to notify the employee in writing before the effective date of the promotion that a trial period is required under this paragraph. If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to a position in the former job family in the same pay band for which the employee is qualified with the receiving agency, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. The promotion shall automatically become permanent at the end of the final working day of the trial period.

(c) If an employee on a trial period is absent from work in excess of 30 continuous calendar days the trial period shall be adjusted by the number of calendar days the employee was absent. The employee shall be notified at the earliest date that the trial period is to be extended. Upon the employee's return to work notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the trial period.

(~~c~~d) **Statutory probationary period after intra-agency promotion.** An employee who is promoted to a job for which a probationary period is either permitted or required by Oklahoma Statutes shall be notified by the Appointing Authority of the probationary period before the effective date of the promotion. An employee shall not be required to serve a trial period after the promotion if a statutory probationary period is required.

PART 13. RESIGNATIONS

260:25-11-132. Method of resignation

(a) To resign in good standing, an employee must give the Appointing Authority at least **14** calendar days prior notice unless the Appointing Authority agrees in writing to permit a shorter period of notice. The Appointing Authority will supply the employee written confirmation of any shorter period of notice that is allowed.

(b) Verbal resignations may be accepted by the Appointing Authority and implemented at his/her discretion.

(c) An employee who is absent from work without prior approval and who has not contacted his/her supervisor or agency representative within five working days is deemed to have resigned from state service.

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

260:25-15-45. Family and medical leave

(a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C, 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least 12 months and have worked at least 1,250 hours during the preceding 12-month period.

(b) An eligible employee is entitled to family and medical leave for up to a total of 12 weeks during any 12-month period, for the following reasons:

(1) the birth of the employee's son or daughter, and to care for the newborn child;

(2) the placement with the employee of a son or daughter for adoption or foster care;

(3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability;

(4) a serious health condition that makes the employee unable to perform the functions of the employee's job; or

(5) any qualifying exigency (as defined by U.S. Department of Labor Regulations) arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

(c) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 weeks of leave during a 12-month period to care for the service member. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described in this

paragraph, an eligible employee shall be entitled to combined total of 26 weeks of leave under paragraph (b) and (c). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (b) during any other 12-month period.

(d) An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An Appointing Authority may require a certification issued by the health care provider of a covered service member being cared for by an employee.

(e) The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the 12-month period beginning on the date of the birth or placement.

(f) When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section, a covered service member as referenced in (c) of this Section, or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. When family and medical leave is taken for a qualifying exigency as referenced in (b)(5) of this Section, leave may be taken intermittently or on a reduced leave schedule. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.

(g) Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least 30 days before leave is to begin if the need for family and medical leave is expected. In any case in which the necessity for leave under (b)(5) of this Section is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. When the need for family and medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:

(1) be in writing;

~~(2) refer to this Section;~~

(~~3~~2) describe the reason for the family and medical leave;

(~~4~~3) specify the type of leave the employee is requesting to account for the time off; and

(~~5~~4) include any information or documentation required for the type of leave requested.

(h) The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

(i) Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority ~~shall give~~may require employees to use all available~~the following options~~paid leave prior to recording the absence as leave without pay in accordance with 260:25-15-47 to account for time lost because of leave under the federal Family and Medical Leave Act of 1993.

~~(1) Charge to accumulated annual leave [74:840-2.22];~~

~~(2) Charge to accumulated sick leave [74:840-2.22];~~

~~(3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the Oklahoma Statutes, which is also known as "shared leave";~~

~~(4) Charge to accumulated compensatory time.; or~~

~~(5) Record as leave without pay in accordance with 260:25-15-47.~~

(j) The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

(k) Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

(l) An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

[OAR Docket #16-473; filed 6-14-16]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 45. EMPLOYEES GROUP INSURANCE ~~DIVISION~~DEPARTMENT - ADMINISTRATIVE AND GENERAL PROVISIONS

[OAR Docket #16-474]

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Subchapter 1. Purpose, Definitions, Rules and References

260:45-1-1. Purpose [AMENDED]

260:45-1-2. Definitions [AMENDED]

260:45-1-3. Rules, cumulative [AMENDED]

Subchapter 5. Grievance Panel Authority and Hearing Procedures

260:45-5-5. Continuance; disposition; Attorney representation [AMENDED]

AUTHORITY:

The Director of the Office of Management and Enterprise Services; 62. O.S. §34.28; 62 O.S. §34.3.1

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Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.
CONTACT PERSON:
Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2017:

SUBCHAPTER 1. PURPOSE, DEFINITIONS, RULES AND REFERENCES

260:45-1-1. Purpose

The purpose of this chapter is to outline the structure of the Office of Management and Enterprise Services (OMES) Employees Group Insurance ~~Division~~Department (EGID) and to identify the availability and procedures to be used to access a grievance hearing.

260:45-1-2. Definitions

The following words and terms as defined by EGID shall have the following meaning unless the content clearly indicates otherwise:

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

"EGID" means the Employees Group Insurance ~~Division~~Department of the Office of Management and Enterprise Services.

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

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

"OEIBB" means the Oklahoma Employees Insurance and Benefits Board.

260:45-1-3. Rules, cumulative

The Employees Group Insurance ~~Division~~Department of the Office of Management and Enterprise Services hereinafter "EGID"will, from time to time, adopt handbooks, policies and procedures for the implementation of the rules set forth herein. Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. The rules in this title shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.

SUBCHAPTER 5. GRIEVANCE PANEL AUTHORITY AND HEARING PROCEDURES

260:45-5-5. Continuance; disposition; Attorney representation

Any request for continuance may be granted by the Attorney representing EGID or the Panel if requested for any of the following reasons: illness or unavailability of the party requesting the hearing~~;~~, unavailability or illness of a material witness~~;~~, unavoidable conflict of schedule, unavailability of relevant documents, or other good cause. All parties to the hearing shall be notified of the continuance as soon as possible.

(1) Unless precluded by law, informal disposition may be made of any individual
proceedings by stipulation, agreed settlement, consent order, or default.

(2) Any party shall at all times have the right to be represented by counsel at their own expense, provided such counsel is licensed to practice law by the Supreme Court of Oklahoma.

[OAR Docket #16-474; filed 6-14-16]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 50. EMPLOYEES GROUP INSURANCE ~~DIVISION~~DEPARTMENT - HEALTH, DENTAL, VISION AND LIFE PLANS

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260:50-3-13. Rights of former employees to continue in the Group Health, Dental, and Vision Insurance Plan [AMENDED]
260:50-3-15. Effective dates of coverage for current employees [AMENDED]
260:50-3-17. Dependents [AMENDED]
260:50-3-19. Termination of dependent coverage [AMENDED]
260:50-3-20. Withdrawal from plan; termination or loss of coverage [AMENDED]
260:50-3-25. Basic disclosure plan for Medicare beneficiaries [AMENDED]
Subchapter 5. Coverage and Limitations
Part 5. Life Benefits
260:50-5-20. Term life coverage [AMENDED]

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CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2017:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

260:50-1-2. Definitions

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

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

"Administrator" means the Administrator of the Employees Group Insurance~~Division~~Department or a designee.

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

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

"The Board" means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].

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

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a co-payment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]

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

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

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

the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child or child legally placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(13)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 260:50-3-18.

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

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

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

"Excepted Benefits" means the four categories of benefits as established in section 2791 of the PHS Act, section 733 of ERISA and section 9832 of the Internal Revenue Code, as summarized in IRS Bulletin 2015-14 and subsequent regulatory guidance. These Excepted Benefits include but are not limited to vision coverage, dental coverage, long-term care insurance, Medicare supplement coverage, automobile liability insurance, workers compensation, accidental death and dismemberment insurance and specific disease coverage (such as cancer).

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

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

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

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

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

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

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

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

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

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

"Members" means all persons covered by one or more of the group insurance plans offered by EGID including eligible

current and qualified former employees of participating entities and their eligible covered dependents.

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

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

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

"OEIBB" means Oklahoma Employees Insurance and Benefits Board.

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

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

"Orthodontic limitation" means an individual who enrolls in the Dental Plan will not be eligible for any orthodontic benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontic services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.

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

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

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

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

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

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

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

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

SUBCHAPTER 3. ADMINISTRATION OF PLANS

260:50-3-13. Rights of eligible former employees to continue in the Group Health, Dental, and Vision Insurance Plan

(a) Health, dental and vision coverage may be elected as determined by State Statute or retained at the time of termination of employment from an employer who participates in that health, dental or vision coverage, if such election to continue in force or begin is made within thirty [30] days from the date of termination of service, and if the following conditions are met:

(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan.

(2) The election must be received by EGID no later than thirty [30] days after the date of termination of service.

(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected, the coverage may not be reinstated at a later date, except as permitted for former State employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement.

(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:

(1) During an open enrollment period; or

(2) Eligible dependent(s) not covered at the time of the former employee's termination from active employment, as long as the dependent election is made within thirty [30] days of the termination date.

(3) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added within thirty [30] days after acquiring the new dependent[s].

(4) If the dependent has lost other ~~group~~ health or group dental insurance coverage and notice has been given to EGID within thirty [30] days after the loss of the other coverage. Excepted Benefits do not qualify as other

health coverage for purposes of this rule, and replacement is limited to the corresponding type of coverage lost.

(d) During an option period, covered former employees may make changes to their existing benefits but not add additional benefits with the exception of vision coverage. Vision coverage cannot be dropped mid-year except as allowed at 260:50-3-22(c).

(e) If an eligible former employee has a spouse who is participating in the Plan as an employee of a participating entity, the former employee may transfer his or her health, dental and vision coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:

(1) Coverage must remain continuous; and

(2) All eligible dependents must be insured unless they have other verifiable ~~group~~ coverage.

(3) The eligible former employee, at a later date, may defer or transfer his or her insurance coverage from dependent status back to former employee status if coverage with the Plan has remained continuous, and the former employer of the eligible former employee continues to participate in the Plan.

(f) An individual who has retained health, dental or vision coverage who is returning to current employment for a participating entity and meets the eligibility criteria for a current employee is entitled to transfer his present coverage to that employer as long as the employer is a participant in the benefit transferred. The employee may retain his present life coverage and may add life coverage so long as the total amount of life coverage does not exceed the guaranteed issue amount. Evidence of insurability must be submitted and approved for any amount exceeding guaranteed issue or the amount previously held in retirement, whichever is greater.

(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for a current employee is not entitled to coverage through that employer.

(h) In the event an otherwise eligible former employee returns to current employment who did not retain health coverage upon termination of employment, the eligibility requirements of a new employee must be met in order to obtain coverage through the employer. Such individuals must work for three [3] years in order to qualify for retaining any benefits not previously elected upon ceasing current employment when they re-retire. This includes members who terminated from employers not participating in the Group Plans authorized by the Oklahoma State Employees Benefits Act [74 O. S. §1301] when they originally ended employment.

260:50-3-15. Effective dates of coverage for current employees

An employee other than an education employee is eligible to participate if not classified as seasonal or temporary and whose actual performance of duties normally requires one thousand [1,000] hours per year or more. An education employee who is a member of or eligible to participate in the Oklahoma Teacher's Retirement System and working a minimum of four [4] hours per day or twenty [20] hours per week may participate in the Plan. Part-time education employees are those who meet the requirements of a half-time employee as defined by the Oklahoma Teachers Retirement System. Eligible employees shall be covered on the first [1st] day of the month following the month in which the employee is in an eligible status.

(1) If an employee is absent due to accident or illness on the date the employee coverage would normally become effective, benefits shall not be payable until the employee returns to the job. If the employee is absent from work because of a holiday, vacation or nonscheduled working day and the employee was on the job on a scheduled working day immediately preceding the effective date, this effective date will not be changed. An employee coming to work during the latter part of a payroll period who is not able to complete an insurance change form should be placed on the appropriate plans on the first [1st] day of the following month with employee only coverage, so that the employee life, dental and health will be in effect. Members may add optional coverages within the member's initial thirty [30] day enrollment period to be effective the first [1st] day of the month following the date the member enrolled for optional coverages.

(2) Participating entities shall forward members' enrollment information and any changes to enrollment information during the initial enrollment period to the Administrator within ten [10] days after the last day a member may enroll.

(3) If an employee leaves a participating entity and is hired by another participating entity within the following thirty [30] day period, premiums must be forwarded to EGID to avoid a break in coverage.

(4) An enrolled member who terminates employment or is in leave without pay status and whose spouse is also an enrolled employee may transfer coverage to their spouse to be insured as a dependent. The health, dental, vision and basic life may be transferred. The employee's basic life amount will transfer to a dependent spouse amount. If there are dependent children, they must also be insured unless they have other verifiable group coverage.

(5) An employee that terminates from a participating employer and is hired by another participating employer shall be entitled to be treated as a new employee with new health, dental, vision and life benefit options available. A rehired employee returning to a former employer has new health, dental and vision benefit options only after a thirty [30] day break in coverage and may be subject to orthodontic limitations.

(6) Except as provided by statute, an individual employee may choose not to be enrolled in the health or dental plans or may disenroll from these plans because of other ~~group~~ health or group dental coverage or by reason of eligibility for military or Indian health services within thirty [30] days after the date the employee becomes eligible for the other ~~group~~ health or group dental coverage. Such employees who subsequently lose the other ~~group~~ coverage or eligibility for military or Indian health services may enroll in the corresponding health or dental plans offered through EGID if the election is made no

later than thirty [30] days after the date of loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the dental limitation, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost the previous ~~group~~ coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following the election of health and/or dental coverage, and any break in coverage shall result in the application of the dental limitations. Excepted Benefits do not qualify as other health coverage for purposes of this rule.

260:50-3-17. Dependents

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other corresponding and verifiable ~~group~~ health, group dental or vision coverage. The member can elect not to cover dependents who do not reside with the member, are married, are not financially dependent on the member for support, have other ~~group~~ coverage or are eligible for Indian or military health benefits. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life. Excepted Benefits do not qualify as other coverage for purposes of this rule.

(1) When the parent is covered by health insurance, in order for an employee to retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) for his or her own newborn child, a completed insurance change form and any appropriate premium for the month of birth must be furnished to the Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims incurred for inpatient hospital treatment beyond the first forty-eight [48] or ninety-six [96] hours may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan. HealthChoice newborn limited benefit: a newborn has limited coverage for a birth for the first forty-eight [48] hours following a vaginal delivery or for the first ninety-six [96] hours following a C-section delivery without an additional premium. There are no benefits for services in addition to the routine hospital stay if the newborn is not enrolled for the month of the birth and premiums are not paid for that month. A Newborn Benefit Waiver must be completed to exclude a newborn from the Newborn Benefit.

(2) Newborns must be added the first of the month of the child's birth by filling out an Insurance Change Form within thirty [30] days after birth of the newborn.

(3) When one or more eligible dependents are currently covered, the newborn must be added to the same coverage.

(4) Where a newborn is added to coverage, all other eligible dependents must be enrolled in coverage if they are not currently enrolled. A member can waive health or dental coverage for their spouse.

(5) If a member accepts newborn benefits for the birth of his or her child but does not retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) as a result of the member's failure to furnish his or her Insurance/Benefits Coordinator with a completed insurance change form and any appropriate premium for the month of the newborn's birth within thirty [30] days after the birth of the newborn:

(A) There is no additional premium for the newborn benefit.

(B) Enrollment of other eligible dependents is not required.

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

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

(8) Eligible dependents who lose other ~~group~~ health, group dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through EGID within thirty [30] days after the loss of the other ~~group~~ insurance coverage if those dependents have been continuously covered by the other ~~group~~ dental insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage. Excepted Benefits do not qualify as other health coverage for purposes of this rule.

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

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

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

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

260:50-3-19. Termination of dependent coverage

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

(b) **Loss of other group health, dental, vision or life insurance coverage.** The twelve [12] month requirement does not apply when the dependent has lost other ~~group~~health, group dental, vision and/or group life insurance coverage and is seeking reinstatement pursuant to Rule 260:50-3-17(8). Excepted Benefits do not qualify as other health coverage for purposes of this rule.

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

260:50-3-20. Withdrawal from plan; termination or loss of coverage

(a) **Withdrawal from plan.** Those eligible entities participating on a voluntary basis that elect to withdraw cannot re-enter the Plan for one [1] year following the date of withdrawal except for extraordinary circumstances. Notice of the election to withdraw must be provided to EGID thirty [30] days prior to the actual withdrawal date.

(b) **Termination of coverage due to insolvency of carrier.** Any eligible entities who have withdrawn and purchased other coverage, then have been notified by their other ~~group~~ health and/or group dental insurance carrier that coverage is being terminated due to insolvency of the carrier may re-enroll in the corresponding coverages within thirty [30] days after the loss of coverage by submitting a completed application form which must be approved by EGID prior to enrollment. Excepted Benefits do not qualify as other health coverage for purposes of this rule.

(c) **Individual member withdrawal and re-enrollment.** An individual employee who discontinues coverage on himself cannot re-enroll in any coverage for himself or his dependents for a period of twelve [12] months. Subsequent to the end of this twelve [12] month period, he may reapply for coverage offered by the Oklahoma State and Education Employees Group Insurance Board provided that he is eligible through a participating entity. The orthodontic limitations will apply.

(d) **Loss of other ~~group~~ health, group dental or group life insurance coverage.** The twelve [12] month requirement does not apply when the individual member has lost other ~~group~~ health, group dental and/or group life insurance coverage and is seeking reinstatement pursuant to Rule 260:50-3-20(c). Excepted Benefits do not qualify as other health coverage for purposes of this rule.

260:50-3-25. Basic disclosure plan for Medicare beneficiaries

(a) The following words and terms as defined by EGID, when used in this section, shall have the following meaning: "Medicare beneficiary" means individuals eligible for HealthChoice Medicare plan coverage who are also entitled to Medicare benefits as designated by the United States Social Security Administration.

(b) In order to assure Medicare beneficiaries with an understanding of the medical and pharmacy benefits provided by, and the operation of, the HealthChoice Medicare plans; EGID shall maintain, adopt, and implement a basic disclosure plan for Medicare beneficiaries. This basic disclosure plan includes but is not limited to informational materials such as:

(1) A Medicare beneficiary benefits handbook providing a summary of medical and pharmacy benefits available under EGID's Medicare HealthChoice plan. Such handbooks shall be updated when material benefits or covered services change, or when reductions occur. A separate notification of material changes will be sent to all Medicare

beneficiaries in a timely fashion prior to the updating of the Medicare beneficiary benefits handbook.

(2) A pre-enrollment package which shall be provided to all plan eligible Medicare beneficiaries. The pre-enrollment package shall, within a reasonable person's determination, be written in clear and understandable language providing the Medicare beneficiary detailed and necessary information upon which to make a selection of coverage for an upcoming plan year.

(3) A confirmation of benefit coverage form which will be distributed in a timely fashion after enrollment of a Medicare beneficiary, and by which HealthChoice shall notify the Medicare beneficiary of the plan coverage for the upcoming year. ~~The confirmation of benefit form shall further detail any identified preexisting exclusions, and provide a description of an appeal process.~~

(4) An explanation of benefit determination letter explaining the outcome of each medical or pharmacy claim processed for payment or denial. In the case of denial the explanation of benefit determination letter shall provide information of the appeals process available to the Medicare beneficiary.

(5) Material which provides all Medicare beneficiaries with basic disclosure information on special enrollment rights, medical child support orders, and any Medicare service or benefit that EGID by law has been directed to provide.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 5. LIFE BENEFITS

260:50-5-20. Term life coverage

(a) **Group Term Life Benefits.** A former employee who is reemployed by the same participating employer within twenty-four [24] months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. Additionally, the amount of life insurance cannot exceed the amount of the guaranteed issue based on the employee's current salary, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by EGID. However, to elect this benefit, the member must be either a) enrolled in one of the group health plans offered through EGID or b) be enrolled in other group health coverage. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. §178] If no beneficiary form is on file at EGID, benefits will be paid to the decedent's estate.

(b) **Unlimited contestability period.** There shall be no time limitation imposed upon EGID, during which coverage based on evidence of insurability submitted to EGID can be contested, if it is found that materially erroneous, false, inaccurate, or misleading information was provided in order to obtain optional or supplemental coverage in excess of any guaranteed amounts of coverage. In the event EGID determines coverage was granted based upon erroneous, false, inaccurate or misleading information, and that such information was material to EGID providing any optional or supplemental coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary.

[OAR Docket #16-475; filed 6-14-16]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 55. EMPLOYEES GROUP INSURANCE ~~DIVISION~~DEPARTMENT - THE DISABILITY PLAN

[OAR Docket #16-476]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:55-1-2. Definitions [AMENDED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 62 O.S. §34.3.1; 62 O.S. Section 34.6(8)
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Clarify language, eliminate obsolete language, correct omissions and streamline to promote and enhance operations, through removal of inaccurate or redundant verbiage, and to simplify language.
CONTACT PERSON:
Scott D. Boughton, Deputy General Counsel, (405) 717-8957

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2017:

260:55-1-2. Definitions

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

"Base compensation" means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.

"Benefit period" means the first [1st] day of the benefit period will be the day benefits commence as defined at 260:55-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 260:55-1-11(d). A recurrent disability as defined at 260:55-1-7 will not alter the beginning date of the benefit period.

"Disability" means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty-one [31] consecutive calendar days or longer. After the first twenty-four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers compensation or social security are not considered prima facie evidence of disability for this plan.

"EGID" means the Employees Group Insurance ~~Division~~Department of the Office of Management and Enterprise Services.

"Eligibility period" means the first thirty-one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period. Employees reinstated to eligibility to participate in the disability plan after having waived disability coverage pursuant to 74 O.S. §1308.3 will be considered to have no prior service and no continuous employment prior to their reinstated eligibility.

"Elimination period" means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.

"Employee" means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability Plan or who meet each and every requirement of this Disability Plan.

"Furlough" means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.

"Illness" means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the Plan.

"Injury" means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the Plan.

"Participation" means participation in the Disability Plan shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty-one [31] consecutive days.

"Physician" means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.

"Preexisting condition" means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her entry-on-duty (EOD) date. The term "preexisting condition" shall also include any condition which is related to such injury or illness.

"Years of service" means time spent as an active employee performing full-time duties for remuneration with an entity participating in the Disability Plan. Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.

[OAR Docket #16-476; filed 6-14-16]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 70. RISK MANAGEMENT PROGRAM

[OAR Docket #16-522]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Casualty or Liability Incident Management
260:70-3-2. Functions of Program [AMENDED]

Subchapter 5. Casualty or Liability Claims Management, Payment and Reports
260:70-5-1. Claims Management [AMENDED]
260:70-5-2. ~~Limitations on payments in connection with other covered entities~~Claims payment [AMENDED]
Subchapter 7. Establishment of Centralized State Risk and Insurance Management Program
260:70-7-2. Functions of Oklahoma Risk Management Program [AMENDED]
Subchapter 9. Driver and Vehicle Safety Standards for Motor Vehicle Operations
260:70-9-1. Driver and vehicle safety standards for motor vehicle operations [AMENDED]
Subchapter 11. Coverage for State Owned Buildings, Contents and Other
260:70-11-3. Claims payment [AMENDED]

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62 O.S. §34.6 and 74 O.S. §85.58A; Director of the Office of Management and Enterprise Services

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this rulemaking action is to correct scrivener's errors made in the revocation of Title 580 rules (Department of Central Services) and the adoption of the rules into Title 260 (Office of Management and Enterprise Services).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. CASUALTY OR LIABILITY INCIDENT MANAGEMENT

260:70-3-2. Functions of Program

Each Agency Risk Management Program shall have assigned to it sufficient personnel to fulfill each of the following functions:

(1) **Incident scene management.**

(A) **General.** The Agency Risk Management Coordinator shall be responsible for assuring that proper steps are taken at the scene of any liability incident to ensure the safety and security of personnel and property, and to otherwise manage the scene in the best interest of the Oklahoma Risk Management Program. Employees of all agencies and other covered entities must be informed and encouraged to promptly report any potential liability incident in which they might be involved, or which they might witness, to proper supervisory and security personnel.

(B) **Reports by witnesses.** Any employee or officer of any agency or other covered entity who is involved in any potential liability incident, as a witness or otherwise, must immediately notify his or her immediate supervisor, as well as the security office or law enforcement officer with responsibility for the area where such incident occurs, if any. In case of any liability incident involving motor vehicles, the following procedure specified in paragraph (2) of this section, shall be followed.

(2) **Reporting vehicle liability incidents.**

(A) The operator of a vehicle involved in a reportable vehicle incident shall immediately notify the nearest security office or law enforcement officer with responsibility for the area where such incident occurs, unless incapacitated by injury to the extent that notification is impractical. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(B) The operator shall remain at the scene until completion of all acts required by law or the rules in ~~580:25-3~~260:70-3 to be performed at the scene, unless injuries sustained require treatment or other extenuating circumstance exist preventing the operator from remaining at the scene.

(C) The operator shall fill out a required "In Case of Accident" form furnished in the glove compartment or other applicable designated place of all vehicles. This form shall be given to the Agency Risk Management Coordinator who will fill out a "Standard Liability Incident Report" from which, together with the "In Case of Accident" form, and "Scope of Employment" form shall be forwarded to the Risk Management Department as soon as the Risk Management Coordinator has completed an investigation of the liability incident.

(D) Any liability incident involving a fatality, personal injury or property damage must be reported immediately to the Risk Management Department. An answering service is available 24 hours a day, seven days a week.

(3) **Statements by parties involved.**

(A) Employees of any agency or other covered entity, whose conduct or performance of duty give rise to a "Liability Incident" shall be required to cooperate in good faith with the defense of any claim which may be

presented in connection with the "Liability Incident". Any such employee's cooperation shall include, but not be limited to refraining from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Department, any law enforcement authority investigating the "Liability Incident" at the scene, or by statute. No employee involved in a "Liability Incident" has the authority to agree to or promise to settle any claim

(B) Any employee who is a witness to a "Liability Incident", but who did not commit or perform any act or omission contributing to the occurrence giving rise to the "Liability Incident" shall refrain from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Department, or any law enforcement authority investigating the "Liability Incident" at the scene. Providing, however, that all such employees shall remain free to make any statement or comment concerning agency operations which are protected by 74 O.S. Section 840-2.5 and 840-2.6.

(4) **Investigation.** The Agency Risk Management Coordinator shall ensure that each liability incident involving the property or personnel of the agency or other covered entity is promptly investigated and that such investigation shall, at a minimum, involve ascertainment of the identities of all possible claimants and all known witnesses. A description of the occurrences giving rise to damages including the date time and location, shall be provided and an estimate of the possible amount of damages shall be made. Photographs of the accident scene or property damage should be taken as close to the date and time of the liability incident as possible. The identification of a party or a witness shall include full name, address, home and business phone numbers, date of birth, social security number and brief summary of what is known or reported by such witness.

(5) **Records keeping.** The Agency Risk Management Coordinator shall keep orderly records, organized so as to be readily retrievable by date, location of incident and names of parties potentially giving rise to liability, of each investigation of any liability incident. The Agency Risk Management Coordinator shall also prepare and keep monthly summary of all liability incidents, recording the date, names of possible claimants, nature of incident, nature of injuries, estimate of damages and date investigation completed. A unique identification number shall be assigned to each liability incident which may be used to specify the matter in any communications between the Agency Risk Management Coordinator and the Risk Management Department.

(6) **Reporting procedures.** The Agency Risk Management Coordinator shall:

(A) **Give telephone notice to the Risk Management Department.** The Agency Risk Management Coordinator shall give telephone notice of any liability incident to the Risk Management Department not later than the next working day following the occurrence of any such incident.

(B) **Fill out "Standard Liability Incident Report".** The Agency Risk Management Coordinator shall fill out and send to the Risk Management Department a "Standard Liability Incident Report" form furnished by the Administrator to all agencies and other covered entities by the Risk Management Division. This report should include but not be limited to the following information:

(i) The time, date, and location of accident.

(ii) The department involved, and where a vehicle is involved, vehicle number or tag number, year and make, operator's name and telephone number at home and work. Owner's name if leased or rented.

(iii) A description of other property or vehicle, if any, year and make, name and address of operator and owner and telephone numbers.

(iv) The names of injured persons and the name of hospital(s) where such persons may receive treatment.

(v) The damage to the vehicle, if any, and the vehicle's location.

(vi) The name of the investigating officer.

(vii) A brief description of the incident.

(viii) The names, addresses and telephone numbers of all witnesses.

(ix) Photographs of the incident scene.

(C) **Forward "In Case of Accident Form" and "Scope of Employment Form" to the Risk Management Department.** The Agency Risk Management Coordinator shall send to the Risk Management Department the "In Case of Accident" form filled out by the operator of any vehicle involved in a reportable vehicle incident. Be sure to place a new "In Case of Accident" form in the vehicle as soon as possible if the vehicle is to be subsequently used to conduct business after applicable repairs have been procured and the agency or other covered entity is satisfied the vehicle is safe to operate.

(D) **Send informational material to the Risk Management Department.** The Agency Risk Management Coordinator shall complete all preliminary investigations following a liability incident and send a completed "Standard Liability Incident Report", the "In Case of Accident" report, if any, and any other pertinent information that is the result of a thorough investigation to the Risk Management Department. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(7) **Training and notices.** Every Agency Risk Management Program shall make adequate provision for training and notification to all employees regarding their responsibilities under the Oklahoma Risk Management Program. Employees shall be trained or notified regarding necessary reporting requirements in the event they may witness or be participants in a liability incident. Posters and signs shall be posted in conspicuous places informing employees, supervisors and other officers of their various responsibilities under the program.

(8) **Risk Management Manual.** Every agency or other covered entity shall formulate and adopt an "Agency Risk Management Procedure Manual" consistent with the minimum requirements of the rules and regulations contain in OAC ~~580:25-3~~260:70. Such a manual shall fully describe the organization and procedures for the conduct of Risk Management activities within such agency, shall contain samples of all forms in current use, shall describe the proper reporting chain-of-command for routing necessary information to the Agency Risk Management Coordinator, shall identify all personnel having specified responsibilities for risk management activities and shall contain such other information as shall be required from time to time by the Risk Management Department or deemed pertinent by the Administrator. Agency Risk Management procedures shall be updated from time to time to maintain the currency of the information contained in the manual, and such modifications or revised editions shall be promptly filed with the Risk Management Department.

(9) **Coordination with the Risk Management Department.** One of the primary functions of the Agency Risk Management Coordinator will be to facilitate cooperation between the agency or other covered entity, the Risk Management Department, and legal counsel, when necessary, in cases where a liability incident actually gives rise to a claim for damages against the state or other covered entity. It will often be necessary for meetings, interviews, record reviews and other investigative activities to be arranged between Risk Management Department personnel and covered employees. The Agency Risk Management Coordinator will be the primary source of contact with an agency or other covered entity for purposes of arranging such matters.

(10) **Forms.** From time to time, the Risk Management Department may promulgate forms for use in the various Risk Management activities described above, including forms of notices, reports, manuals, etc. Unless a form has been prescribed by the Risk Management Department, it shall be the duty of the Agency Risk Management Coordinator to establish standard forms for use within the other covered entity to carry out Risk Management activities under 74 O.S. Section 85.58A et seq. and the rules contained in OAC 260:70-3. In any case where such a form has been prescribed by the Administrator for any purpose, it shall be adopted and made the exclusive form for such purpose by each Agency Risk Management Coordinator. Seminars may be conducted from time to time by the Risk Management Department to inform state or other covered entities employee(s), officer(s), Agency Risk Management Coordinator(s), Director(s), manager(s), supervisor(s), and other responsible personnel of systematic changes in standard forms of notices, reports, manuals, etc. Instructions, dates, identity of personnel expected to attend, etc., will be communicated by the Risk Management Department on an as-needed basis.

SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS

260:70-5-1. Claims management

(a) **Settlement and payment of claims.**

(1) **General.** While the Risk Management Department will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Department has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.

(ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.

(iii) If any State agency, or any other covered entity, or its attorney fails to reasonably cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.

(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.

(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Office of Management and Enterprise Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.

(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Claimants shall provide to Risk Management any and all requested information in order for Risk Management to comply with all State and Federal laws. If a claimant fails to comply with such requests, claimant's claim shall be invalid and ineffective unless and until claimant provides the information to Risk Management necessary for it to comply with State and Federal laws. However, nothing in this section shall toll or delay the time limits provided by the Oklahoma Governmental Tort Claims Act governing a claimant's obligation in reporting a claim.

(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A et seq. or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A et seq. under any State or Federal law.

(D) In the event an entity covered under any insurance or self-insurance program administered by the Risk Management Department does not consent to the first Settlement Opportunity found to be acceptable to Risk Management's legal counsel and Risk Management, Risk Management's liability for all loss on account of such claim shall not exceed the amount for which Risk Management could have settled such claim (the Settlement Opportunity Amount).

(E) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) **"Official State Business" and "Scope of Employment".** Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Department of the Office of Management and Enterprise Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee

for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding $25,000.00.** A claim settlement in which a payment not exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding $25,000.00.** A claims settlement in which a payment exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in ~~580:25-5-1(a)(2) and (3)~~260:70-5-1(a).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Department has purchased a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or another covered entity. If a commercial policy of insurance has been purchased by any entity outside the Risk Management Program, whether or not approved by the Risk Administrator, no self-insurance coverage shall be paid from Risk Management funds.

(b) **Collection of liability claims owed to the state.** In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:

(1) Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Division of Central Accounting and Reporting of the Office of Management and Enterprise Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S., Section 62.5.

(2) In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Division of Agency Accounting and Reporting of the Office of Management and Enterprise Services to the injured agency pursuant to 74 O.S., Section 62.5.

260:70-5-2. ~~Limitations on payments in connection with other covered entities~~Claims payment

The Risk Management Division has several methods in which to pay claims against the state or other covered entities. Methods of paying claims for liability incidents include:

(1) **Issuance of a state warrant.**

(A) Upon approval of a claim payment by authorized legal counsel, the Risk Management Division shall:

(i) Forward a request for a warrant to be issued with copies of documents showing all required approvals for claim payment.

(ii) Attach to the request for a warrant to be issued, a fully and properly executed release of liability, if available, or a copy of the court approval.

(B) The Division of Central Accounting and Reporting of the Office of Management and Enterprise Services shall:

(i) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws.

(ii) Issue a warrant.

(2) **Agency special account voucher.**

(A) Upon approval of claim payment by authorized legal counsel, the Risk Management Division shall:

(i) Forward a request for a voucher to be issued from the Risk Management "Quick Settlement Account", pursuant to 74 O.S. Section 85.58N.

(ii) Attach to the request for a voucher to be issued, a release of liability form, if available, and copies of documents showing all required approvals for claim payment.

(iii) The "Quick Settlement Account" shall not be used for payment of claims, settlements or judgments against other covered entities.

(B) The Division of Central Accounting and Reporting of the Office of Management and Enterprise Services shall:

(i) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws.

(ii) Issue the voucher.

(3) **Limitations on payments in connection with other covered entities**

(~~a~~A) Because other covered entities, as defined in Chapter 70 of Title 260 largely constitute political subdivisions or private entities, and further because the State of Oklahoma is constitutionally prohibited from assuming the debts of such bodies, it is necessary that the funds, reserves and other financial resources for payment of claims, settlements and judgments against other covered entities be drawn entirely from contributions and premiums paid by such other covered entities which shall be maintained in one or more segregated revolving funds and which shall not be commingled with funds of the State of Oklahoma.

(~~b~~B) The Risk Management Department shall also be empowered to charge against the premiums and contributions paid into the above-described segregated revolving fund or funds the actual, reasonable administrative expense of all services provided to other covered entities under Chapter 70 of Title 260.

SUBCHAPTER 7. ESTABLISHMENT OF CENTRALIZED STATE RISK AND INSURANCE MANAGEMENT PROGRAM

260:70-7-2. Functions of Oklahoma Risk Management Program

(a) In order to protect the assets of the state or any other covered entity against liability loss, the Risk Management Department shall consolidate and administer:

(1) All plans to transfer liability risks, if it is economically advantageous to do so, by acquiring commercial liability insurance, by pass-off of liability or by other means.

(2) All plans and programs pertaining to Risk Management including liability self-insurance programs, except ~~workers' compensation insurance and~~ state employees group, health, dental and life insurance.

(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.

(b) In order to protect the assets of the state against property or casualty loss, the Risk Management Department shall consolidate and administer:

(1) All plans to transfer property or casualty risks, if it is economically advantageous to the state to do so, by acquiring property or casualty insurance, pass-off of responsibility through transfer of risk, or by other means.

(2) All plans and programs pertaining to Risk Management including property or casualty self-insurance programs.

(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.

(c) In order to take every practical measure to eliminate or prevent injury to employees, private persons, entities or others, the Risk Management Division shall consolidate and administer a continuous effective loss-prevention and loss-control program designed to:

(1) Protect the state's assets.

(2) Ensure a safe environment for state employees and for the public who come into contact with state employees or property.

(3) Minimize the possible interruption of vital public services.

(4) Safeguard that all exposures to financial loss are discovered and handled appropriately.

(5) Reduce the costs and consequences of accidents, including insurance premiums, through effective safety management.

(d) In order to ensure the continuity of services to the state or other covered entities:

(1) The Risk Management Department shall protect the assets of the state or any other covered entity against liability loss by:

(A) Insuring through either commercial liability insurance or other commercial insurance for the protection of the state and any other covered entity; and,

(B) Administering of a self-insured retention plan for providing insurance for the state and any other covered entity against liability.

(C) Insuring through a combination of self-insured retention and commercial insurance for the state and any other covered entity against liability.

(2) The Risk Management Department shall protect the assets of the state against property or casualty loss by:

(A) Insuring through either property insurance or other commercial insurance for the protection of the state against property or casualty loss.

(B) Administering of a self-insured retention plan for providing insurance for the state against property and casualty loss.

(C) Insuring through a combination of self-insured retention and commercial insurance for the state against property or casualty loss.

SUBCHAPTER 9. DRIVER AND VEHICLE SAFETY STANDARDS FOR MOTOR VEHICLE OPERATIONS

260:70-9-1. Driver and vehicle safety standards for motor vehicle operations

In order to help protect the general public, as well as the state and other covered entities' property and their employees, the rules contained in OAC 260:70-9 shall apply:

(1) **Primary requirements.** It being imperative that in order to assure the driving public that state vehicles will be operated properly and by trained individuals, State Risk Management reserves the right to insure for liability insurance only those state employees or volunteers it deems insurable. In order to facilitate this right, Risk Management may, from time to time, request Motor Vehicle Records (MVR's) from the Department of Public Safety. Any information found on the report that may be negative towards the driving record of the individual employee may be cause for Risk Management to inform the employing agency of said employee that the driver is uninsurable and that in the event of a loss involving said employee, Risk Management will refuse to pay for such loss(es) out of the Risk Management Comprehensive Risk Pool. Losses incurred under such conditions shall be borne by the employing agency. In addition to the above, the following are minimum requirements:

(A) To operate a vehicle of any type, an individual must have a valid driver's license. Risk Management may assist agencies in checking whether or not an employee has a valid Oklahoma drivers license.

(B) Driver will use the vehicle only for state or other covered entity business within the scope of the driver's employment/authority.

(C) Driver will wear his/her safety belt.

(D) Driver will observe all traffic laws.

(E) Driver will not allow an unauthorized person to drive the vehicle.

(F) Consumption of alcoholic beverages or narcotics prior to the operation of a vehicle is prohibited.

(2) **General requirements.**

(A) Backing of vehicles where the driver does not have a clear view of the entire area behind the vehicle will be accomplished with an assistance of a guide. If a second person is in the vehicle, he/she should guide the vehicle back using the appropriate hand and voice signals. If the driver is alone, he/she should check the area behind his/her vehicle before backing.

(B) Drivers will ensure that windows, headlights, taillights, and wipers are clean and operational at all times.

(C) In order to give ample warning to oncoming and following vehicles, turn signals must be utilized by drivers at all times, when making a turn or changing lanes.

(D) Do not "tail-gate". When following other vehicles in normal traffic and under good weather conditions, a time gap of two seconds should be allowed.

(E) On hills, curves, intersections or in any area where your vision is obstructed, do not make a turnabout, i.e., u-turn.

(F) Vehicles and equipment shall not be parked or left adjacent to the roadway in such a manner as to constitute a traffic hazard to the driving public. Vehicles will not be parked where they will obstruct the sight of other drivers.

(3) **Specific requirements.**

(A) It shall be unlawful for any driver of any vehicle to operate said vehicle without a valid drivers license, pursuant to 47 O.S. ~~1981~~, Section 6-101 et seq. Drivers will carry a valid drivers license at all times, pursuant to 47 O.S. ~~1981~~, Section 6-112.

(B) Any volunteer or employee who operates a state or other covered entity vehicle regularly or occasionally is required to report suspension or revocation of his/her license to their agency. Failure of an employee or volunteer to report a change in license status may result in denial of insurance coverage by the Risk Management Department in the event of an accident, pursuant to 260:70-9-1(3)(~~A~~B).

(C) All items or materials, which may move around during transport by truck or trailer, will be secured or tarped.

(D) No more than three (3) persons will ride in the front seat of a state or other covered entity vehicle. Where only two single seats exist, only one rider may ride in each seat.

(E) Drivers of state or other covered entity vehicles will drive in a courteous manner at all times.

(F) Emergency vehicles under emergency situations are exempt from normal motor vehicle laws, but are required to exercise due regard for the safety of all persons pursuant to 47 O.S. ~~1981~~, Section 11-106.

(G) Any Driver of a motor vehicle involved in an at fault accident or accidents while functioning as an agent of the State and in which the driver acted negligently (and caused personal injury and/or property damage) shall be required to attend and successfully complete a Motor Vehicle Improvement (MVI) course. Such course shall be approved by the State Risk Management Department and must be attended within six (6) months of the date of the accident. Failure to successfully complete an approved MVI course shall result in the driver of the state vehicle being declared uninsurable by the State Risk Management Administrator until such time that the driver successfully completes the required course. The Risk Management Administrator may waive this requirement and paragraph H upon proper application and for good cause.

(H) Any driver of a motor vehicle, while functioning as an agent of the State, that is involved in two at fault accidents in a twenty four (24) month period shall, in addition to paragraph G, be declared uninsurable by the Risk Management Administrator for a period of three (3) months following the second accident.

(I) Special equipment such as tractor-trailers, mowers, construction equipment, mobile cranes, fork lifts and emergency vehicles shall not be operated without adequate training provided by the Agency and authorization by the agency in charge.

(4) **Maintenance requirements.**

(A) Before operating a state or other covered entity vehicle, the driver is responsible for checking to see that all necessary safety equipment and control devices are in good condition before he/she operates it. These items should include;

(i) Lights.
(ii) Directional signals.
(iii) Steering wheel.
(iv) Brakes
(v) Rear-view and side-view mirrors.
(vi) Horn.
(vii) Tires.
(viii) Safety belts
(ix) Windshield wipers.
(x) Defroster.

(B) For vehicles used to transport people, such as an activity bus or van, the following items in addition to those listed in ~~580:25-9-1(4)(A)~~260:70-9-1(4)(A) should be checked for emergency use:

(i) Reflectors.
(ii) Fire extinguisher, type B-C.
(iii) First aid kit.

(C) No state or other covered entity vehicle will be operated without a current state safety inspection sticker.

(5) **Accident reporting.** Any state or other covered entity vehicle involved in an incident with a third party shall report the incident to his Agency Risk Manager or the Risk Management Department not later than the next working day following the occurrence of the incident. Risk Management, in order to adequately investigate and come to a timely determination as to whether or not a claim is valid, relies on the agency Risk Coordinator to assist them in the investigation. Risk Management may require additional information other than the initial incident report and claim report. Information request(s) by Risk Management must be responded to within four (4) weeks of date of the request by the agency. If it is determined that an agency has not responded or is not acting in good faith to assist State Risk Management, Risk Management reserves the right to make a determination on the information received which could result in the approval of a claim when it might not otherwise be. In that case, Risk Management will pay the claim and invoice the full amount back to the responsible agency. The Risk Management Administrator reserves the right to waive this requirement for good cause.

(6) **Safety standards for other covered entities entitled to services from the Risk Management Program.** To meet eligibility criteria for approval and participation under the State Risk Management Program, drivers and vehicles shall meet or exceed the following requirements;

(A) Drivers of fire apparatus shall have a valid drivers license to drive the vehicle.

(B) There shall be documentation of the drivers license for any individual who drives or may be required to drive a vehicle.

(C) Drivers of fire apparatus must be thoroughly trained and the training documented.

(D) Each other covered entity shall have a written policy that sets forth speed limits for its vehicles on emergency runs.

(E) All emergency vehicles shall be provided with audible and visible warning devices. These devices shall be kept in proper working order and utilized without fail on emergency runs.

(F) Wheel chocks must be used for rear wheels while using any aerial ladder apparatus to help prevent the apparatus from slipping.

(G) There shall be a preventive maintenance program in place to ensure that all emergency vehicles are maintained in a safe condition. This list is not meant to be a complete listing, but only a guide. The following items are suggested safety areas that should be checked:

(i) Visible and audible signals
(ii) Lighting system.
(iii) Tires.
(iv) Steering
(v) Brake system air tanks.
(vi) Brake fluid.
(vii) Windshield wipers.
(viii) Rear view mirrors.

(H) Applications of risk management coverage, pursuant to Section 85.58A of Title 74, are subject to review by the Administrator. The review may include a physical inspection of the vehicles and related records.

(I) Other covered entities are subject to random safety and loss prevention inspections of equipment for as long as they choose to participate in the State Risk Management Program.

(J) Non-compliance with safety standards as required by the Administrator could result in a denial to participate in the program or cancellation of coverage.

SUBCHAPTER 11. COVERAGE FOR STATE OWNED BUILDINGS, CONTENTS AND OTHER

260:70-11-3. Claims payment

The amount payable for each loss shall be determined by the Administrator. Payment of claims shall be made as funds

are available and upon the approval of the Administrator. Final payment shall not be made until a loss affidavit and a release of all claims has been properly executed and the covered entity has complied with all procedures for claim payment as set forth in the Annual Statement of coverage. On a loss where the property covered is to be replaced under the terms of the Annual Statement of Coverage, and a final settlement has been reached, the Administrator reserves the right to require that the covered entity be paid only that portion of the actual cash value until the property suffering the loss has been put back whole. At that time, all remaining settlement funds will be released.

(1) The Risk Management Department shall:

(A) Acquire a release of all claims and a loss affidavit by the chief administrative officer or other authorized official of the agency where a property loss has occurred; or.

(B) Acquire an attestation from the chief administrative officer of the agency where a property loss has occurred that the agency does not intend to replace the property loss and will accept actual cash value in lieu of replacement; and,

(C) Forward a request for a warrant for either replacement value or actual cash value to be issued reflecting all approval(s) necessary under the rules and regulations contained in ~~580:25-11~~260:70-11.

(2) The Division of Central Accounting and Reporting of the Office of Management and Enterprise Services shall:

(A) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws; and,

(B) Issue a warrant, such warrant and subsequent endorsement serving as indicia for proof of payments of a property loss.

[OAR Docket #16-522; filed 6-15-16]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

[OAR Docket #16-511]

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Proposed policy changes correct citations and references to state statutes, specify that policy addresses appeals and not grievances which are addressed in other sections, remove provisions related to the Administrative Law Judge's jurisdiction to match other rules and statutes and language clean-up for clarity and accuracy.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

317:2-1-2. Appeals

(a) **Member Process Overview.**

(1) The appeals process allows a member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to file an appeal, the member files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal.

(3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received by OHCA within ~~30 days of written notice sent by OHCAaccording~~ the timeframe pursuant to Title 68 ~~Okla. Stat.~~O.S. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out ~~and~~or if necessary documentation is not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date and time for this procedure. The member must appear at this hearing and it is conducted according to 317:2-1-5.

The ALJ's decision may be appealed to the Chief Executive Officer of the OHCA, which is a record review at which the parties do not appear (317:2-1-13).

(7) Member appeals are ordinarily decided within 90 days from the date OHCA receives the member's timely request for a fair hearing unless the member waives this requirement. [Title 42 ~~C.F.R. Section~~CFR 431.244(f)]

(8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision is normally rendered by the ALJ within 20 days of the hearing before the ALJ.

(b) **Provider Process Overview.**

(1) The proceedings as described in this ~~Section~~subsection contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA Administrative Law Judge under 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the provider who files ~~a grievance~~an appeal) files an LD form requesting ~~a grievance~~an appeal hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-2 forms are for provider ~~grievances~~appeals and LD-3 forms are for nursing home wage enhancement grievances.)

(B) If the LD form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

~~(C) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.~~

(~~D~~C) A decision will be rendered by the ALJ ordinarily within 45 days of the close of all evidence in the case.

(~~E~~D) Unless an exception is provided in 317:2-1-13, the Administrative Law Judge's decision is appealable to OHCA's CEO under 317:2-1-13.

(c) **ALJ jurisdiction.** The ~~administrative law judge~~Administrative Law Judge has jurisdiction of the following matters:

(1) Member Appeals:

(A) Discrimination complaints regarding the SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;

~~(E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);~~

(~~F~~E) Proposed administrative sanction appeals pursuant to 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(~~G~~F) Appeals which relate to eligibility determinations made by OHCA;

(~~H~~G) Appeals of insureds participating in Insure Oklahoma which are authorized by 317:45-9-8(a); and

(2) Provider Appeals:

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under 317:30-5-131.2(b)(5), (e)(8), and (e)(12);

~~(D) Petitions for Rulemaking;~~

(~~E~~D) ~~Appeals to the decision made by the Contracts manager related to reports of supplier non-compliance to the Central Purchasing Division, Oklahoma Department of Central Services and other appeal rights granted by contract;~~Appeals of Professional Service Contract awards and other matters related to the Central Purchasing Act pursuant to Title 74 O. S. § 85.1;

(~~F~~E) Drug rebate appeals;

~~(G) Nursing home contracts which are terminated, denied, or non-renewed;~~

(~~H~~F) Proposed administrative sanction appeals pursuant to 317:30-3-19. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will normally be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

~~(I) Contract award appeals;~~

(~~J~~G) Provider appeals of OHCA audit findings pursuant to 317:2-1-7. This is the final and only appeals process for appeals of OHCA audits; and

(~~K~~H) Oklahoma Electronic Health Records Incentive program appeals related only to incentive payments, incentive payment amounts, provider eligibility determinations, and demonstration of adopting, implementing, upgrading, and meaningful use eligibility for incentives.

(~~L~~I) Supplemental Hospital Offset Payment Program (SHOPP) annual assessment, Supplemental

Payment, fees or penalties as specifically provided in OAC 317:2-1-15.

317:2-1-13. Appeal to the Chief Executive Officer

(a) The Oklahoma Health Care Authority offers approximately 40 different types of administrative appeals. Some of the appeals are appealable to the Chief Executive Officer~~,~~ and some are not. The following appeals may be heard by the Chief Executive Officer following the decision of an Administrative Law Judge:

(1) Appeals under 317:2-1-2(c)(1)(A) to (c)(1)~~(H)~~(G), with the exception of ~~Subsection (F)~~subsection (c)(1)(E);

(2) Appeals under 317:2-1-2(c)(2)(A) to (c)(2)~~(K)~~(I), with the exceptions of ~~Subsections (H)~~subsections (c)(2)(F) and ~~(J)~~(G); and

(3) Appeals under 317:2-1-8 and 317:2-1-10.

(b) Appeals to the Chief Executive Officer must be filed with the OHCA within ~~twenty (20)~~20 days of the date of the Order, or decision by OHCA.

(c) No new evidence may be presented to the Chief Executive Officer.

(d) Appeals to the Chief Executive Officer under (a) of this Section may be filed by the provider, member, or agency. The Chief Executive Officer will ordinarily render decisions within ~~sixty (60)~~60 days of the receipt of the appeal.

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TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

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Proposed policy is revised to clarify the purpose of the Program Integrity audit appeal hearings, clarify which issues are appealable and streamline the process of audit appeal hearings. In addition, proposed revisions revoke the rules in nursing home provider contract appeals policy.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

317:2-1-7. Program Integrity Audit Appeals

All appeals related to audits originating from Program Integrity resulting in overpayments are heard by an Administrative Law Judge (ALJ) ~~per~~pursuant to 56 ~~Okla. Stat.~~O.S. § 1011.9.

(1) ~~If a provider disagrees with a decision of an OHCA audit, which has determined that the provider has received an overpayment, the provider may appeal, within 20 days of the date of that decision by submitting an LD-2 form to OHCA's docket clerk.~~If the OHCA determines a provider received an overpayment based upon audit findings issued pursuant to OAC 317:30-3-2.1, the provider may appeal the audit findings. If a provider elects to appeal the audit findings, the provider must file its appeal with the OHCA's Legal Docket Clerk, using Form LD-2. The LD-2 must be received by the OHCA Legal Docket Clerk within 20 days of the date of the initial audit findings or within 20 days of the date of the audit findings following reconsideration. The computation of time shall be calculated in accordance with 12 O.S. § 2006.

(2) ~~The appeal will be commenced by the receipt of an LD-2 form from the appellant provider. The form must set out with specificity the overpayment finding to which the provider objects along with the grounds for the appeal. The provider shall explain in detail the factual and/or legal basis for disagreement with the alledged erroneous decision. The provider shall attach to the LD-2 form all relevant exhibits the provider believes necessary to decide the appeal, including the following:~~The provider must attach a statement to the LD-2 that specifies what findings and/or claims are being appealed, as well as all factual and legal bases for the appeal. The provider shall attach the following to the LD-2 form:

(A) Citations for any statute or rule that the provider contends has been violated;

(B) The provider's name, address, e-mail address, and telephone number;

(C) The name, address, e-mail address, and ~~phone~~telephone number of the provider's authorized representative, if any; and

(D) The LD-2 must be signed by the provider or provider's authorized representative.

(i) For purposes of this section, "provider" means the person or entity against ~~which~~whom the overpayment is sought.

(ii) ~~If someone other than an individual provider or entity's authorized representative is representing the provider, he/she must be licensed to practice law within the State of Oklahoma.~~ Consistent with Oklahoma rules of practice, an individual provider may appear on his/her own behalf or may be represented by an attorney licensed to practice law within the State of Oklahoma. In the case of an entity, the provider entity must be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma must comply with 5 ~~Okla. Stat.~~O.S. Art II, Sec. 5, and rules of the Oklahoma Bar Association.

(3) ~~The burden of proof during the hearing will be upon the provider and the Administrative Law Judge will decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court.~~A provider or the provider's authorized representative shall immediately report any change in contact information during the course of the appeal to the OHCA Legal Docket Clerk.

(4) ~~Within approximately 45 days of receiving the LD-2, the docket clerk will schedule a pre-hearing conference before an Administrative Law Judge. This period of time is intended to allow parties an opportunity to settle the dispute prior to the pre-hearing. Settlement or mediation of audit disputes is encouraged and can begin at any time of the audit process between the provider and OHCA's legal division. If settlement is reached, the terms shall be set out in writing and signed by both parties and/or their representatives. Upon the finalization and signature of the settlement agreement, the appeal(s) shall be dismissed with prejudice.~~The OHCA, on its own initiative or upon written request of a party, may consolidate or join appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.

(5) ~~Any change in contact information during the course of the appeal should be immediately reported to the OHCA docket clerk.~~The provider has the burden of proof to prove that the overpayment determination and the errors identified in the audit findings are inaccurate. The provider must prove the relief sought by a preponderance of the evidence standard, as defined by the Oklahoma Supreme Court. In adjudicating an appeal under the preponderance of the evidence standard, the ALJ will examine each piece of evidence for relevance, probative value, and credibility, to determine whether the fact to be proven is proved by the greater weight of the evidence.

(6) ~~The OHCA, on its own initiative or upon written request of a party, may consolidate or join appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.~~Within approximately 45 days of receiving the LD-2, the Legal Docket Clerk will schedule a prehearing conference before an ALJ. This period of time is intended to provide the parties an opportunity to settle the dispute prior to the prehearing. Settlement of audit appeals is encouraged and can begin at any time of the audit appeal process between the provider and OHCA's Legal Division. If a settlement is reached, the terms shall be set out in writing and signed by both parties and/or their authorized representatives. Unless otherwise warranted, an Agreed Order setting out the terms of the settlement shall be presented to the ALJ for approval. In limited situations, a settlement may be agreed to be a confidential settlement by the parties and will not be submitted as an Agreed Order to the ALJ. In the case of confidential settlements, the Appellant shall file a motion to dismiss the appeal with prejudice which informs the ALJ that the matter has been settled and that the audit appeal is moot.

(7) Audit appeals which are not settled will commence with a prehearing conference before the assigned ~~administrative law judge~~ALJ as follows:

(A) ~~At the conference the parties shall clarify and isolate the legal and factual issues involved in the audit appeal.~~The prehearing conference shall be informal, structured by the ALJ, and not open to the public. The ALJ shall record the prehearing conference by digital recording.

(i) Each party shall be notified of the date of the prehearing conference at least 30 calendar days prior to the scheduled prehearing conference.

(ii) Each party shall appear in person or through their authorized representative.

(iii) Witnesses, not including a named party, shall not appear at the prehearing conference. Nor shall any witness testimony be presented at the prehearing conference.

(B) ~~Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.~~A request for continuance of a prehearing conference can be made up to three (3) business days prior to the scheduled prehearing conference date. A lesser period of time may be permitted for good cause shown. The ALJ shall rule on the request and in no case shall a combination of continuance exceed a total of 30 calendar days except for good cause shown.

(C) Within ~~fifteen~~20 days prior to the prehearing conference, the Appellant provider shall file a prehearing conference statement with the ~~docket clerk~~Legal Docket Clerk and provide a copy to the other party; and within 10 days prior to the prehearing conference, the OHCA shall file a prehearing conference statement with the docket clerk and provide

a copy to the other party. Each party's prehearing conference statement shall include:

(i) A brief statement of ~~his or her~~its case, ~~to include~~including a list of stipulations and legal and factual issues to be heard;

(ii) A list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer;

(iii) A list of ~~any documents and exhibits and the original, or a copy, of each document or exhibit~~all exhibits, together with a copy thereof, which each party intends to ~~be offered~~offer into evidence ~~or presented~~ at the hearing; and

(iv) Any ~~requirements or~~ requests for discovery.

~~(D) The prehearing conference shall be informal, structured by the administrative law judge, and not open to the public. The administrative law judge shall record the prehearing conference by digital recording.~~

~~(i) Each party shall be notified of the date of the prehearing conference at least 20 calendar days prior to the scheduled prehearing conference.~~

~~(ii) Witnesses, not including a named party, shall not appear at the prehearing conference. Nor shall any witness testimony be presented at the prehearing conference.~~

(D) At the prehearing conference, the parties shall clarify and isolate the legal and factual issues involved in the audit appeal.

(E) ~~A request for continuance of a prehearing conference can be made up to three days prior to the scheduled prehearing conference date. A lesser period of time may be permitted for good cause shown. The administrative judge shall rule on the request and in no case shall a combination of continuances exceed a total of 30 calendar days except for good cause shown.~~Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. A prehearing conference shall not be continued if a party fails to be prepared to identify issues, propose witnesses, or provide exhibits, unless the ALJ finds good cause is shown.

(F) Following the prehearing conference, the ~~administrative judge~~ALJ shall issue ~~an~~a Scheduling Order setting ~~out the witnesses, exhibits, documents, and issues to be presented at the hearing; the hearing date; the decisions reviewed and made during the prehearing conference; other scheduling deadlines as may be needed; and any stipulations agreed to by the parties. The administrative judge should attempt to issue the Order within two weeks of the prehearing conference.~~forth deadlines for parties to complete discovery, submit briefs as directed by the ALJ, submit prehearing motions, and other deadlines as may be needed. The ALJ should attempt to issue the Scheduling Order within two (2) weeks of the prehearing conference. Upon completion of discovery and the submission of any motions or briefs, the ALJ shall issue a Prehearing Order that shall identify all issues to be presented at the hearing; a final list of witnesses to be called by each party; a final list of exhibits to be used by each party; and the hearing date and anticipated duration of the hearing. The Prehearing Order should be filed by the ALJ no later than 10 days prior to the hearing.

(8) ~~Administrative Law Judge~~The ALJ shall:

(A) Limit all decisions, rulings, and orders to matters directly related to the contested overpayment determination resulting from the audit findings issued pursuant to OAC 317:30-3-2.1 and procedural matters set forth within OAC 317:2-1-7;

(~~A~~B) Hear and rule on pending requests or motions as expeditiously as possible. This includes setting filing and responsive deadlines in accordance with Title 12 of the Oklahoma Statutes and the Rules for District Courts of Oklahoma. To preserve judicial efficiency, a reply to a response to a motion shall not be filed by a party without leave of Court to do so and such permission shall not be routinely granted;

(~~B~~C) Rule on whether witnesses have knowledge of the facts at issue;

~~(C) Rule on whether a witness shall produce a report to detail proposed testimony as described in Rule 26 of the Federal Rules of Procedure;~~

(D) Rule on whether discovery requests and other motions and requests are relevant;

(E) Rule on whether to grant a party's request to depose a witness. To preserve judicial efficiency, depositions shall not be routinely permitted and shall only be permitted by order of the ALJ;

(F) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, used as a means of harassment, unduly burdensome, or not timely filed; and

(G) Identify and rule on errors being appealed and issues to be heard at the administrative hearing.

(9) ~~The hearing shall be digitally recorded and closed to the public.~~As the purpose of the administrative process is to expedite a limited appellate review of the audit findings, the ALJ shall ensure a timely resolution of the appeal. The ALJ shall schedule a hearing within 90 days of the prehearing conference. A party may request a continuance of the hearing by motion, which shall only be permitted if the ALJ finds good cause exists and neither party shall be prejudiced by the continuation.

(10) At the hearing:

(A) Each party shall appear in person or through their authorized representative.

(B) All witnesses must appear in person to provide testimony.

(C) All relevant exhibits provided with each party's prehearing conference statement or final exhibit list,

that have not been objected to or stricken by the ALJ, shall be deemed admissible at the hearing.

(D) Each party is responsible to provide a sufficient number of copies of its own exhibits at the hearing.

(E) The hearing will be limited to one (1) day. Each side will be allowed four (4) hours to present its case-in-chief, which is inclusive of any time needed for cross-examination of witnesses by the opposing party. For good cause shown, the ALJ may increase or decrease the time limit for each party to present its case-in-chief, taking into account the time limits of the entire appeal process.

(~~10~~11) The ~~administrative law judge~~ALJ should attempt to make the final hearing decision within ~~180~~90 days from the date of the ~~prehearing conference~~hearing. ~~The final order shall be the entire record of the appeal. Pursuant to Administrative Procedures Act, the Order does not need to contain findings of fact or conclusions of law. The final order is the final decision and is not appealable to the CEO.~~Any appeal of the final order pursuant to 12 O.S. § 951 must be filed with the District Court of Oklahoma County within 30 days.

(A) The following items shall constitute the record on appeal:

(i) all motions and orders filed with the Legal Docket Clerk;

(ii) all exhibits admitted during the hearing; and

(iii) the transcripts of proceedings, if any.

(B) It shall be the duty of the Appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within 30 days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the Appellant.

(12) All orders and settlements are non-precedential decisions.

(13) The prehearing conference, the hearing, and any supplementary hearings or conferences shall be digitally recorded and closed to the public.

(14) The record of the appeal, confidential settlements, and any audio recordings shall remain confidential.

317:2-1-8. Nursing home provider contract appeals [REVOKED]

~~This Section explains the appeal process to be accorded all nursing home providers whose contracts are terminated, denied or non-renewed. No procedure is afforded a nursing facility whose contract is limited in any other fashion.~~

~~(1) If a nursing home provider's contract is terminated, non-renewed or denied prior to the action's effective date, the provider will be afforded an informal reconsideration in accordance with 42 C.F.R. 421.153.~~

~~(2) The notice of termination, non-renewal or, denial of contract will include the findings it was based upon. The letter will be sent by certified mail to the provider.~~

~~(3) The provider will have 60 days to respond to the notice unless there is a finding of immediate jeopardy or a determination that the facility's SoonerCare certification has been cancelled prior to 60 days. The response should outline the reasons why the OHCA's decision to terminate, non-renew, or deny the contract is wrong. The response by the provider must include a detailed position addressing the findings set out in the OHCA's letter. In the event that less than a 60 day notice is provided for either reason stated above, the provider will be afforded a notice in as much time before decertification as possible.~~

~~(4) Based upon the provider's response, the OHCA will affirm or deny the notice of non-renewal, termination or denial.~~

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The proposed Grievance Procedures and Process policy amends language to clarify the appeals process for a 30 day for cause and immediate contract termination and removes references to suspended contracts. Proposed changes also add language to rules addressing 60 day without cause termination. The amendments makes clear that pursuant to contract terms, either party may terminate the contract with a 30 day written notice when it is a for cause termination, or with a 60 day notice if the termination is without cause. Additionally, changes detail the post-termination panel committee composition and its function and add language that specifies the timeframe for which a provider must submit a written response to OHCA requesting reconsideration.

CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

317:2-1-12. ~~For Cause provider contract suspension/termination appeals process~~For cause and immediate provider contract termination appeals process

This ~~Section~~section explains the appeals process for providers whose SoonerCare contracts have been ~~suspended/~~terminated by the OHCA for cause. ~~Those providers whose contracts have been affected by other OHCA actions cannot request an appeal of those measures. Contracts terminated or suspended for cause are either timed terminations (30, 60, or 90 day) or immediate terminations/suspensions. Paragraphs (1) and (2) apply to timed terminations/suspensions and paragraph (3) applies to immediate terminations.~~

(1) ~~**Procedure for suspending/terminating provider's contract.**~~ **30 day for cause termination.** Pursuant to the terms of all provider contracts with the OHCA, either party may terminate the contract for cause with a 30 day written notice to the other party.

(A) **Notice of proposed ~~suspension or~~ termination.** The OHCA will provide notice to the ~~medical services~~ provider of the proposed~~ suspension or~~ termination of ~~provider~~the provider's contract. The written notice of ~~suspension/~~termination will state:

(i) the reasons for the proposed ~~suspension/~~termination;

(ii) the date upon which the ~~suspension/~~termination will be effective; and

(iii) a statement that the ~~medical services~~ provider has a right to OHCA review prior to the ~~suspension/~~termination of the provider's contract ~~(refer to subparagraph (B) of this paragraph)~~.

(B) **Right to OHCA review prior to ~~suspension/~~termination of provider contract.** Before the ~~medical services~~ provider's contract is ~~suspended or~~ terminated, the OHCA will give the ~~medical services~~ provider the opportunity to submit documents and written arguments against the ~~suspension/~~termination of the provider's contract. The provider's written response requesting a review must be submitted within 20 days from the date of the notice. If a written response is not received within 20 days, the notice of termination will become final and there will be no further right to review or appeal post-termination.

(C) **Notice of ~~suspension or~~ termination.**

(i) ~~After the review of the medical services provider's written response, the OHCA will make a final administrative decision subject to a post-suspension or termination hearing.~~After the OHCA review of the provider's written response, the OHCA will make a final administrative decision regarding the contract termination.

(ii) ~~After the review of the medical services provider's written response, the OHCA will make a final administrative decision subject to a post-sanction hearing.~~ Should the OHCA decide ~~not to suspend or terminate~~that the provider's contract should not be terminated, the ~~medical services~~ provider will be notified in writing of the reasons for the OHCA's decision.

(iii) Should the OHCA make a decision to ~~suspend or~~ terminate the ~~medical services~~ provider's contract, the OHCA will send a subsequent notice stating:

(I) the reasons for the decision;

(II) the effective date of the ~~suspension or~~ termination of the contract; and

~~(III) the medical services provider's right to request a post-suspension or termination hearing; and~~

(III) the provider's right to request a post termination panel committee desk review within 20 days of the date of the termination letter.

~~(IV) the requirements and procedures for reinstatement.~~

~~(2) **Post-suspension/termination hearing.** After the effective date of the suspension or termination of the provider's contract, the medical services provider is entitled to receive a post-suspension or termination hearing. The hearing committee for the OHCA will be comprised of three members of the OHCA and two other members as appointed. The representative who investigated the case will not be a representative if an investigation was initiated or completed.~~

~~(A) After the provider's request for the post-suspension/termination hearing is made, a hearing date will be established. A certified letter will be sent to the provider giving notification of the hearing date and naming the contact person. The contact person will answer procedural questions about the hearing.~~

~~(B) Ten days prior to the hearing, the medical services provider will submit a brief written statement detailing the evidence which will be presented by the provider at the hearing. Such statement must detail the facts which will be refuted by the provider. The purpose of the hearing will be limited to issues raised in the letter of suspension or termination as the cause of suspending or terminating the provider contract.~~

~~(C) The provider may be represented by an authorized representative, with documentation to that effect, at the informal hearing and/or the provider may present testimony himself or herself and have witnesses present.~~

~~(D) At the conclusion of the hearing, a decision will be made by the Hearing Committee. The provider~~

~~will be notified in writing of the decision within 20 days of the final day of the hearing. The decision letter will constitute the agency's final decision regarding the matter.~~

~~(3) **Notice of immediate suspension or termination.** The process below will be followed in the event of an immediate suspension or termination:~~

~~(A) A notice described in paragraph (1)(A) will be sent to the provider, except there is no right to review prior to an immediate termination or suspension.~~

~~(B) A post-suspension termination review will be conducted in accordance with paragraph (2) above.~~

(2) **Immediate termination.** The OHCA will provide notice to the provider of the termination of the provider's contract. The written notice of termination will state:

(A) the reasons for the proposed termination;

(B) the date upon which the termination will be effective; and

(C) a statement that the provider has a right to appeal the termination of the provider's contract in a post-termination panel committee desk review within 20 days of the date of the termination letter.

(3) **Post-termination panel committee desk review.** After the effective date of the termination of the provider's contract, the provider is entitled to receive a post-termination panel committee desk review. The panel review committee for the OHCA will be comprised of three (3) employees of the OHCA as designated by the Chief Executive Officer or his/her designee. Any OHCA employee who was involved with the underlying investigation of the provider's case for purpose of the termination will not be a panel review committee member. The purpose and scope of the panel committee desk review will be limited to issues raised in the OHCA's letter of termination as the basis of terminating the provider's contract. The panel committee does not have jurisdiction to hear issues not addressed in the termination notice.

(A) The provider must request a panel committee desk review within 20 days of the date of the termination letter. The provider must submit a brief written statement detailing the facts which are refuted by the provider. Any documentation the provider requests consideration of by the panel review committee must also be submitted with the written statement.

(B) The OHCA may submit any additional documents to the panel committee for the desk review that may contradict the documents submitted by the provider for the purposes of the desk review. Any additional information that OHCA submits to the panel review committee will also be provided to the provider.

(C) The panel review committee will issue a written decision regarding the provider's contract termination approximately 60 days from receipt of the provider's written statement and documentation.

(4) **60 day without cause termination.** Pursuant to the terms of all provider contracts with the OHCA, either party may terminate the contract without cause with a 60 day written notice to the other party. As such, there is no right to appeal or review of a 60 day contract termination.

[OAR Docket #16-518; filed 6-15-16]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #16-488]

RULEMAKING ACTION:
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RULES:
Subchapter 7. SoonerCare
Part 1. General Provisions
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(Reference APA WF # 15-27A)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Okla. Article 10, Section 23 of the Oklahoma Constitution. 42 CFR 431.10
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n/a
ANALYSIS:
Proposed SoonerCare Choice policy is revised to clarify inconsistent and conflicting language authorizing medical residents as Primary Care Physicians (PCP) under SoonerCare. Language cleanup will reflect current OHCA practices.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 7. SOONERCARE

PART 1. GENERAL PROVISIONS

317:25-7-5. Primary care providers

For provision of health care services, the OHCA contracts with qualified Primary Care Providers. All providers serving as PCPs must have a valid SoonerCare Fee-for-Service contract as well as an exercised SoonerCare Choice addendum. Additionally, all PCPs, excluding Provider or Physician Groups, must agree to accept a minimum capacity of patients, however this does not guarantee PCPs a minimum patient volume. Primary Care Providers are limited to:

(1) **Physicians.** Any physician licensed to practice medicine in the state in which he or she practices who is engaged in a general practice or in family medicine, general internal medicine or general pediatrics may serve as a PCP. The Chief Executive Officer (CEO) of the OHCA may designate physicians to serve as PCPs who are licensed to practice medicine in the state in which they practice who are specialized in areas other than those described above. In making this determination, the CEO may consider such factors as the percentage of primary care services delivered in the physician's practice, the availability of primary care providers in the geographic area of the state in which the physician's practice is located, the extent to which the physician has historically provided services to SoonerCare members, and the physician's medical education and training.

(A) For physicians serving as SoonerCare Choice PCPs, the State caps the number of members per physician at 2,500. However, the CEO in his/her discretion may increase this number in under served areas based on a determination that this higher cap is in conformance with usual and customary standards for the community. If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed one FTE. Thus, the physician cannot exceed a maximum total capacity of 2500 members.

(B) In areas of the State where cross-state utilization patterns have developed because of limited provider capacity in the State, the CEO may authorize contracts with out-of-state providers for PCP services. Out-of-State PCPs are required to comply with all access standards imposed on Oklahoma physicians.

(2) **Advanced Practice Nurses.** Advanced Practice Nurses who have prescriptive authority may serve as PCPs for the Primary Care Case Management delivery system if licensed to practice in the state in which he or she practices. Advanced Practice Nurses who have prescriptive authority may serve as PCPs for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

(3) **Physician Assistants.** Physician Assistants may serve as PCPs if licensed to practice in the state in which he or she practices. Physician Assistants may serve as PCPs for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

~~(4) **Medical Residents.**~~

~~(A) Medical residents may serve as PCPs when the following conditions are met:~~

~~(i) The resident is licensed to practice in the state in which he or she practices.~~

~~(ii) The resident is at least at the Post-Graduate 2 (PG-2) level.~~

~~(iii) The resident serves as a PCP only within his or her continuity clinic setting (for example, Family Practice residents may only serve as the PCP within the Family Practice Residency clinic setting).~~

~~(iv) The resident works under the supervision of a licensed attending physician.~~

~~(v) The resident specifies the residency program or clinic to which payment will be made.~~

~~(B) Medical residents practicing as a PCP may not exceed a capacity of more than 875 members. However, the CEO in his/her discretion may increase this number.~~

(~~5~~4) **Indian Health Service (IHS) Facilities and Federally Qualified Health Center (FQHC) provider groups.**

(A) Indian Health Service facilities whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements at OAC 317:30-5-1088 may serve as PCPs.

(B) Federally Qualified Health Centers whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements in OAC 317:30-5-660.2 may serve as PCPs.

(~~6~~5) **Provider or physician group capacity and enrollment.**

(A) Provider or physician groups must agree to accept a minimum enrollment capacity and may not exceed 2,500 members per physician participating in the provider group.

(B) If licensed physician assistants or advanced practice nurses are members of a group, the capacity may be increased by 1,250 members if the provider is available full-time.

(C) Provider or physician groups must designate a medical director to serve as the primary contact with OHCA.

[OAR Docket #16-488; filed 6-15-16]

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

[OAR Docket #16-481]

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Part 1. General Scope and Administration
317:30-3-11. [AMENDED]
317:30-3-11.1. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-44. [AMENDED]
Part 83. Residential Behavior Management Services
317:30-5-744. [AMENDED]
Part 87. Birthing Centers
317:30-5-893. [AMENDED]
Part 97. Case Management Services for Under Age 18 at Risk of or in the Temporary Custody or Supervision of Office of Juvenile Affairs
317:30-5-973. [AMENDED]
Part 99. Case Management Services for Under Age 18 in Emergency, Temporary or Permanent Custody or Supervision of the Department of Human Services
317:30-5-993. [AMENDED]
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1045. [AMENDED]
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317:30-3-11.1 [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-44. [AMENDED]
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-744. [AMENDED]
Part 87. Birthing Centers
317:30-5-893. [AMENDED]
Part 97. Case Management Services for Under Age 18 at Risk of or in the Temporary Custody or Supervision of Office of Juvenile Affairs
317.30-5-973. [AMENDED]
Part 99. Case Management Services for Under Age 18 in Emergency, Temporary or Permanent Custody or Supervision of the Department of Human Services
317:30-5-993. [AMENDED]
Part 105. Residential Behavioral Management Services in GroupSettings and Non-Secure Diagnostic and Evaluation Centers
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n/a
ANALYSIS:
The proposed policy revisions restrict the filing of claims for reimbursement from 12 months to six months. In addition, rules regarding resubmissions are revised to update the deadline from 24 months to 12 months.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-11. Timely filing limitation

(a) ~~According to federal regulations, claims must be received by the Fiscal Agent within one year from the date of service.~~ According to federal regulations, the Authority must require providers to submit all claims no later than 12 months from the date of service. Federal regulations provide no exceptions to this requirement. For dates of service provided on or after July 1, 2015, the timely filing limit, for SoonerCare reimbursement, is 6 months from the date of service. Payment will not be made on claims when more than ~~12~~6 months have elapsed between the date the service was provided and the date of receipt of the claim by the Fiscal Agent. ~~Federal regulations provide no exceptions to this requirement. Because of this requirement, caution should be exercised to assure claims are filed timely in all cases where an application for assistance has been filed. The following procedure is recommended. If the service is approaching the one year time limit and a case number has not been assigned and an approval for medical assistance has not been received, or there is a case number but the medical assistance case has not been approved, or a provider contract has not been approved, file a claim. The claim will be denied, however, the denial is proof of timely filing.~~A denied claim can be considered proof of timely filing.

(b) Claims may be submitted anytime during the month.

(c) To be eligible for payment under ~~Medicaid~~SoonerCare, claims for coinsurance and/or deductible must meet the Medicare timely filing requirements. If a claim for payment under Medicare has been filed in a timely manner, the Fiscal Agent must receive a ~~Medicaid~~SoonerCare claim relating to the same services within 90 days after the agency or the provider receives notice of the disposition of the Medicare claim.

317:30-3-11.1. Resolution of claim payment

(a) After the submission of a claim from a provider which had been adjudicated by the Authority, a provider may resubmit the claim under the following rules.

(b) The provider must have submitted the claim initially under the timely filing requirements found at OAC 317:30-3-11.

(c) ~~The provider's resubmission of the claim must be received by the Oklahoma Health Care Authority no later than 24 months from the date of service.~~For dates of service provided on or after July 1, 2015, the provider's resubmission of the claim must be received by the Oklahoma Health Care Authority no later than 12 months from the date of service. The only exceptions to the ~~24~~12 month resubmission claim deadline are the following:

(1) administrative agency corrective action or agency actions taken to resolve a dispute, or

(2) reversal of the eligibility determination, or

(3) investigation for fraud or abuse of the provider, or

(4) court order or hearing decision.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-44. Medicare eligible individuals

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section.

(1) Claims filed with Medicare automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment ~~or~~and within one year of the date of service in order to be considered timely filed.

(2) If payment is denied by Medicare and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for denial.

(3) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment ~~or~~and within one year from the date of service.

(4) For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES

317:30-5-744. Billing

~~(a) Claims must not be submitted prior to OHCA's determination of the member's eligibility, and must not be submitted later than 1 year after the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from SoonerCare funds can be made should the individual be determined eligible at a later date.~~

(a) Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

(b) Claims for dually eligible individuals (Medicare/Medicaid) should be filed directly with the OHCA.

PART 87. BIRTHING CENTERS

317:30-5-893. Billing

Billing for birthing center services will be on HCFA-1500. ~~Under Medicaid, the claim must be received by OHCA within 12 months of the date of service in order to be eligible for payment. If the eligibility of the individual has not been determined after ten months from the date of services, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~ Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

PART 97. CASE MANAGEMENT SERVICES FOR UNDER AGE 18 AT RISK OF OR IN THE TEMPORARY CUSTODY OR SUPERVISION OF OFFICE OF JUVENILE AFFAIRS

317:30-5-973. Billing

Billing for case management services is on Form HCFA-1500. ~~Claims should not be submitted until Medicaid eligibility of the individual has been determined. However, a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~ Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

PART 99. CASE MANAGEMENT SERVICES FOR UNDER AGE 18 IN EMERGENCY, TEMPORARY OR PERMANENT CUSTODY OR SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES

317:30-5-993. Billing

Billing for case management services is on Form HCFA-1500. ~~Claims should not be submitted until Medicaid eligibility of the individual has been determined. However,~~

~~a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim must be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~ Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1045. Billing

(a) Billing is on the HCFA-1500.

~~(b) Claims should not be submitted until the Medicaid eligibility of the individual has been determined. However, a claim must be received by the fiscal agent within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim is submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~

(b) Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

[OAR Docket #16-481; filed 6-15-16]

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

[OAR Docket #16-515]

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ANALYSIS:
Proposed policy revisions clarify and enhance lock-in procedures. Proposed revisions would strengthen the consequences of not adhering to the lock-in restrictions by sanctioning members who have been locked in with a single prescriber and pharmacy.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-14. Freedom of choice

(a) **Any Qualified provider.** The Oklahoma Health Care Authority (OHCA) assures that any individual eligible for SoonerCare, may obtain services from any institution, agency, pharmacy, person, or organization that is contracted with OHCA and qualified to perform the services.

(b) **Member lock-in.** SoonerCare members who have demonstrated utilization above the statistical norm, during a 6-month period, may be "locked-in" to a prescriber and/or one pharmacy for medications classified as controlled dangerous substances in accordance with ~~Federal Regulation~~ 42 CFR 431.54.

(1) Over-utilization patterns by SoonerCare members may be identified either by referral or by OHCA automated computer systems. SoonerCare records, for a 6-month period, of those identified members are then reviewed. Medical and pharmacy claim histories are reviewed by OHCA pharmacy consultants to determine if ~~high usage is medically justified~~the member has unreasonably utilized SoonerCare provider and/or prescription services.

(2) If it is determined that SoonerCare has been over-utilized, the member may be notified, by letter, of the need to select a prescriber and/or pharmacy and of their opportunity for a fair hearing in accordance with OAC 317:2-1-2. If ~~they do~~the member does not select a prescriber or pharmacy, one ~~is~~will be selected for ~~them. In some cases, members may be sanctioned under OAC 317:35-13-7.~~the member.

(3) The prescriber and/or pharmacy of choice, unless the aforementioned providers have been identified as having problems with over-utilization, are notified by letter and given an opportunity to accept or decline to be the member's prescriber and/or pharmacy.

(4) When the provider accepts, a confirmation letter is sent to both member and provider showing the effective date of the arrangement.

(5) After the lock-in arrangement is made, the provider may file claims for services provided in accordance with OHCA guidelines.

(6) Locked-in members may obtain emergency services from an emergency room facility for an emergency medical condition or as part of an inpatient admission.

(7) If a claim for a controlled dangerous substance is filed by another pharmacy, the claim will be denied.

(8) ~~When a member is enrolled into the lock-in program, usage is monitored periodically and reviewed every 24 months. A provider may send a written request for member review. If review indicates utilization patterns meet lock-in removal criteria, the member may be removed from lock-in at the discretion of OHCA staff.~~A member placed in the lock-in program will remain in lock-in status for a minimum of 24 months. While in lock-in status, the member's usage shall be monitored periodically and shall be reviewed at the end of 24 months.

(9) ~~During~~Following a review, OHCA may elect to continue lock-in for an additional period of up to 24 months, remove the member from lock-in ~~because of~~based upon medical necessity, or remove ~~them because of decreased utilization, or impose sanctions under OAC 317:35-13-7.~~the member based upon program compliance. The member will be provided written notice of OHCA's decision and afforded an opportunity to appeal. OHCA retains the right at any time to impose sanctions in an appropriate case pursuant to OAC 317:35-13-7 or to take other appropriate action for abusive conduct.

(10) The member in the lock-in program may make a request to change providers after the initial three months; when the member moves to a different city or if the member feels irreconcilable differences will prevent necessary medical care. Change of providers based on irreconcilable differences must be approved by OHCA staff or contractor.

(11) OHCA may make a provider change when the provider makes a request for change or may initiate a change anytime it is determined necessary to meet program goals.

[OAR Docket #16-515; filed 6-15-16]

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

[OAR Docket #16-507]

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ANALYSIS:
Proposed program integrity audit and review policy is revised to clarify OHCA audit procedures and address issues such as extrapolation, reconsideration and audits. Definitions will be expanded to include universe, sample and error rate. Language will be amended to clarify those items included in the audit/review process, the provider's options after an initial audit/review, and the process for selecting sample claims in a probability sample audit.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-2.1. Program Integrity Audits/Reviews

(a) This section applies to all contractors/providers:

(1) **"Contractor/provider"** means any person or organization that has signed a provider agreement with the Oklahoma Health Care Authority (OHCA).

(2) **"Extrapolation"** means the methodology of estimating an unknown value by projecting, with a calculated precision (i.e., margin of error), the results of a probability sample to the universe from which the sample was drawn.

(3) **"Probability sample"** means the standard statistical methodology in which a sample is selected based on the theory of probability (a mathematical theory used to study the occurrence of random events).

(4) **"Universe"** means all paid claims or types of paid claims audited/reviewed during a specified timeframe.

(5) **"Sample"** means a statistically valid number of claims obtained from the universe of claims audited/reviewed.

(6) **"Error Rate"** means the percentage of dollars of audited claims found to be billed in error.

(b) An OHCA audit/review includes the following:

~~(1) An examination of provider records, by either an on-site or desk audit. Claims may be examined for compliance with relevant federal and state laws and regulations, written provider billing instructions, numbered memoranda, and/or medical necessity.~~

(1) An examination of provider records, by either an on-site or desk audit. Claims may be examined for compliance with provider contracts, relevant federal and state laws and regulations, including but not limited to the Oklahoma Administrative Code.

~~(2) A draft audit/initial review report, which contains preliminary findings.~~

(2) An initial audit/review report contains preliminary findings. Upon receipt of the findings, a provider may elect to:

(A) Remit the identified overpayment to OHCA;

(B) Request informal reconsideration of the initial report per OAC 317:30-3-2.1(b)(3); or

(C) Request a formal appeal of the initial report per OAC 317:30-3-2.1(b)(4).

~~(3) An informal reconsideration period in which the provider may supply relevant information to clear any misunderstandings and/or findings.~~

(3) An informal reconsideration period. If a provider requests an informal reconsideration, the provider shall provide any and all documentation or relevant information to clear any misunderstandings and/or findings identified in the initial report. Only claims identified by the provider for reconsideration will be reviewed by the OHCA. Any claims or findings not identified by the provider for reconsideration will be deemed waived by the provider if the provider chooses to later appeal the reconsideration finding. The reconsideration findings will replace the initial findings and be identified as the final report.

~~(4) The right to a formal appeal, if the contractor/provider requests it.~~

(4) The right to a formal appeal, if requested by the provider. A request for reconsideration does not limit a provider's right to a formal appeal. However, all claims not specifically identified by the provider for further audit/review at reconsideration will be deemed waived by the provider for purposes of a formal audit appeal. Additionally, the provider must specifically identify each claim to be contested on appeal and any claim not identified in the appeal will be deemed waived on appeal.

~~(5) A final audit/review report.~~

(5) If the provider does not request either a reconsideration or a formal appeal within the specified timeframe, the initial report will become the final report and the provider will be obligated to reimburse OHCA for any identified overpayment, which amount shall be immediately due and payable to OHCA.

~~(c) When OHCA conducts a probability sample audit, the sample claims are selected on the basis of recognized and generally accepted sampling methods. If audit reveals patterns of inappropriate coding, failure to adhere to SoonerCare policies, issues related to medical necessity, consistent patterns of overcharging, lack of appropriate documentation, or other fiscal abuse of the SoonerCare program, with an error rate of more than 10%, the provider may be required to reimburse OHCA the extrapolated amount.~~

(c) When OHCA conducts a probability sample audit, the sample claims are selected on the basis of recognized and generally accepted sampling methods. If an audit reveals an error rate exceeding 10%, OHCA shall extrapolate the error rate to the universe of the dollar amount of the audited paid claims.

~~(1) When projecting the overpayment, using statistical sampling, OHCA uses a sample that is sufficient to ensure a minimum 95% confidence level.~~

(1) When using statistical sampling, OHCA uses a sample that is sufficient to ensure a minimum confidence level of 95%.

(2) When calculating the amount to be recovered, OHCA ensures that all overpayments and underpayments reflected in the probability sample are totaled and extrapolated to the universe from which the sample was drawn.

(3) OHCA does not consider non-billed services or supplies when calculating underpayments and overpayments.

~~(d) If sampling reveals an error rate of 10% or less, the provider will be required to reimburse OHCA for any overpayments noted during the review.~~

(d) If a probability sample audit reveals an error rate of 10% or less, the provider will be required to reimburse OHCA for any overpayments noted during the audit/review.

~~(e) In those instances when the probability sample results in an error rate in excess of 10%, the results of a probability sample may be used by OHCA to extrapolate the amount to be recovered.~~

~~(f) SoonerCare contracted providers shall have the option of requesting OHCA perform a full scope audit or utilize an extrapolation method to determine overpayments, if during a review a statistical sample indicates an error rate greater than 10% of paid claims.~~

~~(1) The provider must select the overpayment determination method, full scope audit or extrapolation, within the time constraints of the designated appeal.~~

~~(A) The additional labor cost to perform a full scope audit will be carried by the OHCA if the review produces an error rate less than the initial error rate.~~

~~(B) The provider will be charged the cost of the full scope audit if the review produces an error rate equal to or greater than the initial error rate.~~

~~(C) Cost will be determined through OHCA billable time plus all applicable overhead and/or the cost of contracted services.~~

~~(D) The provider must choose an independent contactor from an OHCA approved list of qualified contractors to perform the full scope audit.~~

~~(2) The provider will be responsible for repayment of any identified overpayment resulting from the review method chosen.~~

[OAR Docket #16-507; filed 6-15-16]

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

[OAR Docket #16-508]

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ANALYSIS:
Proposed OHCA policy changes clarify and make corrections to instructions for the submission of claim inquiries by providers. Proposed changes include title change of section from appeals procedures to claim inquiry procedures, removal of incorrect references to revoked policy, and updated guidance on proper form used for claim inquiries. Proposed policy changes should result in decreased confusion for providers inquiring about payment for services provided to members.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-20. ~~Appeals~~Claim inquiry procedures (excluding nursing homes and hospitals)

~~OHCA has established administrative procedures whereby a~~A medical provider may request a review of the decision of the amount paid or the non-payment of medical services provided an eligible ~~recipient~~member. If the medical provider does not agree with the original payment from the Fiscal Agent, he/she may submit a written explanation on HCA-17 (Claim Inquiry Form) as to why the adjustment is being requested and what action is to be taken, a copy of the paid remittance statement and/or detailed explanation of the paid information and a copy of the original claim with the corrections to be made for consideration of additional payment. The claim should be ~~filed~~submitted in accordance with the instructions in the ~~OAC 317:30-7 for the type of medical provider involved~~OHCA Provider Billing and Procedures Manual.

[OAR Docket #16-508; filed 6-15-16]

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

[OAR Docket #16-487]

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317:30-3-15. [AMENDED]
317:30-3-30. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-3. [AMENDED]
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ANALYSIS:
The proposed rules are revised to clarify when a medical record must be authenticated. Current rules only address signature requirements for edits of a medical record.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-4.1. Uniform Electronic Transaction Act

The Oklahoma Health Care Authority enacts the provisions of the Uniform Electronic Transaction Act as provided in this Section with the exception to the act as provided in this Section.

(1) **Scope of Act.** The Electronic Transaction Act applies to an electronic record and an electronic signature created with a record that is generated, sent, communicated, received or stored by the Oklahoma Health Care Authority.

(2) **Use of electronic records and electronic signatures.** The rules regarding electronic records and electronic signatures apply when both parties agree to conduct business electronically. Nothing in these regulations requires parties to conduct business electronically. However, should a party have the capability and desire to conduct business electronically with the Oklahoma Health Care Authority, then the following guidelines must be adhered to:

(A) Only employees designated by the provider's agency may make entries in the member's medical record. All entries in the member's medical record must be dated and authenticated with a method established to identify the author. The identification method may include computer keys, Private/Public Key Infrastructure (PKIs), voice authentication systems that utilize a personal identification number (PIN) and voice authentication, or other codes. Providers must have a process in place to deactivate an employee's access to records upon termination of employment of the designated employee.

(B) When PKIs, computer key/code(s), voice authentication systems or other codes are used, a signed statement must be completed by the agency's employee documenting that the chosen method is under the sole control of the person using it and further demonstrate that:

(i) A list of PKIs, computer key/code(s), voice authentication systems or other codes can be verified;

(ii) All adequate safeguards are maintained to protect against improper or unauthorized use of PKIs, computer keys, or other codes for electronic signatures; and

(iii) Sanctions are in place for improper or unauthorized use of computer key/code(s), PKIs, voice authentication systems or other code types of electronic signatures.

(C) There must be a specific action by the author to indicate that the entry is verified and accurate. Systems requiring an authentication process include but are not limited to:

(i) Computerized systems that require the provider's employee to review the document on-line and indicate that it has been approved by entering a unique computer key/code capable of verification;

(ii) A system in which the provider's employee signs off against a list of entries that must be verified in the member's records;

(iii) A mail system that sends transcripts to the provider's employee for review;

(iv) A postcard identifying and verifying the accuracy of the record(s) signed and returned by the provider's employee; or

(v) A voice authentication system that clearly identifies author by a designated personal identification number or security code.

(D) Auto-authentication systems that authenticate a report prior to the transcription process do not meet the stated requirements and will not be an acceptable method for the authentication process.

(E) The authentication of an electronic medical record (signature and date entry) is expected on the day the record is completed. If the electronic

medical record is transcribed by someone other than the provider, the signature of the rendering provider and date entry is expected within three business days from the day the record is completed.

(~~E~~F) Records may be edited by designated administrators within the provider's facility ~~but must be authenticated by the original author~~. Edits must be in the form of a correcting entry which preserves entries from the original record. Edits must be completed prior to claims submission or no later than 45 days after the date of service, whichever is later.

(~~F~~G) Use of the electronic signature, for clinical documentation, shall be deemed to constitute a signature and will have the same effect as a written signature on the clinical documentation. The section of the electronic record documenting the service provided must be authenticated by the employee or individual who provided the described service.

(~~G~~H) Any authentication method for electronic signatures must:

(i) be unique to the person using it;

(ii) identify the individual signing the document by name and title;

(iii) be capable of verification, assuring that the documentation cannot be altered after the signature has been affixed;

(iv) be under the sole control of the person using it;

(v) be linked to the data in such a manner that if the data is changed, the signature is invalidated; and

(vi) provide strong and substantial evidence that will make it difficult for the signer to claim that the electronic representation is not valid.

(~~H~~I) Failure to properly maintain or authenticate medical records (i.e., signature and date entry) may result in the denial or recoupment of SoonerCare payments.

(3) **Record retention for provider medical records.** Providers must retain electronic medical records and have access to the records in accordance with guidelines found at OAC 317:30-3-15.

(4) **Record retention for documents submitted to OHCA electronically.**

(A) The Oklahoma Health Care Authority's system provides that receivers of electronic information may both print and store the electronic information they receive. The Oklahoma Health Care Authority is the custodian of the original electronic record and will retain that record in accordance with a disposition schedule as referenced by the Records Destruction Act. The Oklahoma Health Care Authority will retain an authoritative copy of the transferable record as described in the Electronic Transaction Act that is unique, identifiable and unalterable.

(i) **Manner and format of electronic signature.** The manner and format required by the Oklahoma Health Care Authority will vary ~~dependant~~dependent upon whether the sender of the document is a member or a provider. In the limited case where a provider is a client, the manner and format is dependent upon the function served by the receipt of the record. In the case the function served is a request for services, then the format required is that required by a recipient. In the case the function served is related to payment for services, then the format required is that required by a provider.

(ii) **Recipient format requirements.** The Oklahoma Health Care Authority will allow members to request SoonerCare services electronically. An electronic signature will be authenticated after a validation of the data on the form by another database or databases.

(iii) **Provider format requirements.** The Oklahoma Health Care Authority will permit providers to contract with the Oklahoma Health Care Authority, check and amend claims filed with the Oklahoma Health Care Authority, and file prior authorization requests with the Oklahoma Health Care Authority. Providers with a social security number or federal employer's identification number will be given a personal identification number (PIN). After using the PIN to access the database, a PIN will be required to transact business electronically.

(B) Providers with the assistance of the Oklahoma Health Care Authority will be required to produce and enforce a security policy that outlines who has access to their data and what transaction employees are permitted to complete as outlined in the policy rules for electronic records and electronic signatures contained in paragraph (2) of this section.

(C) Third Party billers for providers will be permitted to perform electronic transaction as stated in paragraph (2) only after the provider authorizes access to the provider's PIN and a power of attorney by the provider is executed.

(5) **Time and place of sending and receipt.** The provisions of the Electronic Transaction Act apply to the time and place of receipt with the exception of a power failure, Internet interruption or Internet virus. Should any of the exceptions in this paragraph occur, confirmation is required by the receiving party.

(6) **Illegal representations of electronic transaction.** Any person who fraudulently represents facts in an electronic transaction, acts without authority, or exceeds their authority to perform an electronic transaction may be prosecuted under all applicable criminal and civil laws.

317:30-3-15. Record retention

Federal regulations and rules promulgated by the Oklahoma Health Care Authority Board require that the provider retain, for a period of six years, any records necessary to disclose the extent of services the provider, wholly owned

supplier, or subcontractor, furnishes to recipients and, upon request, furnish such records to the Secretary of the Department of Health and Human Services. Records in a provider's office must contain adequate documentation of services rendered. ~~Documentation must include the provider's signature and credentials.~~ Documentation must include the dated provider's signature and credentials. The provider's signature must be handwritten or electronically submitted if the provider and the Oklahoma Health Care Authority have agreed to conduct transactions by electronic means pursuant to the Uniform Electronic Act. Electronic records and electronic signatures must be in accordance with guidelines found at OAC 317:30-3-4.1. Where reimbursement is based on units of time, it will be necessary that documentation be placed in the member's record as to the beginning and ending times for the service claimed. All records must be legible. Failure to maintain legible records may result in denial of payment or recoupment of payment for services provided when attempts to obtain transcription of illegible records is unsuccessful or the transcription of illegible records appears to misrepresent the services documented. The provider may, after one year from the date of service(s), microfilm or microfiche the records for the remaining five years, as long as the microfilm or microfiche is of a quality that assures that the records remain legible. Electronic records are acceptable as long as they have a secured signature. Provider (other than individual practitioner) agrees to disclose, upon request, information relating to ownership or control, business transactions and criminal offenses involving any program under Title V of the Child Health Act or Titles, XVIII, XIX, XX, or XXI of the Federal Social Security Act.

317:30-3-30. Signature requirements

(a) For medical review purposes, the Oklahoma Health Care Authority (OHCA) requires that all services provided and/or ordered be authenticated by the author. The method used shall be a hand written signature, electronic signature, or signature attestation statement. Stamped signatures are not acceptable. Pursuant to federal and/or state law, there are some circumstances for which an order does not need to be signed.

(1) Facsimile of original written or electronic signatures are acceptable for the certifications of terminal illness for hospice.

(2) Orders for clinical diagnostic tests are not required to be signed. If the order for the clinical diagnostic test is unsigned, there must be medical documentation by the treating physician that he/she intended the clinical diagnostic test be performed. This documentation showing the intent that the test be performed must be authenticated by the author via a hand written or electronic signature.

(3) Orders for outpatient prescription drugs are not required to be signed. If the order for a prescription drug is unsigned, there must be medical documentation by the treating physician that he/she intended that the prescription drug be ordered. This documentation showing the intent that the prescription drug be ordered must be authenticated by the author via a hand written or electronic signature.

(b) A hand written signature is a mark or sign by an individual on a document to signify knowledge, approval, acceptance, or obligation. The authentication of a medical record (signature and date entry) is expected on the day the record is completed. If the medical record is transcribed by someone other than the provider, the signature of the rendering provider and date entry is expected within three business days from the day the record is completed.

(1) If a signature is illegible, the OHCA will consider evidence in a signature log or attestation statement to determine the identity of the author of a medical record entry.

(2) If the signature is missing from an order, the OHCA will disregard the order during the review of the claim.

(3) If the signature is missing from any other medical documentation, the OHCA will accept a signature attestation from the author of the medical record entry.

(c) Providers may include in the documentation they submit a signature log that lists the typed or printed name of the author associated with initials or an illegible signature.

(1) The signature log may be included on the actual page where the initials or illegible signature are used or may be a separate document.

(2) The OHCA will not deny a claim for a signature log that is missing credentials.

(3) The OHCA will consider all submitted signature logs regardless of the date they were created.

(d) Providers may include in the documentation they submit a signature attestation statement. In order to be considered valid for medical review purposes, an attestation statement must be signed and dated by the author of the medical record entry and must contain sufficient information to identify the member.

(1) The OHCA will not consider signature attestation statements where there is no associated medical record entry.

(2) The OHCA will not consider signature attestation statements from someone other than the author of the medical record entry in question.

(3) The OHCA will consider all signature attestation statements that meet the above requirements regardless of the date the attestation was created, except in those cases where the regulations or rules indicate that a signature must be in place prior to a given event or a given date.

(e) Providers may use electronic signatures as an alternate signature method.

(1) Providers must use a system and software products which are protected against modification and must apply administrative procedures which are adequate and correspond to recognized standards and laws.

(2) Providers utilizing electronic signatures bear the responsibility for the authenticity of the information being attested to.

(3) Providers utilizing electronic signatures must comply with OAC 317:30-3-4.1.

(f) Nothing in this section is intended to absolve the provider of their obligations in accordance with the conditions set forth in their SoonerCare contract and the rules delineated in OAC 317:30.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-3. Documentation of services

(a) Records in a physician's office or a medical institution (hospital, nursing home or other medical facility), must contain adequate documentation of services rendered. Such documentation must include the physician's signature or identifiable initials in relation to every patient visit, every prescription, or treatment. In verifying the accuracy of claims for procedures which are reimbursed on a time frame basis, it will be necessary that documentation be placed in the patient's chart as to the beginning and ending times for the service claimed.

(b) Providers must adhere to signature requirements found at OAC 317:30-3-30.

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

[OAR Docket #16-495]

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Subchapter 5. Individual Providers and Specialties
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(Reference APA WF # 15-04)
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Proposed policy revisions remove coverage for removal of benign skin lesions for adults and eliminate adult sleep studies.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-59. General program exclusions - adults

The following are excluded from SoonerCare coverage for adults:

(1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(2) Services or any expense incurred for cosmetic surgery.

(3) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(4) Refractions and visual aids.

(5) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(6) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(7) Non-therapeutic hysterectomies.

(8) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(9) Medical services considered experimental or investigational.
(10) Services of a Certified Surgical Assistant.
(11) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.
(12) Services of an independent licensed Physical and/or Occupational Therapist.
(13) Services of a Psychologist.
(14) Services of an independent licensed Speech and Hearing Therapist.
(15) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.
(16) Payment for more than two nursing facility visits per month.
(17) More than one inpatient visit per day per physician.
(18) Payment for removal of benign skin lesions ~~unless medically necessary~~.
(19) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.
(20) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
(21) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.
(22) Mileage.
(23) A routine hospital visit on the date of discharge unless the member expired.
(24) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
(25) Inpatient chemical dependency treatment.
(26) Fertility treatment.
(27) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
(28) Sleep studies.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-42.17. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage:
(1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
(2) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.
(3) Reversal of sterilization procedures for the purposes of conception are not covered.
(4) Medical services considered experimental or investigational.
(5) Payment for removal of benign skin lesions ~~unless medically necessary~~ for adults.
(6) Refractions and visual aids.
(7) Charges incurred while the member is in a skilled nursing or swing bed.
(8) Sleep studies for adults.

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

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ANALYSIS:
Proposed Durable Medical Equipment (DME) policy is amended to comply with state legislation. The revisions establish focused regulations and policies for Complex Rehabilitation Technology products and services for people with complex physical disabilities.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-210. Eligible providers

All eligible medical suppliers must have a current contract with the Oklahoma Health Care Authority. The supplier must comply with all applicable State and Federal laws. Effective January 1, 2011, all suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) must be accredited by a Medicare deemed accreditation organization for quality standards for DMEPOS suppliers in order to bill the SoonerCare program. OHCA may make exceptions to this standard based on the exemptions provided by the Centers for Medicare and Medicaid Services (CMS) for Medicare accreditation, if the provider is a government-owned entity, or at a provider's request and at the discretion of OHCA based on access issues and/or agency needs for SoonerCare members. Additionally, unless an exception is granted from the OHCA, all DMEPOS providers must meet the following criteria:

(1) DMEPOS providers are required to have a physical location in the State of Oklahoma, or within a designated range of the Oklahoma State border, as determined by the OHCA. The OHCA may make exceptions to this requirement if a DMEPOS provider provides a specialty item, product, or service, which is not otherwise available to SoonerCare members within the State of Oklahoma. Provider contracts for out-of-state DMEPOS providers will be reviewed on a case-by-case basis for specialty items only. The OHCA has discretion and the final authority to approve or deny any provider contract.

(2) DMEPOS providers are required to comply with Medicare DMEPOS Supplier Standards for DMEPOS provided to SoonerCare members, except the requirement to meet surety bond requirements, as specified in 42 C.F.R. 424.57(c).

(3) Complex Rehabilitation Technology (CRT) suppliers are considered DMEPOS providers. Only CRT suppliers may bill CRT procedure codes. A CRT supplier means a company or entity that:

(A) Is accredited by a recognized accrediting organization as a supplier of CRT;

(B) Is an enrolled Medicare supplier and meets the supplier and quality standards established for DME suppliers, including those for CRT, under the Medicare program;

(C) Employs as a W-2 employee at least one qualified CRT professional for each location to:

(i) Analyze the needs and capacities of complex-needs patients in consultation with qualified health care professionals;

(ii) Participate in selecting appropriate CRT items for such needs and capacities; and

(iii) Provide the complex-needs patient technology related training in the proper use and maintenance of the CRT items.

(D) Requires a qualified CRT professional be physically present for the evaluation and determination of the appropriate CRT;

(E) Has the capability to provide service and repair by qualified technicians for all CRT items it sells; and

(F) Provides written information to the complex-needs patient prior to ordering CRT as to how to access service and repair.

317:30-5-211.1. Definitions

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

"Adaptive equipment" means devices, aids, controls, appliances or supplies of either a communication or adaptive type, determined necessary to enable the person to increase his or her ability to function in a home and community based setting or private Intermediate Care Facilities for Individuals with Intellectual Disabilities (IFC/IID) with independence and safety.

"Basic activities of daily living" means a series of activities performed on a day-to-day basis that are necessary to care for oneself (e.g., personal hygiene, dressing, eating, maintaining continence and transferring).

"Capped rental" means monthly payments for the use of the Durable Medical Equipment (DME) for a limited period of time not to exceed 13 months. Items are considered purchased after 13 months of continuous rental.

"Certificate of medical necessity (CMN)" means a certificate required to help document the medical necessity and other coverage criteria for selected items. Those items are defined in this Chapter. The physician's certification must include the member's diagnosis, the reason the equipment is required, and the physician's estimate, in months, of the duration of its need.

"Complex-needs patient" means an individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities.

"Complex rehabilitation technology" means medically necessary durable medical equipment and items that are individually configured to meet specific and unique medical, physical, and functional needs and capacities for basic activities of daily living and instrumental activities of daily living of a complex needs patient. Such equipment and items include, but are not limited to, individually configured power wheelchairs and accessories, individually configured manual wheelchairs and accessories, adaptive seating and positioning systems and accessories, and other specialized equipment such as standing frames and gait trainers.

"Customized DME" means items of DME which have been uniquely constructed or substantially modified for a specific member according to the description and orders of the member's treating physician or other qualified medical professional. For instance, a wheelchair would be considered "customized" if it has been:

(A) measured, fitted, or adapted in consideration of ~~the member's~~the member's body size, disability, period of need, or intended use;

(B) assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs; and

(C) intended for an individual member's use in accordance with instructions from the member's physician.

"Durable medical equipment (DME)" means equipment that can withstand repeated use (e.g. a type of item that could normally be rented), is used to serve a medical purpose, is not useful to a person in the absence of an illness or injury, and is used in the most appropriate setting, including the home or workplace.

"Instrumental activities of daily living" means activities that are not necessarily required on a daily basis, but are important to being able to live independently (e.g., basic communication skills, transportation, meal preparation, shopping, housework, managing medication and managing personal finances).

"Invoice" means a document that provides the following information when applicable: the description of product, quantity, quantity in box, purchase price, NDC, strength, dosage, provider, seller's name and address, purchaser's name and address, and date of purchase. At times, visit notes will be required to determine how much of the supply was expended. When possible, the provider should identify the SoonerCare member receiving the equipment or supply on the invoice.

"Medical supplies" means an article used in the cure, mitigation, treatment, prevention, or diagnosis of illnesses. Disposable medical supplies are medical supplies consumed in a single usage and do not include skin care creams or cleansers. Medical supplies do not include surgical supplies or medical or surgical equipment.

"OHCA CMN" means a certificate required to help document the medical necessity and other coverage criteria for selected items. Those items are defined in this chapter. The physician's certification must include the member's diagnosis, the reason equipment is required, and the physician's estimate, in months, of the duration of its need. This certificate is used when the OHCA requires a CMN and one has not been established by CMS.

"Orthotics" means an item used for the correction or prevention of skeletal deformities.

"Prosthetic devices" means a replacement, corrective, or supportive device (including repair and replacement parts of the same) worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body.

"Qualified complex rehabilitation technology professional" means an individual who is certified as an Assistive Technology Professional (ATP) by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

[OAR Docket #16-501; filed 6-15-16]

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

[OAR Docket #16-490]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-240.3. [AMENDED]
317:30-5-241.6. [NEW]
317:30-5-249. [AMENDED]
Part 67. Behavioral Health Case Management Services [REVOKED]
317:30-5-595. [REVOKED]
317:30-5-596. [REVOKED]
317:30-5-599. [REVOKED]
Part 75. Federally Qualified Health Centers
317:30-5-660.3. [AMENDED]
317:30-5-661.4. [AMENDED]
317:30-5-664.1. [AMENDED]
317:30-5-664.5. [AMENDED]
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
(Reference APA WF # 15-29)
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 Part 431, 440, and 441
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ANALYSIS:
Proposed Behavioral Health Case Management policy changes will transfer coverage guidelines and provider requirements for case management services to another part of rules addressing guidelines for services provided by Outpatient Behavioral Health Agencies.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-240.3. Staff Credentials

(a) **Licensed Behavioral Health Professional (LBHPs).** LBHPs are defined as follows:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided, issued by one of the licensing boards listed in (A) through (F). The exemptions from licensure under 59 § 1353(4) (Supp. 2000) and (5), 59 § 1903(C) and (D) (Supp. 2000), 59 § 1925.3(B) (Supp. 2000) and (C), and 59 § 1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Services.

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(b) **Licensure Candidates.** Licensure candidates are practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (2)(A) through (F) above. The supervising LBHP responsible for the member's care must:

(1) staff the member's case with the candidate,

(2) be personally available, or ensure the availability of an LBHP to the candidate for consultation while they are providing services,

(3) agree with the current plan for the member, and

(4) confirm that the service provided by the candidate was appropriate; and

(5) The member's medical record must show that the requirements for reimbursement were met and the LBHP responsible for the member's care has reviewed, countersigned, and dated the service plan and any updates thereto so that it is documented that the licensed professional is responsible for the member's care.

(c) **Certified Alcohol and Drug Counselors (CADCs).** CADCs are defined as having a current certification as a CADC in the state in which services are provided.

(d) **Multi-Systemic Therapy (MST) Provider.** Masters level therapist who works on a team established by OJA which may include Bachelor level staff.

(e) **Peer Recovery Support Specialist (PRSS).** The Peer Recovery Support Specialist must be certified by ODMHSAS pursuant to requirements found in OAC 450:53.

(f) **Family Support and Training Provider (FSP).** FSPs are defined as follows:

(1) Have a high school diploma or equivalent;

(2) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years' experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(3) successful completion of ODMHSAS Family Support Training;

(4) pass background checks;~~ and~~

(5) service plans must be overseen and approved by an LBHP or Licensure Candidate; and

(6) must function under the general direction of an LBHP, or Licensure Candidate or systems of care team, with an LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

(g) **Behavioral Health Aide (BHA).** BHAs are defined as follows:

(1) Behavioral Health Aides must have completed 60 hours or equivalent of college credit; or

(2) may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience; and

(3) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(4) must be supervised by a bachelor's level individual with a minimum of two years case management or care coordination experience; and

(5) service plans must be overseen and approved by an LBHP or Licensure Candidate; and

(6) must function under the general direction of an LBHP, or Licensure Candidate and/or systems of care team, with an LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

(h) **Behavioral Health Case Manager.** For behavioral health case management services to be compensable by SoonerCare, the provider performing the services must be an LBHP, Licensure Candidate, CADC or have and maintain a current certification as a Case Manager II (CM II) or Case Manager I (CM I) from ODMHSAS. The requirements for obtaining these certifications are as follows:

(1) Certified Behavioral Health Case Manager II (CM II) must meet the requirements in (A), (B), (C) or (D) below:

(A) Possess a Bachelor's or Master's degree in a behavioral health related field earned from a regionally accredited college or university recognized by the United States Department of Education (USDE) or a Bachelor's or Master's degree in education; and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; and complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.

(B) Possess a current license as a registered nurse in the State of Oklahoma with experience in behavioral health care; complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams for behavioral health case management and behavioral health rehabilitation.

(C) Possess a Bachelor's or Master's degree in any field earned from a regionally accredited college or university recognized by the USDE and a current certification or Children's Certificate in Psychiatric Rehabilitation from the US Psychiatric Rehabilitation Association (USPRA); complete the behavioral health case management web-based training as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training; and pass web-based competency exams for behavioral health case management. Applicants who have not received a certificate in children's psychiatric rehabilitation from the US Psychiatric Association (USPRA) must also complete the behavioral health rehabilitation web-based training as specified by ODMHSAS.

(D) Possess a Bachelor's or Master's degree in any field and proof of active progression toward obtaining a clinical licensure Master's or Doctoral degree at a regionally accredited college or university recognized by the USDE and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.

(2) Certified Behavioral Health Case Manager I meets the requirements in either (A) or (B) and (C):

(A) completed 60 college credit hours; or

(B) has a high school diploma with 36 total months of experience working with persons who have a mental illness and/or substance abuse. Documentation of experience on file with ODMHSAS; and

(C) completes two days of ODMHSAS specified behavioral health case management training and passes a web-based competency exam for behavioral health case management.

(3) Wraparound Facilitator Case Manager is a LBHP, Licensure Candidate or CADC that meets the qualifications for CM II and has the following:

(A) successful completion of the ODMHSAS training for wraparound facilitation within six months of employment; and

(B) participate in ongoing coaching provided by ODMHSAS and employing agency; and

(C) successfully complete wraparound credentialing process within nine months of beginning process; and

(D) direct supervision or immediate access and a minimum of one hour weekly clinical consultation with a Qualified Mental Health Professional, as required by ODMHSAS.

(4) Intensive Case Manager is a LBHP, Licensure Candidate or CADC that meets the provider qualifications of a Case Manager II and has the following:

(A) A minimum of two years Behavioral Health Case Management experience, crisis diversion experience, and

(B) must have attended the ODMHSAS six hours Intensive case management training.

317:30-5-241.6. Behavioral Health Case Management

Payment is made for behavioral health case management services as set forth in this Section.

(1) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for behavioral health case management services are persons under age 21 who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons and chronically and/or severely mentally ill adults who are institutionalized or are at risk of institutionalization. All behavioral health case management services will be subject to medical necessity criteria.

(A) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides assessment of case management needs, development of a case management care plan, referral, linkage, monitoring and advocacy on behalf of the member

to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by ODMHSAS. In order to be compensable, the service must be performed utilizing the Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The provider will coordinate with the member and family (if applicable) by phone or face-to-face, to identify immediate needs for return to home/community no more than 72 hours after notification that the member/family requests case management services. For members discharging from a higher level of care than outpatient, the higher level of care facility is responsible for scheduling an appointment with a case management agency for transition and post discharge services. The case manager will make contact with the member and family (if applicable) for transition from the higher level of care than outpatient back to the community, within 72 hours of discharge, and then conduct a follow-up appointment/contact within seven days. The case manager will provide linkage/referral to physicians/medication services, psychotherapy services, rehabilitation and/or support services as described in the case management service plan. Case Managers may also provide crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(B) An eligible member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(C) In order to ensure that behavioral health case management services appropriately meet the needs of the member and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized plan of care.

(D) The individual plan of care must include general goals and objectives pertinent to the overall recovery of the member's (and family, if applicable) needs. Progress notes must relate to the individual plan of care and describe the specific activities to be performed. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the member, the parent or guardian (if the member is under 18), the behavioral health case manager, and a Licensed Behavioral Health Professional or Licensure Candidate as defined in OAC 317:30-5-240.3(a) and (b).

(E) SoonerCare reimbursable behavioral health case management services include the following:

(i) Gathering necessary psychological, educational, medical, and social information for the purpose of individual plan of care development.

(ii) Face-to-face meetings with the member and/or the parent/guardian/family member for the implementation of activities delineated in the individual plan of care.

(iii) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the individual plan of care.

(iv) Supportive activities such as non-face-to-face communication with the member and/or parent/guardian/family member.

(v) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the individual plan of care.

(vi) Monitoring of the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress.

(vii) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care.

(viii) Behavioral Health Case Management is available to individuals transitioning from institutions to the community (except individuals

ages 22 to 64 who reside in an institution for mental diseases (IMD) or individuals who are inmates of public institutions). Individuals are considered to be transitioning to the community during the last 30 consecutive days of a covered institutional stay. This time is to distinguish case management services that are not within the scope of the institution's discharge planning activities from case management required for transitioning individuals with complex, chronic, medical needs to the community. Transition services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(2) **Levels of Case Management.**

(A) Resource coordination services are targeted to adults with serious mental illness and children and adolescents with mental illness or serious emotional disturbance, and their families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an individual's strengths and meet needs in order to achieve stability in the community. Standard managers have caseloads of 30 - 35 members. Basic case management/resource coordination is limited to 25 units per member per month.

(B) Intensive Case Management (ICM) is targeted to adults with serious and persistent mental illness (including members in PACT programs) and Wrap-around Facilitation Case Management (WFCM) is targeted to children with serious mental illness and emotional disorders (including members in a System of Care Network) who are deemed high risk and in need of more intensive CM services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support, training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wrap-around process, a facilitator can facilitate between 8 and 10 families. To ensure that these intense needs are met, case manager caseloads are limited between 10-15 caseloads. The ICM shall be a Certified Behavioral Health Case Manager, have a minimum of 2 years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMHSAS 6 hours ICM training, and 24 hour availability is required. ICM/WFCM is limited to 54 units per member per month.

(3) **Excluded Services.** SoonerCare reimbursable behavioral health case management does not include the following activities:

(A) physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment; or

(B) managing finances; or

(C) providing specific services such as shopping or paying bills; or

(D) Delivering bus tickets, food stamps, money, etc.; or

(E) counseling, rehabilitative services, psychiatric assessment, or discharge planning; or

(F) filling out forms, applications, etc., on behalf of the member when the member is not present; or

(G) filling out SoonerCare forms, applications, etc.;

(H) mentoring or tutoring;

(I) provision of behavioral health case management services to the same family by two separate behavioral health case management agencies;

(J) non-face-to-face time spent preparing the assessment document and the service plan paperwork;

(K) monitoring financial goals;

(L) services to nursing home residents;

(M) psychotherapeutic or rehabilitative services, psychiatric assessment, or discharge; or

(N) services to members residing in ICF/IID facilities.

(4) **Excluded Individuals.** The following SoonerCare members are not eligible for behavioral health case management services:

(A) children/families for whom behavioral health case management services are available through OKDHS/OJA staff without special arrangements with OKDHS, OJA, and OHCA;

(B) members receiving Residential Behavior Management Services (RBMS) in a foster care or group home setting unless transitioning into the community;

(C) residents of ICF/IID and nursing facilities unless transitioning into the community;

(D) members receiving services under a Home and Community Based services (HCBS) waiver program.

(5) **Filing Requirements.** Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.

(6) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the member and it must be reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health professional or licensure candidate as defined at OAC 317:30-5-240.3(a) and (b). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:

(A) date;

(B) person(s) to whom services are rendered;

(C) start and stop times for each service;

(D) original signature or the service provider (original signatures for faxed items must be added to the clinical file within 30 days);

(E) credentials of the service provider;

(F) specific service plan needs, goals and/or objectives addressed;

(G) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;

(H) progress and barriers made towards goals, and/or objectives;

(I) member (family when applicable) response to the service;

(J) any new service plan needs, goals, and/or objectives identified during the service; and

(K) member satisfaction with staff intervention.

(7) **Case Management Travel Time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face-to-face service. The case manager must only bill for the actual face-to-face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.

317:30-5-249. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage. Work and education services:

(1) Talking about the past and current and future employment goals, going to various work sites to explore the world of work, and assisting client in identifying the pros and cons of working.

(2) Development of an ongoing educational and employment rehabilitation plan to help each individual establish job specific skills and credentials necessary to achieve ongoing employment. Psycho-social skills training however would be covered.

(3) Work/school specific supportive services, such as assistance with securing of appropriate clothing, wake-up calls, addressing transportation issues, etc. These would be billed as Case Management following ~~317:30-5-595 through 317:30-5-599~~317:30-5-241.6.

(4) Job specific supports such as teaching/coaching a job task.

PART 67. BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES [REVOKED]

317:30-5-595. Eligible providers [REVOKED]

~~Services are provided by outpatient behavioral health agencies established for the purpose of providing behavioral health outpatient and case management services.~~

~~(1) **Provider agency requirements.** Services are provided by outpatient behavioral health agencies contracted with OHCA that meet the requirements under OAC 317:30-5-240. The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:~~

~~(A) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.~~

~~(B) Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals must be community based.~~

~~(C) The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes.~~

~~(D) An agency must agree to follow the Oklahoma Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.~~

~~(E) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.~~

~~(F) Each site operated by a behavioral health outpatient and case management facility must have a separate provider number, per OAC 317:30-5-240.2.~~

~~(2) **Provider Qualifications.** For behavioral health case management services to be compensable by SoonerCare, the provider performing the service must be an LBHP, Licensure Candidate, CADC, or have and maintain a current certification as a Case Manager II (CM II) or Case Manager I (CM I) from the ODMHSAS. The requirements for obtaining these certifications are as follows:~~

~~(A) Certified Behavioral Health Case Manager II (CM II) must meet the requirements in (i), (ii), (iii) or (iv) below:~~

~~(i) Possess a Bachelor's or Master's degree in a behavioral health related field earned from a regionally accredited college or university recognized by the United States Department of Education (USDE) or a Bachelor's or Master's degree in education; and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; and complete one day of face to face behavioral health case management training and two days of face to face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.~~

~~(ii) Possess a current license as a registered nurse in the State of Oklahoma with experience in behavioral health care; complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face to face behavioral health case management training and~~

~~two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams for behavioral health case management and behavioral health rehabilitation.~~

~~(iii) Possess a Bachelor's or Master's degree in any field earned from a regionally accredited college or university recognized by the USDE and a current certification or Children's Certificate in Psychiatric Rehabilitation from the US Psychiatric Rehabilitation Association (USPRA); complete the behavioral health case management web-based training as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training; and pass web-based competency exams for behavioral health case management. Applicants who have not received a certificate in children's psychiatric rehabilitation from the US Psychiatric Association (USPRA) must also complete the behavioral health rehabilitation web-based training as specified by ODMHSAS.~~

~~(iv) Possess a Bachelor's or Master's degree in any field and proof of active progression toward obtaining a clinical licensure Master's or Doctoral degree at a regionally accredited college or university recognized by the USDE and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.~~

~~(B) Certified Behavioral Health Case Manager I meets the requirements in either (i) or (ii), and (iii):~~

~~(i) completed 60 college credit hours; or~~

~~(ii) has a high school diploma with 36 total months of experience working with persons who have a mental illness and/or substance abuse. Documentation of experience on file with ODMHSAS; and~~

~~(iii) Completes two days of ODMHSAS specified behavioral health case management training and passes a web-based competency exam for behavioral health case management.~~

~~(C) **Wraparound Facilitator Case Manager.** LBHP, Licensure Candidate, CADC, or meets the qualifications for CM II and has the following:~~

~~(i) Successful completion of the ODMHSAS training for wraparound facilitation within six months of employment; and~~

~~(ii) Participate in ongoing coaching provided by ODMHSAS and employing agency; and~~

~~(iii) Successfully complete wraparound credentialing process within nine months of beginning process; and~~

~~(iv) Direct supervision or immediate access and a minimum of one hour weekly clinical consultation with a Qualified Mental Health Professional, as required by ODMHSAS.~~

~~(D) **Intensive Case Manager.** LBHP, Licensure Candidate, CADC or meets the provider qualifications of a Case Manager II and has the following:~~

~~(i) A minimum of two years Behavioral Health Case Management experience, crisis diversion experience, and~~

~~(ii) must have attended the ODMHSAS six hours Intensive case management training.~~

~~(E) All certified case managers must fulfill the continuing education requirements as outlined under OAC 450:50-5-4.~~

317:30-5-596. Coverage by category [REVOKED]

~~Payment is made for behavioral health case management services as set forth in this Section.~~

~~(1) Payment is made for services rendered to SoonerCare members as follows:~~

~~(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for behavioral health case management services are persons under age 21 who are in imminent risk of out of home placement for psychiatric or substance abuse reasons or are in out of home placement due to psychiatric or substance abuse reasons and chronically and/or severely mentally ill adults who are institutionalized or are at risk of institutionalization. All behavioral health case management services will be subject to medical necessity criteria.~~

~~(i) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides assessment of case management needs, development of a case management care plan, referral, linkage, monitoring and advocacy on behalf of the member to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by ODMHSAS. In order to be compensable, the service must be performed utilizing the Strengths Based model of case management. This model of case management assists~~

~~individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the member and family (if applicable) by phone or face-to-face, to identify immediate needs for return to home/community no more than 72 hours after notification that the member/family requests case management services. For member's discharging from a higher level of care than outpatient, the higher level of care facility is responsible for scheduling an appointment with a case management agency for transition and post discharge services. The case manager will make contact with the member and family (if applicable) for transition from the higher level of care than outpatient back to the community, within 72 hours of discharge, and then conduct a follow-up appointment/contact within seven days. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. Case Managers may also provide crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.~~

~~(ii) An eligible member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.~~

~~(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the member and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized plan of care.~~

~~(iv) The individual plan of care must include general goals and objectives pertinent to the overall recovery of the member's (and family, if applicable) needs. Progress notes must relate to the individual plan of care and describe the specific activities to be performed. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the member, the parent or guardian (if the member is under 18), the behavioral health case manager, and a Licensed Behavioral Health Professional or Licensure Candidate as defined in OAC 317:30-5-240.3(a) and (b).~~

~~(v) SoonerCare reimbursable behavioral health case management services include the following:~~

~~(I) Gathering necessary psychological, educational, medical, and social information for the purpose of individual plan of care development.~~

~~(II) Face-to-face meetings with the member and/or the parent/guardian/family member for the implementation of activities delineated in the individual plan of care.~~

~~(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the individual plan of care.~~

~~(IV) Supportive activities such as non face-to-face communication with the member and/or parent/guardian/family member.~~

~~(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the individual plan of care.~~

~~(VI) Monitoring of the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress.~~

~~(VII) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care.~~

~~(VIII) Transitioning from institutions to the community. Behavioral Health Case Management is available to individuals transitioning~~

~~from institutions to the community (except individuals ages 22 to 64 who reside in an institution for mental diseases (IMD) or individuals who are inmates of public institutions). Individuals are considered to be transitioning to the community during the last 30 consecutive days of a covered institutional stay. This time is to distinguish case management services that are not within the scope of the institution's discharge planning activities from case management required for transitioning individuals with complex, chronic, medical needs to the community. Transition services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.~~

~~(B) **Levels of Case Management.**~~

~~(i) Basic Case Management/Resource Coordination. Resource coordination services are targeted to adults with serious and persistent mental illness and children and adolescents with mental illness or serious emotional disturbance, and their families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an individual's strengths and meet needs in order to achieve stability in the community. Standard managers have caseloads of 30 - 35 members. Basic case management/resource coordination is limited to 25 units per member per month.~~

~~(ii) Intensive Case Management (ICM)/Wraparound Facilitation Case Management (WFCM). Intensive Case Management is targeted to adults with serious and persistent mental illness (including members in PACT programs) and Wraparound Facilitation Case Management is targeted to children with serious mental illness and emotional disorders (including members in a System of Care Network) who are deemed high risk and in need of more intensive CM services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support, training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wraparound process, a facilitator can facilitate between 8 and 10 families. To ensure that these intense needs are met, case manager caseloads are limited between 10-15 caseloads. The ICM shall be a Certified Behavioral Health Case Manager, have a minimum of 2 years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMHSAS 6 hours ICM training, and 24 hour availability is required. ICM/WFCM is limited to 54 units per member per month.~~

~~(C) **Excluded Services.** SoonerCare reimbursable behavioral health case management does not include the following activities:~~

~~(i) Physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment; or~~

~~(ii) Managing finances; or~~

~~(iii) Providing specific services such as shopping or paying bills; or~~

~~(iv) Delivering bus tickets, food stamps, money, etc.; or~~

~~(v) Counseling, rehabilitative services, psychiatric assessment, or discharge planning; or~~

~~(vi) Filling out forms, applications, etc., on behalf of the member when the member is not present; or~~

~~(vii) Filling out SoonerCare forms, applications, etc.;~~

~~(viii) Mentoring or tutoring;~~

~~(ix) Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies;~~

~~(x) Non-face-to-face time spent preparing the assessment document and the service plan paperwork;~~

~~(xi) monitoring financial goals;~~

~~(xii) services to nursing home residents;~~

~~(xiii) psychotherapeutic or rehabilitative services, psychiatric assessment, or discharge; or~~

~~(xix) services to members residing in ICF/IID facilities.~~

~~(D) **Excluded Individuals.** The following SoonerCare members are not eligible for behavioral health case management services:~~

~~(i) Children/families for whom behavioral health case management services are available through OKDHS/OJA staff without special arrangements with OKDHS, OJA, and OHCA;~~

~~(ii) Members receiving Residential Behavior Management Services (RBMS) in a foster care or group home setting unless transitioning into the community;~~

~~(iii) Residents of ICF/IID and nursing facilities unless transitioning into the community;~~

~~(iv) Members receiving services under a Home and Community Based services (HCBS) waiver program.~~

~~(E) Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.~~

~~(F) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development~~

~~is compensable time if the time is spent communicating with the participation by, as well as, reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health professional or licensure candidate as defined at OAC 317:30-5-240.3(a) and (b). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:~~

~~(i) date;~~

~~(ii) person(s) to whom services are rendered;~~

~~(iii) start and stop times for each service;~~

~~(iv) original signature or the service provider (original signatures for faxed items must be added to the clinical file within 30 days);~~

~~(v) credentials of the service provider;~~

~~(vi) specific service plan needs, goals and/or objectives addressed;~~

~~(vii) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;~~

~~(viii) progress and barriers made towards goals, and/or objectives;~~

~~(ix) member (family when applicable) response to the service;~~

~~(x) any new service plan needs, goals, and/or objectives identified during the service; and~~

~~(xi) member satisfaction with staff intervention.~~

~~(G) **Case Management Travel Time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face-to-face service. The case manager must only bill for the actual face-to-face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.~~

317:30-5-599. Documentation of records [REVOKED]

~~All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management individual plan of service, documentation of each session must include but is not limited to:~~

~~(1) date;~~

~~(2) person(s) to whom services were rendered;~~

~~(3) start and stop time for each service;~~

~~(4) original signature of the service provider (in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider needs to obtain the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed);~~

~~(5) credentials of service provider;~~

~~(6) specific service plan need(s), goals and/or objectives addressed;~~

~~(7) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address problem(s), goals and/or objectives;~~

~~(8) progress or barriers made towards goals and/or objectives;~~

~~(9) client (and family, when applicable) response to the services;~~

~~(10) any new individual plan of service need(s), goals and/or objectives identified during the service; and~~

~~(11) member satisfaction with staff intervention(s).~~

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-660.3. Health Center enrollment requirements for specialty behavioral health services

~~(a) For the provision of behavioral health related case management services, Health Centers must meet the requirements found at OAC 317:30-5-595 through 317:30-5-599.~~

(~~b~~a) For the provision of behavioral health related case management services and psychosocial rehabilitation services, Health Centers must contract as an outpatient behavioral health agency and meet the requirements found at OAC 317:30-5-240 through ~~30-5-249~~317:30-5-249.

(~~c~~b) Health Centers which provide substance abuse treatment services must also be certified by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).

317:30-5-661.4. Behavioral health professional services provided at Health Centers and other settings

(a) Medically necessary behavioral health services that are primary, preventive, and therapeutic and that would be covered if provided in another setting may be provided by Health Centers. Services provided by a Health Center (refer to OAC 317:30-5-240.3 for a description of services) must meet the same requirements as services provided by other behavioral health providers. Rendering providers must be eligible to individually enroll or meet the requirements as an agency/organization provider specified in OAC 317:30-5-240.2~~,~~ and 317:30-5-280~~ and 317:30-5-595~~. Behavioral Health Services include:

~~(1) Behavioral Health services include:~~

~~(A) Assessment/Evaluation;~~

~~(B) Crisis Intervention Services;~~

~~(C) Individual/Interactive Psychotherapy;~~

~~(D) Group Psychotherapy;~~

~~(E) Family Psychotherapy;~~

~~(F) Psychological Testing; and~~

~~(G) Case Management (as an integral component of services 1-6 above).~~

(1) Assessment/Evaluation;

(2) Crisis Intervention Services;

(3) Individual/Interactive Psychotherapy;

(4) Group Psychotherapy;
(5) Family Psychotherapy;
(6) Psychological Testing; and
(7) Case Management (as an integral component of services 1-6 above).

(b) Medically necessary behavioral health professional therapy services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified behavioral health disorder(s). A minimum of a 45 to 50 minute one-on-one standard clinical session must be completed by an health care professional authorized in the approved FQHC State Plan pages in order to bill the PPS encounter rate for the session. Services rendered by providers not authorized under the approved FQHC state plan pages to bill the PPS encounter rate will be reimbursed pursuant to the SoonerCare fee-for-service fee schedule and must comply with rules found at OAC 317:30-5-280 through 317:30-5-283.

(c) Centers are reimbursed the PPS rate for services when rendered by approved health care professionals, as authorized under FQHC state plan pages, if the Health Center receives funding pursuant to Section 330 or is otherwise funded under Public Law to provide primary health care services at locations off-site (not including satellite or mobile locations) to Health Center patients on a temporary or intermittent basis, unless otherwise limited by Federal law.

(d) Health Centers that operate day treatment programs in school settings must meet the requirements found at OAC ~~317:30-5-240.2(7)~~317:30-5-240.2(b)(7).

(e) In order to support the member's access to behavioral health services, these services may take place in settings away from the Health Center. Off-site behavioral health services must take place in a confidential setting.

317:30-5-664.1. Provision of other health services outside of the Health Center core services

(a) If the Center chooses to provide other SoonerCare State Plan covered health services which are not included in the Health Center core service definition in OAC 317:30-5-661.1, the practitioners of those services are subject to the same program coverage limitations, enrollment and billing procedures described by the OHCA, and these services (e.g., home health services) are not included in the PPS settlement methodology in OAC 317:30-5-664.12.

(b) Other health services include, but are not limited to:

(1) dental services (refer to OAC 317:30-5-696) except for primary preventive dental services;
(2) eyeglasses (refer to OAC 317:30-5-450);
(3) clinical lab tests performed in the Center lab (other than the specific laboratory tests set out for Health Centers' certification and covered as Health Center services);
(4) technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the Center physician is included as physician professional services);
(5) durable medical equipment (refer to OAC 317:30-5-210);
(6) emergency ambulance transportation (refer to OAC 317:30-5-335);
(7) prescribed drugs (refer to OAC 317:30-5-70);
(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
(9) specialized laboratory services furnished away from the clinic;
(10) Psychosocial Rehabilitation Services [refer to OAC 317:30-5-241(a)(7)]; and
(11) ~~Behavioral~~behavioral health related case management services (refer to OAC ~~317:30-5-585 through 317:30-5-589 and OAC 317:30-5-595 through 317:30-5-599~~317:30-5-240 through 317:30-5-249).

317:30-5-664.5. Health Center encounter exclusions and limitations

(a) Service limitations governing the provision of all services apply pursuant to OAC 317:30. Excluded from the definition of reimbursable encounter core services are:

(1) Services provided by an independently CLIA certified and enrolled laboratory.
(2) Radiology services including nuclear medicine and diagnostic ultrasound services.
(3) Venipuncture for lab tests is considered part of the encounter and cannot be billed separately. When a member is seen at the clinic for a lab test only, use the appropriate CPT code. A visit for "lab test only" is not considered a Center encounter.
(4) Durable medical equipment or medical supplies not generally provided during the course of a Center visit such as diabetic supplies. However, gauze, band-aids, or other disposable products used during an office visit are considered as part of the cost of an encounter and cannot be billed separately under SoonerCare.
(5) Supplies and materials that are administered to the member are considered a part of the physician's or other health care practitioner's service.
(6) Drugs or medication treatments provided during a clinic visit are included in the encounter rate. For example, a member has come into the Center with high blood pressure and is treated at the Center with a hypertensive drug or drug samples provided to the Center free of charge are not reimbursable services and are included in the cost of an encounter. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy.
(7) Administrative medical examinations and report services;
(8) Emergency services including delivery for pregnant members that are eligible under the Non-Qualified (ineligible) provisions of OAC 317:35-5-25;
(9) SoonerPlan family planning services;
(10) Optometry and podiatric services other than for dual eligible for Part B of Medicare; and
(11) Other services that are not defined in this rule or the State Plan.

(b) In addition, the following limitations and requirements apply to services provided by Health Centers:

(1) Physician services are not covered in a hospital.

(2) Behavioral health case management and psychosocial rehabilitation services are limited to Health Centers enrolled under the provider requirements in OAC 317:30-5-240~~, and 317:30-5-595~~ and contracted with OHCA as an outpatient behavioral health agency.

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1043. Coverage by category

(a) **Adults.** Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Center Services are not covered for adults.

(b) **Children.** Residential Behavioral Management Services (RBMS) in Group Settings and Non-Secure Diagnostic and Evaluation Centers are covered for children as set forth in this subsection.

(1) **Description.** Residential Behavior Management Services are provided by Organized Health Care Delivery Systems (OHCDS) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. The behavior management services are provided in the least restrictive environment and within a therapeutic milieu. The group setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Residential Behavior Management Services are reimbursed in accordance with the intensity of supervision and treatment required for the group setting in which the child is placed. Members residing in a Level E and Intensive Treatment Services (ITS) Group Homes receive maximum supervision and treatment. In addition, ITS group homes provide crisis and stabilization intervention and treatment. Members residing in a Level D+ Group Home receive highly intensive supervision and treatment. Members residing in a Level D Group home or in a wilderness camp receive close supervision and moderate treatment. Members residing in a Level C Group Home receive minimum supervision and treatment. Members residing in Residential Diagnostic and Evaluation Centers receive intensive supervision and a 20 day comprehensive assessment. Members residing in a Sanctions Home receive highly intensive supervision and treatment. Members residing in an Independent Living Group Home receive intensive supervision and treatment. It is expected that RBMS in group settings are an all-inclusive array of treatment services provided in one day. In the case of a child who needs additional specialized services, under the Rehabilitation Option or by a psychologist, prior authorization by the OHCA or designated agent is required. Only specialized rehabilitation or psychological treatment services to address unique, unusual or severe symptoms or disorders will be authorized. If additional services are approved, the OHCDS collaborates with the provider of such services as directed by the OHCA or its agent. Any additional specialized behavioral health services provided to children in state custody are funded in the normal manner. The OHCDS must provide concurrent documentation that these services are not duplicative. The OHCDS determines the need for RBMS.

(2) **Medical necessity criteria.** The following medical necessity criteria must be met for residential behavior Management Services.

(A) Any ~~DSM-IV AXIS I~~DSM primary diagnosis, with the exception of V codes, with a detailed description of the symptoms supporting the diagnosis. A detailed description of the child's emotional, behavioral and psychological condition must be on file. A diagnosis is not required for behavior management services provided in Diagnostic and Evaluation centers.

(B) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(C) It has been determined by the OHCDS that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(D) Documentation that the child's presenting emotional and/or behavioral problems prevent the child from living in a traditional family home. The child requires the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff.

(E) The Agency which has permanent or temporary custody of the child agrees to active participation in the child's treatment needs and planning.

(F) All of the medical necessity criteria must also be met for continued stay in residential group settings.

(3) **Treatment components.**

(A) **Individual plan of care development.** A comprehensive individualized plan of care for each resident shall be formulated by the provider agency staff within 30 days of admission, for ITS level within 72 hours, with documented input from the agency which has permanent or temporary custody of the child and when possible, the parent. This plan must be revised and updated at least every three months, every seven days for ITS, with documented involvement of the agency which has permanent or temporary custody of the child. Documented involvement can be written approval of the individual plan of care by the agency which has permanent or temporary custody of the child and indicated by the signature of the agency case worker or liaison on the individual plan of care. It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature; however, the provider obtains the original signature for the clinical file within 30 days. No stamped or

Xeroxed signatures are allowed. An individual plan of care is considered inherent in the provision of therapy and is not covered as a separate item of behavior management services. The individual plan of care is individualized taking into account the child's age, history, diagnosis, functional levels, and culture. It includes appropriate goals and time limited and measurable objectives. Each member's individual plan of care must also address the provider agency's plans with regard to the provision of services in each of the following areas:

(i) group therapy;
(ii) individual therapy;
(iii) family therapy;
(iv) alcohol and other drug counseling;
(v) basic living skills redevelopment;
(vi) social skills redevelopment;
(vii) behavior redirection; and
(viii) the provider agency's plan to access appropriate educational placement services. (Any educational costs are excluded from calculation of the daily rate for behavior management services.)

(B) **Individual therapy.** The provider agency must provide individual therapy on a weekly basis with a minimum of one or more sessions totaling one hour or more of treatment per week to children and youth receiving RBMS in Wilderness Camps, Level D, Level D+ homes, Level E Homes, Independent Living Homes, and Sanctions Homes. ITS Level residents will receive a minimum of five or more sessions totaling a minimum of five or more hours of individual therapy per week. Members residing in Diagnostic and Evaluation Centers and Level C Group Homes receive Individual Therapy on an as needed basis. Individual therapy must be age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's plan of care. Individual counseling is a face to face, one to one service, and must be provided in a confidential setting.

(C) **Group therapy.** The provider agency must provide group therapy to children and youth receiving residential behavioral management services. Group therapy must be a face to face interaction, age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's plan of care. The minimum expected occurrence would be one hour per week in Level D, Level C, Wilderness Camps and Independent Living. Two hours per week are required in Levels D+ and E. Ten hours per week are required in Sanctions Homes, Intensive Treatment Service Level. Group therapy is not required for Diagnostic and Evaluation Centers. Group size should not exceed six members and group therapy sessions must be provided in a confidential setting. One half hour of individual therapy may be substituted for one hour of group therapy.

(D) **Family therapy.** Family therapy is a face to face interaction between the therapist/counselor and family, to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The provider agency must provide family therapy as indicated by the resident's individual plan of care. The agency must work with the caretaker to whom the resident will be discharged, as identified by the OHCDS custody worker. The agency must seek to support and enhance the child's relationships with family members (nuclear and appropriate extended), if the custody plan for the child indicates family reunification. The RBMS provider must also seek to involve the child's parents in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program. Any service provided to the family must have the child as the focus.

(E) **Alcohol and other drug abuse treatment education, prevention, therapy.** The provider agency must provide alcohol and other drug abuse treatment for residents who have emotional or behavioral problems related to substance abuse/chemical dependency, to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. This service is considered ancillary to any other formal treatment program in which the child participates for treatment and rehabilitation. For residents who have no identifiable alcohol or other drug use, abuse, or dependency, age appropriate education and prevention activities are appropriate. These may include ~~self - esteem~~self-esteem enhancement, violence alternatives, communication skills or other skill development curriculums.

(F) **Basic living skills redevelopment.** The provider agency must provide goal directed activities designed for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopment is age appropriate and relevant to the goals and objectives of the individual plan of care. This many include, but is not limited to food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, job application and retention skills.

(G) **Social skills redevelopment.** The provider agency must provide goal directed activities designed for each resident to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These are age appropriate, culturally sensitive and relevant to the goals of the individual plan of care. For ITS level of care, the minimum skill redevelopment per day is three hours. Any combination of basic living skills and social

skills redevelopment that is appropriate to the need and developmental abilities of the child is acceptable.

(H) **Behavior redirection.** The provider agency must be able to provide behavior redirection management by agency staff as needed 24 hours a day, 7 days per week. The agency must ensure staff availability to respond in a crisis to stabilize residents' behavior and prevent placement disruption. In addition, ITS group homes will be required to provide crisis stabilization interaction and treatment for new residents 24 hours a day, seven days a week.

(4) **Providers.** For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers, the providers of individual, group and family therapies must:

(A) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board Supervision to be licensed in one of the above stated areas; or

(B) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing boards:

(i) Psychology,

(ii) Social work (clinical specialty only),

(iii) Licensed professional counselor,

(iv) Licensed marriage and family therapist, or

(v) Licensed behavioral practitioner; or

(C) have a baccalaureate degree in a mental health field in one of the stated areas listed in (B) of this paragraph AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in (A) of this paragraph; or

(D) be a registered psychiatric nurse; AND

(E) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;

(ii) treatment of victims of physical, emotional, and sexual abuse;

(iii) treatment of children with attachment disorders;

(iv) treatment of children with hyperactivity or attention deficit disorders;

(v) treatment methodologies for emotional disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;

(viii) anger management; and

(ix) crisis intervention.

(5) **Providers.** For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services provided by their staff for behavior management therapies (Individual, Group, Family) as of July 1, 2007, providers must have the following qualifications:

(A) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, alcohol and drug counselor or under Board approved Supervision to be licensed in one of the above stated areas; or

(B) be licensed as an Advanced Practice Nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided, AND

(C) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;

(ii) treatment of victims of physical, emotional, and sexual abuse;

(iii) treatment of children with attachment disorders;

(iv) treatment of children with hyperactivity or attention deficit disorders;

(v) treatment methodologies for emotionally disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;

(viii) anger management; and

(ix) crisis intervention.

(D) Staff providing basic living skills redevelopment, social skills redevelopment, and alcohol and other substance abuse treatment, must meet one of the following areas:

(i) Bachelor's or Master's degree in a behavioral health related field including but not limited to, psychology, sociology, criminal justice, school guidance and counseling, social work, occupational therapy, family studies, alcohol and drug; or

(ii) a current license as a registered nurse in Oklahoma; or

(iii) certification as an Alcohol and Drug Counselor to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary ~~DSMIV Axis I~~DSM-diagnosis; or

(iv) current certification as a Behavioral Health Case Manager from DMHSAS and meets OHCA requirements to perform case management services, as described in

OAC ~~317:30-5-595~~317:30-5-240 through 317:30-5-249.

(E) Staff providing behavior redirection services must have current certification and required updates in nationally recognized behavior management techniques, such as Controlling Aggressive Patient Environment (CAPE) or MANDT. Additionally, staff providing these services must receive initial and ongoing training in at least one of the following areas:

(i) trauma informed methodology,

(ii) anger management,

(iii) crisis intervention,

(iv) normal child and adolescent development and the effect of abuse,

(v) neglect and/or violence on such development,

(vi) grief and loss issues for children in out of home placement,

(vii) interventions with victims of physical, emotional and sexual abuse,

(viii) care and treatment of children with attachment disorders,

(ix) care and treatment of children with hyperactive, or attention deficit, or conduct disorders,

(x) care and treatment of children, youth and families with substance abuse and chemical dependency disorders,

(xi) passive physical restraint procedures,

(xii) procedures for working with delinquents or the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

(F) In addition, Behavioral Management staff must have access to consultation with an appropriately licensed mental health professional.

[OAR Docket #16-490; filed 6-15-16]

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

[OAR Docket #16-491]

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PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-241.1. [AMENDED]
(Reference APA WF # 15-30)
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ANALYSIS:
Proposed outpatient behavioral health agency policy changes will allow providers more flexibility in conducting biopsychosocial assessments by removing specific required elements. Furthermore, outpatient behavioral health agency rules are revised to remove specific minimum time requirements for behavioral health assessment services. By removing the time requirements from rules, there will be more flexibility in allowing providers to bill in alternative ways that may be different based upon the type of assessment conducted.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-241.1. Screening, assessment and service plan

All providers must comply with the requirements as set forth in this Section.

(1) **Screening.**

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population and limitations.** Screening is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months. To qualify for reimbursement, the screening tools used must be evidence based or otherwise approved by OHCA

and ODMHSAS and appropriate for the age and/or developmental stage of the member.

(2) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified practitioners.** This service is performed by an LBHP or Licensure Candidate.

~~(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in paragraph (1) of this subsection for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more.~~

(~~D~~C) **Target population and limitations.** The Behavioral Health Assessment by a Non-Physician, moderate complexity, is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(~~E~~D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include at least one DSM diagnosis from the most recent DSM edition. The information in the assessment must contain but is not limited to the following:

~~(i) Date, to include month, day and year of the assessment session(s);~~

~~(ii) Source of information;~~

~~(iii) Member's first name, middle initial and last name;~~

~~(iv) Gender;~~

~~(v) Birth Date;~~

~~(vi) Home address;~~

~~(vii) Telephone number;~~

~~(viii) Referral source;~~

~~(ix) Reason for referral;~~

~~(x) Person to be notified in case of emergency;~~

~~(xi) Presenting reason for seeking services;~~

~~(xii) Start and stop time for each unit billed;~~

~~(xiii) Signature of parent or guardian participating in face-to-face assessment. Signature required for members over the age of 14;~~

~~(xiv) Bio-Psychosocial information which must include:~~

~~(I) Identification of the member's strengths, needs, abilities and preferences;~~

~~(II) History of the presenting problem;~~

~~(III) Previous psychiatric treatment history, include treatment for psychiatric; substance abuse; drug and alcohol addiction; and other addictions;~~

~~(IV) Health history and current biomedical conditions and complications;~~

~~(V) Alcohol, Drug, and/or other addictions history;~~

~~(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, include Department of Human Services involvement;~~

~~(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;~~

~~(VIII) Educational attainment, difficulties and history;~~

~~(IX) Cultural and religious orientation;~~

~~(X) Vocational, occupational and military history;~~

~~(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;~~

~~(XII) Marital or significant other relationship history;~~

~~(XIII) Recreation and leisure history;~~

~~(XIV) Legal or criminal record, including the identification of key contacts, (e.g., attorneys, probation officers, etc.);~~

~~(XV) Present living arrangements;~~

~~(XVI) Economic resources;~~

~~(XVII) Current support system including peer and other recovery supports.~~

~~(xv) Mental status and Level of Functioning information, including questions regarding:~~

~~(I) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;~~

~~(II) Affective process, such as mood, affect, manner and attitude, etc.;~~

~~(III) Cognitive process, such as intellectual ability, social adaptive behavior, thought processes, thought content, and memory, etc.; and~~

~~(IV) Full DSM diagnosis.~~

~~(xvi) Pharmaceutical information to include the following for both current and past medications;~~

~~(I) Name of medication;~~

~~(II) Strength and dosage of medication;~~

~~(III) Length of time on the medication; and~~

~~(IV) Benefit(s) and side effects of medication.~~

~~(xvii) Practitioner's interpretation of findings and diagnosis;~~

~~(xviii) Signature and credentials of the practitioner who performed the face-to-face behavioral assessment;~~

~~(xix) Client Data Core Elements reported into designated OHCA representative.~~

(i) Behavioral, including substance use, abuse, and dependence;

(ii) Emotional, including issues related to past or current trauma;

(iii) Physical;

(iv) Social and recreational;

(v) Vocational;

(vi) Date of the assessment sessions as well as start and stop times;

(vii) Signature of parent or guardian participating in face-to-face assessment. Signature required for members over the age of 14; and

(viii) Signature and credentials of the practitioner who performed the face-to-face behavioral assessment

(3) **Behavioral Health Services Plan Development.**

(A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. Behavioral Health Service Plan Development is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. A Service Plan Development, Low Complexity is required every 6 months and must include an update to the bio-psychosocial assessment and re-evaluation of diagnosis.

(B) **Qualified practitioners.** This service is performed by an LBHP or Licensure Candidate.

(C) **Time requirements.** Service Plan updates must be conducted face-to-face and are required every six months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the qualified practitioner and member.

(D) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

(i) member strengths, needs, abilities, and preferences(SNAP);

(ii) identified presenting challenges, problems, needs and diagnosis;

(iii) specific goals for the member;

(iv) objectives that are specific, attainable, realistic, and time-limited;

(v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria;

(ix) description of the member's involvement in, and responses to, the service plan, and his/her signature and date;

(x) service plans are not valid until all signatures are present (signatures are required from the member, if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP or Licensure Candidate; and

(xi) all changes in service plan must be documented in a service plan update (low complexity) or within the service plan until time for the update (low complexity). Any changes to the existing service plan must be signed and dated by the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the lead LBHP or Licensure Candidate.

(xii) Updates to goals, objectives, service provider, services, and service frequency, must be documented within the service plan until the six month review/update is due.

(xiii) Service plan updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis service plan goals and/ or objectives;

(II) progress, or lack of, on previous service plan goals and/or objectives;

(III) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the service plan, and his/her signature and date; and

(IX) service plans are not valid until all signatures are present. The required signatures are: from the member (if 14 or over), the parent/guardian (if

younger than 18 or otherwise applicable), and the primary LBHP or Licensure Candidate.

(E) **Service limitations:**

(i) Behavioral Health Service Plan Development, Moderate complexity (i.e., pre-admission procedure code group) are limited to 1 per member, per provider, unless more than a year has passed between services, then another one can be requested and may be authorized by OHCA or its designated agent.

(ii) Behavioral Health Service Plan Development, Low Complexity: Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member. The date of service is when the service plan is complete and the date the last required signature is obtained. Services should always be age, developmentally, and clinically appropriate.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified practitioners.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist, an LBHP or Licensure Candidate. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Each qualified professional must have a current contract with the Oklahoma Health Care Authority.

(C) **Documentation requirements.** All psychological services must be reflected by documentation in the member's record. All assessment, testing, and treatment services/units billed must include the following:

(i) date;

(ii) start and stop time for each session/unit billed and physical location where service was provided;

(iii) signature of the provider;

(iv) credentials of provider;

(v) specific problem(s), goals and/or objectives addressed;

(vi) methods used to address problem(s), goals and objectives;

(vii) progress made toward goals and objectives;

(viii) patient response to the session or intervention; and

(ix) any new problem(s), goals and/or objectives identified during the session.

(D) **Service Limitations.** Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Behavioral Health Provider Manual. Evaluation and testing is clinically appropriate and allowable when an accurate diagnosis and determination of treatment needs is needed. Eight hours/units of testing per patient over the age of three, per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the actual testing, interpretation, scoring, and reporting are performed. A maximum of 12 hours of therapy and testing, per day per rendering provider are allowed. A child who is being treated in an acute inpatient setting can receive separate psychological services by a physician or psychologist as the inpatient per diem is for "non-physician" services only. A child receiving Residential level treatment in either a therapeutic foster care home, or group home may not receive additional individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent. Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider. For assessment conducted in a school setting the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Individuals who qualify for Part B of Medicare: Payment is made utilizing the SoonerCare allowable for comparable services. Payment is made to physicians, LBHPs or psychologists with a license to practice in the state where the services is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed.

[OAR Docket #16-491; filed 6-15-16]

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

[OAR Docket #16-492]

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PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 22. Health Homes
317:30-5-251. [AMENDED]
317:30-5-252. [AMENDED]
(Reference APA WF # 15-32)

AUTHORITY:

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

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ANALYSIS:
SoonerCare Health Homes for adults with Serious Mental Illness (SMI) and Children with Serious Emotional Disturbances (SED) were implemented in February 2015. Since implementation, some inconsistencies between OHCA rules and Health Home Certification rules administered by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) have been identified that need to be cleaned up. Some examples are specifics regarding provider requirements and which providers are allowed to provide specific Health Home services.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 22. HEALTH HOMES

317:30-5-251. Eligible providers

(a) **Agency requirements.** Providers of Health Home (HH) services are responsible for providing HH services to qualifying individuals within the provider's specified service area. Qualifying providers must be:

(1) Certified by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) as a Community Mental Health Center under OAC 450:17; or

(2) Accredited as a provider of outpatient behavioral health services from one of the national accrediting bodies; or

(3) Certified by ODMHSAS as a Mental Illness Service Program pursuant to OAC 450:27; or

(4) Certified by ODMHSAS as a Program of Assertive Community Treatment (PACT) pursuant to OAC 450:55.

(5) In addition to the accreditation/certification requirements in (1) - (4), providers must also have provider specific credentials from ODMHSAS for Health Home Services (OAC 450:17; OAC 450:27; OAC 450:55).

(b) **Health Home team.** Health Homes will utilize an interdisciplinary team of professionals and paraprofessionals to identify an individual's strengths and needs, create a unified plan to empower persons toward self-management and coordinate the individual's varied healthcare needs. HH teams will vary in size depending on the size of the member panel and acuity of members. HH team composition will vary slightly between providers working with adults and children.

(1) Health Homes working with adults with Serious Mental Illness (SMI) will utilize a multidisciplinary team consisting of the following:

(A) Health Home Director;

(B) Nurse Care Manager (RN or LPN);

(C) Consulting Primary Care Practitioner (PCP);

(D) Psychiatric Consultant (317:30-5-11);

(E) Certified Behavioral Health Case Manager(CM)(OAC 450:50; 317:30-5-595);

(F) Wellness Coach~~/Peer Support Specialist (OAC 450:53; 317:30-5-240.3)~~ credentialed through ODMHSAS; and

(G) Administrative support.

(2) In addition to the individuals listed in (1) (A) through (G) above, teams working with adults with SMI (PACT teams only) will also have at least one of the following team members:

(A) Licensed Behavioral Health Professional or Licensure Candidate (317:30-5-240.3);

(B) Substance abuse treatment specialist (Licensed Alcohol and Drug Counselor (LADC) or Certified Alcohol and Drug Counselor (CADC); or

(C) Employment specialist.

(3) Health Homes working with children with Serious Emotional Disturbance (SED) will utilize a multidisciplinary team consisting of the following:

(A) ~~Project~~ Health Home Director;

(B) Nurse Care Manager (RN or LPN);

(C) Consulting Primary Care Practitioner (PCP);

(D) Psychiatric Consultant (317:30-5-11);

(E) Care Coordinator (CM II Wraparound Facilitator as defined in 317:30-5-595(2) (C);

(F) Family Support Provider (317:30-5-240.3);

(G) Youth/Peer Support Specialist (OAC 450:53; 317:30-5-240.3);

(H) Children's Health Home Specialist (Behavioral Health Aide or higher, with additional training in WellPower or credentialed as a Wellness Coach through ODMHSAS); and

(I) Administrative Support.

317:30-5-252. Covered Services

Health Home services are covered for adults with Serious Mental Illness (SMI) and children with Serious Emotional Disturbance (SED) as set forth in this Section unless specified otherwise, and when provided in accordance with a documented care plan. The care plan must be client directed, integrated, and reflect the input of the team (including the

involvement of the consulting primary care physician or APRN in managing the medical component of the plan), as well as others the client chooses to involve. Coverage includes the following services:

(1) **Comprehensive Care Management.**

(A) **Definition.** Comprehensive care management services consist of developing a Comprehensive Care Plan to address needs of the whole person and involves the active participation of the Nurse Care Manager, certified Behavioral Health Case Manager, Primary Care Practitioner, the Health Home clinical support staff with participation of other team members, family and caregivers.

(B) **Service requirements.** Comprehensive care management services include the following, but are not limited to:

(i) Identifying high-risk members and utilizing member information to determine level of participation in care management services;

(ii) Assessing preliminary service needs; participating in comprehensive person-centered service plan development; responsible for member physical health goals, preferences and optimal clinical outcomes;

(iii) Developing treatment guidelines that establish clinical pathways for health teams to follow across risk levels or health conditions;

(iv) Monitoring individual and population health status and service use to determine adherence to or variance from best practice guidelines; and

(v) Developing and disseminating reports that indicate progress toward meeting outcomes for member satisfaction, health status, service delivery and cost.

(C) **Qualified professionals.** Comprehensive care management services are provided by a health care team with participation from the client, family and caregivers~~, consisting of the following required professionals and paraprofessionals~~. The following team members are eligible to provide comprehensive care management:

(i) Nurse Care Manager (RN or LPN within scope of practice);

(ii) Certified Behavioral Health Case Manager; ~~and~~

(iii) Primary Care Practitioner~~.~~;

(iv) Psychiatric consultant; and

(v) Licensed Behavioral Health Professional (LBHP).

(2) **Care coordination.**

(A) **Definition.** Care coordination is the implementation of the Comprehensive Care Plan with active member involvement through appropriate linkages, referrals, coordination, and follow-up to needed services and supports.

(B) **Service requirements.** Care coordination services include the following, but are not limited to:

(i) Care coordination for primary health care, specialty health care, and transitional care from emergency departments, hospitals and Psychiatric Residential Treatment Facilities (PRTFs);

(ii) Ensuring integration and compatibility of mental health and physical health activities;

(iii) Providing on-going service coordination and link members to resources;

(iv) Tracking completion of mental and physical health goals in member's Comprehensive Care Plan;

(v) Coordinating with all team members to ensure all objectives of the Comprehensive Care Plan are progressing;

(vi) Appointment scheduling;

(vii) Conducting referrals and follow-up monitoring;

(viii) Participating in hospital discharge processes; and

(ix) Communicating with other providers and members/family.

(C) **Qualified professionals.** Team members are responsible to ensure implementation of the Comprehensive Care Plan, which includes mental health goals, physical health goals, and other life domain goals for achievement of clinical outcomes. Care coordination services are provided by a primary care practitioner-led team which includes the following professionals and paraprofessionals:

(i) Nurse Care Manager (RN or LPN); ~~and~~

(ii) Certified Behavioral Health Case Managers~~.~~;

(iii) Health Home Director;

(iv) Family Support Provider;

(v) Peer/Youth Support Provider; and

(vi) Health Home Specialist/Hospital Liaison.

(3) **Health promotion.**

(A) **Definition.** Health promotion consists of providing health education specific to the member's chronic condition.

(B) **Service requirements.** Health promotion will minimally consist of the following, but is not limited to:

(i) Providing health education specific to member's condition;

(ii) Developing self-management plans with the member;

(iii) Providing support for improving social networks and providing health promoting lifestyle interventions including:

(I) Substance use prevention;

(II) Smoking prevention and cessation;

(III) Obesity reduction and prevention;

(IV) Nutritional counseling; and

(V) Increasing physical activity.

(C) **Qualified professionals.** Health promotion services must be provided by the Primary Care Practitioner, Registered Nurse Care Manager (or LPN

within full scope of practice) and the Wellness Coach or Health Home Specialist at the direction of the Health Home Director.

(4) **Comprehensive transitional care.**

(A) **Definition.** Care coordination services for comprehensive transitional care are designed to streamline plans of care, reduce hospital admissions and interrupt patterns of frequent hospital emergency department use.

(B) **Service requirements.** ~~In conducting comprehensive transitional care, the Nurse Care Manager and the case manager will work as co-leads.~~ The duties of the ~~Nurse Care Manager or the case manager~~ qualified team members providing transitional care services include, but are not limited to the following:

(i) Developing contracts or Memorandums of Understanding (MOUs) with regional hospitals or system(s) to ensure a formalized structure for transitional care planning, to include communication of inpatient admissions and discharges of Health Home members;

(ii) Maintaining a mutual awareness and collaboration to identify individuals seeking emergency department services that may benefit from connection with a Health Home site; and

(iii) Motivate hospital staff to notify the Health Home staff of such opportunities.

(C) **Qualified individuals.** Comprehensive transitional care services can be provided by the following team members:

(i) Nurse Care Manager;

(ii) Certified behavioral health case manager; and

(iii) Family Support provider.

(5) **Individual and family support services.**

(A) **Definition.** Individual and family support services assist individuals in accessing services that will reduce barriers and improve health outcomes, with a primary focus on increasing health literacy, the ability of the member to self- manage their care, and facilitate participation in the ongoing revision of their Comprehensive Care Plan.

(B) **Service requirements.** Individual and family support services include, but are not limited to:

(i) Teaching individuals and families self-advocacy skills;

(ii) Providing peer support groups;

(iii) Modeling and teaching how to access community resources;

(iv) Assisting with obtaining and adhering to medications and other prescribed treatments; and

(v) Identifying resources to support the member in attaining their highest level of health and functioning in their families and in the community, including transportation to medically necessary services.

(C) **Qualified individuals.** Individual and family support service activities must be provided by one of the following:

(i) Wellness Coaches, Recovery support specialist, Children's Health Home specialist; or

(ii) Care coordinators; or

(iii) Family Support Providers~~.~~; or

(iv) Nurse Care Manager.

(6) **Referral to community and social support services.**

(A) **Definition.** Provide members with referrals to community and social support services in the community.

(B) **Service requirements.** Providing assistance for members to obtain and maintain eligibility for the following services as applicable, including but not limited to:

(i) Healthcare;

(ii) Disability benefits;

(iii) Housing;

(iv) Transportation;

(v) Personal needs; and

(vi) Legal services.

(C) **Limitations.** For members with Developmental Disabilities, the Health Home will refer to and coordinate with the approved Developmental Disabilities case management entity for these services.

(D) **Qualified individuals.** Referral to community and social support services may be provided by a certified behavioral health case manager, Family Support Provider or a nurse care manager.

[OAR Docket #16-492; filed 6-15-16]

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

[OAR Docket #16-500]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 45. Optometrists
317:30-5-432.1. [AMENDED]
Part 47. Optical ~~Companies~~Suppliers
317:30-5-450. [AMENDED]
(Reference APA WF # 15-17)
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Proposed policy changes will modify the reimbursement structure for eyeglasses and clarify other requirements and provisions for SoonerCare coverage of eyeglasses frames and lenses.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 45. OPTOMETRISTS

317:30-5-432.1. Corrective lenses and optical supplies

(a) ~~Payment will be made for children for lenses, frames, low vision aids and certain tints when medically necessary including to protect children with monocular vision. Coverage includes one set of lenses and frames per year. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.~~When medically necessary, payment will be made for lenses, frames, low vision aids and certain tints for children. Coverage includes lenses and frames to protect children with monocular vision. Coverage includes two sets of non-high-index lenses and frames per year. Any high-index lenses or frames beyond this limit must be prior authorized and determined to be medically necessary.

(b) Corrective lenses must be based on medical need. Medical need includes a significant change in prescription or replacement due to normal lens wear.

(c) SoonerCare provides frames when medically necessary. Frames are expected to last at least one year and must be reusable. If a lens prescription changes, the same frame must be used if possible. Payment for frames includes the dispensing fee.

(d) ~~SoonerCare reimbursement for frames or lenses represents payment in full. No difference can be collected from the patient, family or guardians.~~Providers must accept SoonerCare's payment as payment in full for services rendered, except when authorized by SoonerCare (e.g., copayments, other cost sharing arrangements authorized by the State).

(1) Providers must be able to dispense standard eyeglasses which SoonerCare would fully reimburse with no cost to the eligible member.

(2) If the member wishes to select eyeglasses with special features which exceed the SoonerCare allowable fee, the member may be billed the excess cost. The provider must obtain signed consent from the member acknowledging that they are selecting eyeglasses that will not be covered in full by SoonerCare and that they will be responsible to pay the excess cost. The signed consent must be included in the member's medical record.

(e) Replacement of or additional lenses and frames are allowed when medically necessary. The OHCA does not cover lenses or frames meant as a backup for the initial lenses/frames. Prior authorization is not required unless the number of glasses exceeds two per year. The provider must always document in the patient record the reason for the replacement or additional eyeglasses. The OHCA or its designated agent will conduct ongoing monitoring of replacement frequencies to ensure ~~guidelines are~~OHCA policy is followed. Payment adjustments will be made on claims not meeting these requirements.

(f) Bifocal lenses for the treatment of accommodative esotropia are a covered benefit. Progressive lenses, trifocals, photochromic lenses and tints for children require prior authorization and must satisfy the medical necessity standard. Polycarbonate lenses are covered for children when medically necessary. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(g) Progressive lenses, aspheric lenses, tints, coatings and photochromic lenses for adults are not compensable and may be billed to the patient.

(h) Replacement of lenses and frames due to abuse and neglect by the member is not covered.

(i) Bandage contact lenses are a covered benefit for adults and children. Contact lenses for medically necessary treatment of conditions such as aphakia, keratoconus, following keratoplasty, aniseikonia/anisometropia or albinism are a covered benefit for adults and children. Other contact lenses for children require prior authorization and must satisfy the medical necessity standard.

PART 47. OPTICAL ~~COMPANIES~~SUPPLIERS

317:30-5-450. Eligible providers

Payment can be made to optical suppliers who have a current ~~Memorandum of Agreement~~SoonerCare contract with ~~this Authority~~the OHCA.

[OAR Docket #16-500; filed 6-15-16]

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

[OAR Docket #16-489]

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Part 75. Federally Qualified Health Centers
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ANALYSIS:
Proposed SoonerCare Choice policy is revised to clarify inconsistent and conflicting references to language authorizing medical residents as Primary Care Physicians (PCP) under SoonerCare. Cleanup of language would accurately reflect OHCA practices and requirements for payment under SoonerCare.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-660.5. Health Center service definitions

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

"Core Services" means outpatient services that may be covered when furnished to a patient at the Center or other location, including the patient's place of residence.

"Encounter or Visit" means a face-to-face contact between an approved health care professional as authorized in the FQHC state plan pages and an eligible SoonerCare member for the provision of defined services through a Health Center within a 24-hour period ending at midnight, as documented in the patient's medical record.

"Licensed Behavioral Health Professional (LBHP)" means licensed psychologists, licensed clinical social workers (LCSWs), licensed marital and family therapists (LMFTs), licensed professional counselors (LPCs), licensed behavioral practitioners (LBPs), and licensed alcohol and drug counselors (LADCs).

"Other ambulatory services" means other health services covered under the State plan other than core services.

"Physician" means:

(A) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed or who is a licensed physician employed by the Public Health Service;

(B) within limitations as to the specific services furnished, a doctor of dentistry or dental or oral surgery, a doctor of optometry, or a doctor of podiatry;

~~(C) a resident as defined in OAC 317:25-7-5(4) who meet the requirements for payment under SoonerCare;~~

"Physicians' services" means professional services that are performed by a physician at the Health Center (or are performed away from the Center, excluding inpatient hospital services) whose agreement with the Center provides that he or she will be paid by the Health Center for such services.

"PPS" means prospective payment system all-inclusive per visit rate method specified in the State plan.

[OAR Docket #16-489; filed 6-15-16]

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

[OAR Docket #16-503]

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317:30-5-696.1. [AMENDED]
317:30-5-698. [AMENDED]
317:30-5-699. [AMENDED]
317:30-5-700. [AMENDED]

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ANALYSIS:
Proposed Dental policy is amended to mirror new terminology from the Code on Dental Procedures and Nomenclature (CDT), to clean up outdated language, and to add oversight requirements for the supervision of certified registered nurse anesthetists.

CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-695. Eligible dental providers and definitions

(a) Eligible dental providers in Oklahoma's SoonerCare program are:

(1) individuals licensed as dentists under 59 Oklahoma Statutes §§ 328.21, 328.22, and 328.23 (licensed dentists, specialty dentists and out of state dentists);

(2) individuals issued permits as dental interns under 59 Oklahoma Statute § 328.26;

(3) individuals who are third and fourth year dental students at an accredited Oklahoma dental college; and

(4) any individual issued a license in another state as a dentist.

(b) All eligible providers must be in good standing with regard to their license. Any revocation or suspension status of a provider referenced in subsection (a) above renders the provider ineligible for payment or subject to recoupment under SoonerCare.

(c) Eligible providers must document and sign records of services rendered in accordance with guidelines found at OAC 317:30-3-15.

(d) The American Dental Association's version of ~~Current Dental Terminology (CDT)~~Code on Dental Procedures and Nomenclature (CDT) is used by the OHCA to communicate information related to codes, and procedures for administration. Definitions, nomenclature, and descriptors as listed in the CDT will apply, with the exception of more specific definitions or limitations set forth.

(1) "Decay" means carious lesions in a tooth; decomposition and/or dissolution of the calcified and organic components of the tooth structure.

(2) "Emergency Dental Care" includes, but is not limited to, the immediate service that must be provided to relieve the member from pain due to an acute infection, swelling, trismus or trauma.

(3) "Palliative Treatment" means action that relieves pain but is not curative. Palliative Treatment is an ~~all inclusive~~all-inclusive service. No other codes are reimbursable on the same date of service.

(4) "Radiographic Caries" means dissolution of the calcified and organic components of tooth tissue that has penetrated the enamel and is approaching the dentinoenamel junction.

(5) "Upcoding" means reporting a more complex and/or higher cost procedure than actually performed.

(6) "Unbinding" means billing separately for several individual procedures that are included within one Current Dental Terminology or Current Procedural Terminology (CPT) code.

317:30-5-696.1. ~~Conscious Sedation~~Anesthesia

Payment is made for medical and surgical services performed by a dentist to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician. Payment is made to Dentists who have received appropriate formal education in conscious ~~(moderate)~~ sedation~~, deep sedation,~~ and general anesthesia. ~~and are qualified to use these modalities in practice.~~

(1) Training to competency in conscious ~~(moderate)~~ sedation techniques may be acquired at the predoctoral, postgraduate, graduate, or continuing education level. Dentists who wish to utilize conscious ~~(moderate)~~ sedation are expected to successfully complete formal training which is structured in accordance with the American Dental Association's educational guidelines as well as the board of Dentistry for the State in which they practice.

(2) The knowledge and skills required for the administration of deep sedation and general anesthesia are beyond the scope of pre-doctoral and continuing education. Only dentists who have successfully completed an accredited/approved residency program in anesthesiology, for

the administration of anesthetic agents will be permitted to provide and bill for this service.

(3) All anesthesia services must be provided in accordance with OAC 317:30-5-7.

(A) Dentists who provide or supervise deep sedation or general anesthesia are required to have training in anesthesiology, oral surgery or pediatric dentistry, such as in a residency curriculum.

(B) To be considered qualified to supervise the administration of general anesthesia or deep sedation, OHCA requires a minimum of eighteen (18) hours of courses related to the administration of anesthesia, deep sedation or medical emergencies in the dental office every three (3) years.

317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis ~~(See OAC 317:30-5-695(d)(2)~~[See OAC 317:30-5-695(d)(2)]. Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. Images with an indication of the left side of member, six point periodontal charting and copy of the comprehensive treatment plans are required. Study models are usually not required, but models and narratives may be requested by OHCA or representatives of OHCA. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense. Submitted documentation used to base a decision will not be returned.

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members under 21 and eligible ICF/IID residents. Minimum required records to be submitted with each request are right and left mounted ~~bitewing~~bitewings ~~x-rays or images~~ and periapical films or images of tooth/teeth involved or the edentulous areas if not visible in the bitewings. ~~X-rays~~Images must be submitted with film mounts and each film or print must be of diagnostic quality. ~~X-rays and/or images~~Images must be identified by the tooth number and include date of exposure, member name, member ID, provider name, and provider ID. All ~~x-rays or~~ images, regardless of the media, must be submitted together with a completed and signed comprehensive treatment plan that details all needed treatment at the time of examination, and a completed current ADA form requesting all treatments requiring prior authorization. The ~~film~~images, digital media, photographs, or ~~printout~~printouts must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Root canal therapy is not considered an emergency procedure unless due to trauma to an anterior tooth. The provider must document the member's oral hygiene and flossing ability ~~over a minimum of two months,~~ in the member's records.~~Pulpal~~ Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics.

(A) Prior authorization is required for members who have a treatment plan requiring more than two ~~anterior and/or two posterior~~ root canals. All rampant, active caries must be removed prior to requesting anterior endodontics. Payment is made for services provided in accordance with the following:

(i) Permanent teeth only.

(ii) Accepted ADA materials must be used.

(iii) Pre and post-operative periapical ~~x-rays~~images must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider must document the member's oral hygiene and flossing ability ~~over a minimum of two months,~~ in the member's records.

(ii) Teeth that require pre-fabricated post and cores to retain a restoration due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post-operative periapical ~~x-rays~~images must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area. Approval of second molars is contingent upon proof of medical necessity.

(vi) Only ADA accepted materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

(I) an opposing tooth has super erupted;

(II) loss of tooth space is one third or greater;

(III) opposing second molars are involved unless prior authorized; or

(IV) the member has multiple teeth failing due to previous inadequate root canal therapy or follow-up;

(V) all rampant, active caries must be removed prior to requesting posterior endodontics.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build-up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(2) **Crowns for permanent teeth.** Crowns are compensable for restoration of natural teeth for members who are 16 years of age or older and 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. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

(i) ~~all~~All rampant, active caries must be removed prior to requesting any type of crown.

(ii) The tooth must be decayed to such an extent to prevent proper cuspal or incisal function.

(iii) The clinical crown is fractured or destroyed by one-half or more.

(iv) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered for a crown.

(B) The conditions listed in (A)(i) through (A)(iv) of this paragraph should be clearly visible on the submitted ~~x-rays~~images when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown. Non authorized restorative codes may be used if available.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleanable margins, there is invasion of the biologic width, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed for molar or pre-molar teeth.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Provider is responsible for replacement or repair of all crowns if failure is caused by poor laboratory processes or procedure by provider for 48 months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of missing anterior permanent teeth or two or more missing posterior teeth in the same arch for members 16 through 20 years of age. Provider must indicate which teeth will be replaced. ~~Members must have excellent oral hygiene documented for at least 18 months in the requesting provider's records and submitted with prior authorization request to be considered.~~ Members must have improved oral hygiene documented for at least 12 months in the provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up for a period of two years post insertion.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of three or more missing teeth in the same arch for members 12 through 16 years of age. Provider must indicate tooth numbers to be replaced. This appliance includes all necessary clasps and rests.

(5) **Occlusal guard.** Narrative of medical necessity must be sent with prior authorization. Model should not be made or sent unless requested.

(6) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members 17 through 20 years of age will be considered for this treatment. Destruction of healthy teeth to replace a single missing tooth is not considered medically necessary. Members must have excellent oral hygiene documented for at least 18 months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up until member loses eligibility.

(7) **Periodontal scaling and root planing.** Procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have ~~3~~three or more of the six point measurements ~~5~~five millimeters or greater, or have multiple areas of ~~radiographic~~image supported bone loss ~~and~~, subgingival calculus and must involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under the age ~~10~~12. This procedure is not allowed in conjunction with any other periodontal surgery.

317:30-5-699. Restorations

(a) **Utilization parameters.** The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per 24 months. Additional restorations may be authorized upon approval of OHCA in cases of trauma. Teeth receiving a restoration are eligible within three months for consideration of single crown if endodontically treated. Providers must document type of isolation used in treatment progress notes. The provider is responsible for follow-up or any required replacement of a failed restoration, if the member is currently SoonerCare eligible.

~~Fees paid for the original restorative services may be recouped if any additional treatments are required on the same tooth by a different provider within 12 months due to defective restoration or recurrent decay. If it is determined by the Dental Director that a member has received poorly rendered or insufficient treatment from a provider, the Dental Director may prior authorize corrective procedures by a second provider.~~

(b) **Coverage for dental restorations.** Restoration of incipient lesions is not considered medically necessary treatment. Any diagnosis not supported by ~~radiographs~~images requires documentation of the medical need on which the diagnosis was made. Services for dental restorations are covered as follows:

(1) If the mesial occlusal pit and the distal occlusal pit on an upper molar tooth are restored at the same appointment, this is a one surface restoration.

(2) If any two separate surfaces on a posterior tooth are restored at the same appointment, it is a two surface restoration.

(3) If any three separate surfaces on a posterior tooth are restored at the same appointment, it is a three surface restoration.

(4) If the mesial, distal, facial and/or lingual of an upper anterior tooth is restored at the same appointment, this is a four surface restoration.

(5) If any two separate surfaces on an anterior tooth are restored at the same appointment, it is a two surface restoration.

(6) If any three separate surfaces on an anterior tooth are restored at the same appointment, it is a three surface restoration.

(7) An incisal angle restoration is defined as one of the angles formed by the junction of the incisal and the mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.

(8) When four or more separate surfaces on a posterior tooth are restored at the same appointment it is a four surface restoration.

(9) Wide embrasure cavity preparations do not become extra surfaces unless at least one half of cusp or surface is involved in the restoration. An MODFL restoration would have to include the mesial-occlusal-distal surfaces as well as either the buccal groove pit or buccal surface or at least one half the surface of one of the buccal cusps. The same logic applies for the lingual surface.

317:30-5-700. Orthodontic services

(a) In order to be eligible for SoonerCare Orthodontic services, members must be referred through a primary care dentist; a member can receive a referral from a primary care dentist to the orthodontist only after meeting the following:

(1) the member has had a caries free initial visit; or

(2) has all decayed areas restored and has remained caries free for 12 months; and

(3) has demonstrated competency in maintaining an appropriate level of oral hygiene.

(b) Member with cleft palate can be referred directly by their treating physician without a dental referral and are exempt from above requirements.

(c) The Oklahoma SoonerCare Orthodontic Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. The orthodontic provider has the ability to determine if members may qualify with a visual screening. Diagnostic record accumulation and/or submission should only occur for members with high potential for acceptance. These orthodontic services include the following:

(1) a handicapping malocclusion, as measured on the Handicapping Labio-Lingual Deviation Index (HLD) with a minimum score of 30;

(2) any classification secondary to cleft palate or other maxillofacial deformity;

(3) if a single tooth or anterior crossbite is the only medical need finding, service will be limited to interceptive treatment;

(4) fixed appliances only; and

(5) permanent dentition with the exception of cleft defects.

(d) Reimbursement for Orthodontic services is limited to:

(1) Orthodontists, or

(2) General or Pediatric dental practitioners who have completed at least 200 certified hours of continuing education in the field of orthodontics practice and submit for review at least 25 successfully completed comprehensive cases. Of these 25 comprehensive cases, ten or more must be extraction cases. An applicant for this certification must practice in an OHCA deemed ~~under served~~under-served area. The comprehensive cases submitted should be of a complexity consistent with type of handicapping ~~Malocclusion~~malocclusion likely to be treated in the SoonerCare program.

(A) Cases submitted must include at least one of each of the following types:

(i) deep overbite where multiple teeth are impinging upon the soft tissue of the palate;

(ii) impacted canine or molar requiring surgical exposure;

(iii) bilateral posterior crossbite requiring fixed rapid palatal expansion; and

(iv) skeletal class II or III requiring orthognathic surgery.

(B) As with all dental or orthodontia treatment performed and reimbursed by SoonerCare, all pre and post orthodontic records must be available for review.

(C) The ~~Oklahoma Health Care Authority~~OHCA requires all ~~General~~general dentists providing comprehensive orthodontic care to submit a copy of the Oklahoma Board of Dentistry continuing education report and verification that at least 20 continuing education hours in the field of orthodontics has been completed per reporting period. All verification reports must be submitted to OHCA Dental unit every three years, no later than August 30. In addition,

verification of adequate progress for all active orthodontic cases will be reviewed by the OHCA Dental Unit upon completion of 24 months of therapy.

(e) The following limitations apply to orthodontic services:

(1) Cosmetic orthodontic services are not a covered benefit of the SoonerCare Program and no requests should be submitted;

(2) All orthodontic procedures require prior authorization for payment;

(3) Prior authorization for orthodontic treatment is not a notification of the member's eligibility and does not guarantee payment. Payment for authorized services depends on the member's eligibility at the beginning of each treatment year. Treatment year is determined by date of banding;

(4) The member must be SoonerCare-eligible and under 18 years of age at the time the request for prior authorization for treatment is received by the OHCA. Services cannot be added or approved after eligibility has expired. It is the orthodontist's responsibility to verify that the member has current SoonerCare eligibility and the date of birth indicates the member is under age 18.

(f) Orthodontic services are an elective procedure. The orthodontist must interview the prospective member as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.

(g) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA members is equivalent to that of private pay patients.

(h) Providers are not obligated to accept a member when it appears that the member will not cooperate in the orthodontic hygiene treatment program, does not return to the general dentist for preventive visits or is not willing to keep eligibility for SoonerCare current.

317:30-5-700.1. Orthodontic prior authorization

(a) The following records and documentation, plainly labeled with the member's full name, recipient identification number (RID), and the orthodontist's name are required for prior authorization of orthodontic services and must be submitted to the Dental Unit of the OHCA when the member has a total score of not less than 30 points or meets other eligibility criteria in paragraph (d).

(1) Completed currently approved ADA dental claim form;

(2) Complete and scored Handicapping Labio-Lingual Deviations
Index with Diagnosis of Angle's classification;

(3) Detailed description of any oral maxillofacial anomaly;

(4) Estimated length of treatment;

(5) Intraoral photographs showing teeth in centric occlusion and/or photographs of trimmed anatomically occluded diagnostic casts. A lingual view of casts may be included to verify impinging overbites;

(6) Cephalometric ~~x rays~~images with tracing, and panoramic film, with a request for prior authorization of comprehensive orthodontic treatment;

(7) If diagnosed as a surgical case, submit an oral surgeon's written opinion that orthognathic surgery is indicated and the surgeon is willing to provide this service;

(8) Additional pertinent information as determined necessary by the orthodontist or as requested by the OHCA.

(b) All images~~, x rays,~~ and required documentation must be submitted in one package. OHCA is not responsible for lost or damaged materials.

(c) All records and documentation submitted in a request for prior authorization for orthodontic treatment are reviewed by the OHCA Orthodontic Consultant for compensability and length of treatment. Any documentation on which a decision is made will not be returned.

(d) Some children not receiving a minimum score of 30 on the Handicapping Labio-Lingual Deviation Index (HLD) may have other conditions to be considered. In the event an orthodontist believes there are other medical, social, or emotional conditions impacting the general health of the child, he/she refers to the conditions listed on the EPSDT exception section found on the HLD. The following guidelines and restrictions apply to other conditions:

(1) Other medical, social, or emotional conditions are limited to those conditions that affect the medical, social or emotional function of the child.

(2) Other medical, social, or emotional conditions are not scored if the sole condition sought to be improved is the cosmetic appearance of the child.

(3) Such other medical, social, or emotional conditions must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (i.e., a child's teacher, primary care physician, behavioral health provider, school counselor).

(4) Objective evidence must be submitted with the HLD.

(5) When such other medical, social, or emotional conditions are reflected on the HLD, the OHCA Orthodontic Consultant must review the data and use his or her professional judgment to score the value of the conditions.

(6) The OHCA Orthodontic Consultant may consult with and utilize the opinion of the orthodontist who completes the form.

(e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the member's age precludes approval, a computer generated notice is issued to the provider and member with notice of the denial, the reason for the denial, and appeal rights (see OAC 317:2-1 for grievance procedures and process).

(f) Orthodontic treatment and payment for the services are approved within the scope of SoonerCare. If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment.

(1) Approval of orthodontic treatment is given in accordance with the following:

(A) Authorization for the first year begins on the date of banding and includes the placement of appliances, arch wires, and a minimum of six adjustments. It is expected that orthodontic members be seen every four to eight weeks for the duration of active treatment.

(B) Subsequent adjustments will be authorized in one year intervals and the treating orthodontist must provide a comprehensive progress report at the 24 month interval.

(C) All approved treatment is included on the original prior authorization and will include the total payment for that treatment year.

(2) Claim and payment are made as follows:

(A) Payment for comprehensive treatment includes the banding, wires, ~~and~~ adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers.

(B) Payment is not made for comprehensive treatment beyond 36 months.

(g) If the member moves from the geographic area or shows a need to change their provider, then the provider who received the yearly payment is financially responsible until completion of that member's orthodontic treatment for the current year.

(h) If the provider who received yearly payment does not agree to be financially responsible, then the Oklahoma Health Care Authority will recoup funds paid for the member's orthodontic treatment.

(i) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials are returned to the orthodontist.

(j) Study models must be diagnostic and meet the following requirements:

(1) Study models must be properly poured and adequately trimmed without large voids or positive bubbles present.

(2) Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.

(3) 3-D model images are preferred.

(4) Study models not in compliance with the above described diagnostic guidelines are not accepted. The provider may send new images that meet these requirements. If the provider does not respond, the request for treatment is denied.

(5) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.

317:30-5-704. Billing instructions

(a) **HCPCS Codes.** The Oklahoma Health Care Authority utilizes the Medicare Level II HCPCS Codes. All claim submissions must be in compliance with this coding system.

(b) **Prior authorization.** Where applicable, the appropriate arch, quadrant, or tooth surface and tooth number must be included on the claim. Diagnosis codes are requested to be listed in box 34 of ADA form 2012.

(c) ~~**X-rays.**~~ **Images.** Any type of film or prints submitted will not be returned. All ~~x-rays~~images must be dated, mounted and have patient's name, recipient identification number (RID), provider name and provider number.

317:30-5-705. Billing

Billing for dental services may be submitted on the currently approved version of the American Dental Association (ADA) claim form. Diagnosis codes are requested to be listed in box 34 of ADA form 2012. Electronic submission must be made on the HIPPA compliant Form 837D.

[OAR Docket #16-503; filed 6-15-16]

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

[OAR Docket #16-494]

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Part 79. Dentists
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INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed Dental policy revisions add coverage for medically necessary dental services for adult SoonerCare members needing dental clearance for organ transplant approval. The proposed Dental policy is revised to mirror new terminology from the Code on Dental Procedures and Nomenclature (CDT), to clean up outdated language, and allow dentist to perform emergency evaluations as medically necessary. Proposed revisions also clarify the separate note requirement must address the 5A's and that the signature is one office note signature provided at the end of the visit.

CONTACT PERSON:

Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

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 obtain prior authorization 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 images, 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 image 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.~~ This procedure should precede any images, and chart documentation must include image 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~~any dentist for more than six months. An examination should precede any ~~radiographs~~images, and chart documentation must include ~~radiographic~~images 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**~~**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~~a comprehensive or periodic evaluation examination being completed.

(D) ~~**Radiographs (x-rays)**~~**Images.** To be SoonerCare compensable, ~~x-rays~~images must be of diagnostic quality and medically necessary. A clinical examination must precede any ~~radiographs~~images,

and chart documentation must include member history, prior ~~radiographs~~images, caries risk assessment and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified ~~x rays~~images of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Periapical ~~radiograph~~images must include at least ~~3~~three millimeters beyond the apex of the tooth being ~~x rayed~~imaged. ~~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.~~ Panoramic films and two bitewings are considered full mouth images. Full mouth images as noted above or traditional (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~~images by the same dentist/dental office are considered a complete series if the ~~fee for~~number of individual ~~radiographs~~images equals or exceeds the ~~fee~~traditional number 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~~images 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~~images 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~~images 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~~five years;

(III) Tooth numbers E and F before ~~6~~six years;

(IV) Tooth numbers N and Q before ~~5~~five years;

(V) Tooth numbers D and G before ~~5~~five 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.

(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~~images 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~~images 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~~images 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~~,~~ that addresses the 5A's, 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 #16-494; filed 6-15-16]

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

[OAR Docket #16-502]

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317:30-5-907.1. [AMENDED]
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ANALYSIS:
Proposed Diagnostic Testing Facility policy is amended to define services that fall within the scope of authority for independent diagnostic testing facilities (IDTF). The proposed changes clarify reimbursement for rendered services and physician oversight.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 90. DIAGNOSTIC TESTING ENTITIES

317:30-5-907. ~~Eligible providers~~ Provider requirements

~~Diagnostic testing entities must be Medicare certified as Mobile X-ray or Independent Diagnostic Testing Facilities (IDTF). Providers must have a current contract on file with the Oklahoma Health Care Authority.~~

(a) An Independent Diagnostic Testing Facility (IDTF) is either a fixed location or mobile entity independent of a hospital or physician's office where diagnostic services are performed by licensed certified non-physician personnel under appropriate physician supervision. Diagnostic testing entities must be Medicare certified as Mobile X-ray or an IDTF and have a current contract on file with the Oklahoma Health Care Authority.

(b) An IDTF must have one or more supervising physicians who are responsible for the direct and ongoing oversight of the quality of the testing performed, the proper operation and calibration of the equipment used to perform tests and the qualifications of non-physician personnel who use the equipment.

(c) An IDTF enrolled in the SoonerCare program must comply with all applicable federal regulations, including applicable provisions of 42 CFR 410.32 and 42 CFR 410.33.

317:30-5-907.1. ~~Coverage by category~~ Coverage and limitations

(a) **Adults.** ~~Payment is made for the technical component on outpatient diagnostic procedures in accordance with the guidelines set forth in OAC 317:30-5-24.~~ For IDTF services to be covered:

(1) Services must be medically necessary;

(2) The treating physician's order must specify the procedures to be performed and the reason for the service; and

(3) The IDTF may not add any procedures based on internal protocols without a written order by the treating physician.

(b) **Children.** Coverage is the same as adults.

317:30-5-907.3. Reimbursement

~~Reimbursement will be based on the current allowed charge for radiological procedures.~~

(a) Diagnostic procedure are reimbursable if the services were rendered to a non-hospital patient and the IDTF provided all services (professional and technical) associated with the total procedure as defined in the CPT. When separate CPT codes itemize a service by its professional and technical components, the IDTF may bill and be reimbursed for the components of the procedure it actually performed.

(b) Payment is made for the technical component on outpatient diagnostic procedures in accordance with the guidelines set forth in OAC 317:30-5-24.

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

[OAR Docket #16-504]

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Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/US)
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317:30-5-1087. [AMENDED]
317:30-5-1088. [AMENDED]
317:30-5-1089. [AMENDED]
317:30-5-1090. [AMENDED]
317:30-5-1091. [AMENDED]
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ANALYSIS:
Proposed Indian Health Services, Tribal Programs and Urban Indian Clinics (I/T/U) policy is revised for clarity and consistency with other sections of Chapter 30. Proposed revisions update professional staff titles, clarify requirements for providers to contract with OHCA and appear on the IHS listing of tribal facilities, update language to include the use of OHCA's EPE system and clarify professional staff recognized by OHCA. Additional revisions would remove language on telemedicine originating site fees, define homebound individuals, require documentation of treatment and add requirements for licensure candidates. Proposed revisions include clean-up to remove outdated policy to align with current practice and to clarify I/T/U encounters and outpatient encounters, inpatient practitioner services and prior authorization procedures.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND URBAN INDIAN CLINICS (I/T/US)

317:30-5-1085. General provisions

(a) Indian Health Services (IHS) provide health care to Certificate of Degree of Indian Blood (CDIB) eligible American Indian and Alaska Natives (AI/AN). The IHS is a division of the Department of Health and Human Services that administers a system of hospitals and Indian health outpatient services. Urban Indian Clinics are considered facilities of the IHS. Under the Indian Self-Determination Act, Public Law 93-638, as amended, Tribes may also provide health care to ~~CDIB~~IHS eligible AI/ANs.

(b) The rules at OAC 317:30-3 apply to IHS, Tribal, and Urban Indian facilities. Additionally, unless otherwise stated, all other SoonerCare rules apply to IHS, Tribal, and Urban Indian facilities.

317:30-5-1086. Eligible I/T/U providers

~~Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/US) are considered eligible for participation in the SoonerCare Program. To receive SoonerCare reimbursement, an I/T/U must have a current contract on file with the Oklahoma Health Care Authority (OHCA). OHCA recognizes that I/T/US are the payer of last resort, and are not considered creditable health insurance.~~

Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/US) are considered eligible for participation in the SoonerCare Program. To receive SoonerCare reimbursement, an I/T/U must be contracted as a provider with the Oklahoma Health Care Authority and appear on the IHS maintained listing of IHS-operated and Indian health care facilities under a 638 agreement. OHCA recognizes that I/T/US are the payer of last resort, and are not considered creditable health insurance. It is the sole responsibility of the facility to petition IHS for placement on the list of facilities operating under a 638 agreement.

317:30-5-1087. Terms and definitions

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

(1) **"American Indian/Alaska Native (AI/AN)"** means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card.

(2) **"Behavioral Health services"** means professional medical services for the treatment of a mental health and/or addiction disorder(s).

(3) **"CFR"** means the Code of Federal Regulations.

(4) **"CMS"** means the Centers for Medicare and Medicaid Services.

(5) **"Encounter"** means a face to face contact between a health care professional and ~~a CDIB card~~an IHS eligible SoonerCare member for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a 24-hour period ending at midnight, as documented in the patient's record.

(6) **"Licensed Behavioral Health Professional (LBHP)"** means a licensed psychologist, licensed clinical social worker ~~(LSW-C)~~(LCSW), licensed marital and family therapist (LMFT), licensed professional counselor (LPC), licensed behavioral practitioner (LBP) or licensed alcohol and drug counselor (LADC).

(7) **"OHCA"** means the Oklahoma Health Care Authority.

(8) **"OMB rate"** means the Medicaid reimbursement rate negotiated between CMS and IHS. Inpatient and outpatient Medicaid reimbursement rates for I/T/US are published annually in the Federal Register or Federal Register Notices. The outpatient rate is also known as the I/T/U encounter rate. The encounter rate is available only to I/T/U facilities that appear on the IHS maintained listing of IHS-operated and Indian health care facilities operating under a 638 agreement. It is the sole responsibility of the facility to petition IHS for placement on this list.

(9) **"Physician"** means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery or who is a licensed physician employed by the Federal Government in an IHS facility or who provides services in a 638 Tribal Facility.

(10) **"State Administering Agency (SAA)"** is the Oklahoma Health Care Authority.

(11) **"638 Tribal Facility"** is a facility that is operated by a tribe or tribal organization and funded by Title I or Title III of the Indian Self Determination and Education Assistance Act (Public Law 93-638).

317:30-5-1088. I/T/U provider participation requirements

(a) I/T/US must ~~either~~ directly employ ~~or contract~~ the services of legally credentialed professional staff that are authorized within their scope of practice under state law to provide the services for which claims are submitted to SoonerCare; or I/T/U Physicians may meet all requirements for employment by the Federal Government as a physician and be employed by the Federal Government in an IHS facility or affiliated with a 638 Tribal Facility.

~~(b) The facility is required to report professional staff contracted or employed by the I/T/U to the OHCA. Participating I/T/US are required to submit a list of names of all practitioners working within the facility and a list of all individual OHCA provider and National Provider Identifier (NPI) numbers. The reimbursement for the services rendered at or on behalf of the I/T/U will be made to the facility.~~

(b) The facility is required to contract with OHCA all professional staff employed by the I/T/U. Participating I/T/Us are required to submit contracts for all practitioners working within the facility via Oklahoma's Electronic Provider Enrollment (EPE) web-based system. The reimbursement for services rendered at or on behalf of the I/T/U will be made to the facility.

~~(c) The following professional staff are recognized by OHCA:~~

~~(1) Physicians;~~

~~(2) Licensed Physician Assistants;~~

~~(3) Dentists;~~

~~(4) Pharmacists;~~

~~(5) Advanced Practice Nurses (APNs) which include:~~

~~(A) Advanced Registered Nurse Practitioners (ARNPs);~~

~~(B) Certified Nurse Midwives (CNMs);~~

~~(C) Certified Registered Nurse Anesthetists (CRNAs); and~~

~~(D) Clinical Nurse Specialists (CNSs);~~

~~(6) Registered nurses under the supervision of a licensed physician; and~~

~~(7) Practitioners who are actively and regularly receiving board approved supervision, or those receiving extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet fully licensed for the services that are within the practitioner's scope of practice. This includes but is not limited to:~~

~~(A) licensed clinical social workers (LSW-C);~~

~~(B) marital and family therapists (LMFT);~~

~~(C) licensed professional counselors (LPC);~~

~~(D) licensed behavioral practitioners (LBP); and~~

~~(E) licensed alcohol and drug counselors (LADC).~~

(c) Only professional staff listed as eligible providers in OAC 317:30-5 are recognized by OHCA.

317:30-5-1089. I/T/U multiple sites

(a) I/T/US may contract as a PCP/CM under SoonerCare Choice (See OAC 317:25-7-5).

~~(b) I/T/US are required to submit a list of all clinics affiliated or owned by the facility including any clinics that do not have I/T/U status, along with all OHCA provider numbers assigned to these clinics.~~

(b) I/T/US are required to contract with all facilities affiliated or owned by the I/T/U to be eligible for SoonerCare reimbursement.

317:30-5-1090. Provision of other health services outside of the I/T/U encounter

~~(a) An I/T/U outpatient facility may provide other items and services which are not part of an encounter. If covered, these services are separately billable to the SoonerCare program. Coverage of services will be based upon medical necessity and the scope of coverage under the SoonerCare program and subject to any limitations, restrictions or prior authorization requirements.~~

(~~b~~a) Medically necessary SoonerCare covered services that are not included in the I/T/U outpatient encounter rate may be billed outside the encounter rate within the scope of the SoonerCare fee-for-service ~~rate~~contract. The services will be reimbursed at the fee-for-service rate, and will be subject to any limitations, restrictions or prior authorization requirements. Examples of these services include but are not limited to:

(1) pharmaceuticals/drugs;
(2) durable medical equipment;
(3) glasses;
(4) ambulance;
(5) home health;
(6) inpatient practitioner services;
(7) non-emergency transportation [refer to OAC 317:35-3-2];
(8) behavioral health case management [refer to ~~OAC 317:30-5-585 through 317:30-5-589 and OAC 317:30-5-595 through 317:30-5-599~~OAC 317:30-5-240 through 317:30-5-249];
(9) psychosocial rehabilitative services [refer to OAC 317:30-5-240 through ~~317:30-5-248~~317:30-5-249]; and
(10) psychiatric residential treatment facility services [refer to OAC 317:30-5-96.3].

(~~c~~b) If the I/T/U facility chooses to provide other SoonerCare State Plan covered health services which are not included in the I/T/U encounter definition, those service providers must be contracted with OHCA and bill for those services under their assigned provider number consistent with program coverage limitations and billing procedures described by the OHCA.

~~(d) The originating site facility fee for telemedicine services is not an I/T/U service. When an I/T/U serves as the originating site, the originating site facility fee is paid separately from the clinic's all-inclusive rate.~~

317:30-5-1091. Definition of I/T/U services

(a) As described in ~~Title 42 of the Code of Federal Regulations (CFR) 136.11(a)~~42 CFR 136.11(a), the I/T/U services may include hospital and medical care, dental care, public health nursing~~, and~~ preventive care (including immunizations)~~, and health examination of special groups such as school children~~.

(b) Further, ~~Title~~ 42 CFR 136.11(c) allows that the scope and availability of I/T/U services will depend upon the resources of the facility.

(c) I/T/U services may be covered when furnished to a patient at the clinic or other location, including a mobile clinic, or the patient's place of residence. Provider contracts must meet the provider participation requirements found at OAC 317:30-5-1096.

(d) I/T/U outpatient encounters include but are not limited to:

(1) Physicians' services and supplies incidental to a physician's services;
(2) Within limitations as to the specific services furnished, a doctor of dentistry or oral surgery, a doctor of optometry, or a doctor of podiatry [Refer to Section 1861(r) of the Act for specific limitations];
~~(3) The services of a resident as defined in OAC 317:25-7-5(4) who meets the requirements for payment under SoonerCare and the supplies incidental to a resident's services;~~
(~~4~~3) Services of advanced practice nurses (APNs), physician assistants (PAs), certified nurse midwives (CNMs), or specialized advanced practice nurse practitioners;
(~~5~~4) Services and supplies incidental to the services of APNs and PAs (including services furnished by certified nurse midwives);
(~~6~~5) Public health nursing services, within the scope of their licensure, include but are not limited to services in the following areas:
(A) Phlebotomy;
(B) Wound care;
(C) Public health education;
(D) Administration of immunizations;
(E) Administration of medication;
(F) Child health screenings meeting EPSDT criteria;
(G) Smoking and Tobacco Use Cessation Counseling;
(H) Prenatal, newborn and postpartum assessments, including case management services for first time mothers; and
(I) General health assessments and management of conditions such as tuberculosis, diabetes and hypertension.
(~~7~~6) Visiting nurse services to the homebound;
(~~8~~7) Behavioral health professional services and services and supplies incidental to the services of LBHPs; and
(~~9~~8) Dental services.

317:30-5-1093. I/T/U visiting nurses services

(a) Visiting nurse services may be covered if:

(1) The services are rendered to a homebound individual~~;~~ who is permanently or temporarily confined to his or her place of residence because of a medical or health condition. The individual may be considered homebound if he or she leaves the place of residence infrequently. For this purpose, place of residence does not include a hospital or long term care facility; and
(2) The services are furnished by a registered nurse, licensed practical nurse, or licensed vocational nurse who is employed by, ~~or~~and receives compensation for the services from the I/T/U; and

(3) The services are furnished under a written plan of treatment that is:

(A) established and reviewed at least every 60 days by a supervising physician of the I/T/U or established by a nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner and reviewed at least every 60 days by a supervising physician; and

(B) signed by the nurse practitioner, physician assistant, nurse midwife, specialized nurse practitioner, or the supervising physician of the clinic.

(b) The nursing care covered in this Section includes:

(1) Services that must be performed by a registered nurse, licensed practical nurse, or licensed vocational nurse if the safety of the patient ~~is to be assured~~can be assured in the home and the medically desired results achieved; and

(2) Personal care services, to the extent covered under Medicare as home health services. These services include helping the patient to bathe, to get in and out of bed, to exercise and to take medications.

(c) This benefit does not cover household and housekeeping services or other services that would constitute custodial care.

~~(d) For purposes of this Section, homebound means an individual who is permanently or temporarily confined to his or her place of residence because of a medical or health condition. The individual may be considered homebound if he or she leaves the place of residence infrequently. For this purpose, place of residence does not include a hospital or long term care facility.~~

317:30-5-1094. Behavioral health services provided at I/T/US

(a) Behavioral health services that are primary, preventive, and therapeutic and would be covered if provided in another setting may be provided by I/T/U providers. Services provided by an I/T/U (refer to OAC 317:30-5-241 for a description of services) must meet the same requirements as services provided by another provider. Services include:

(1) Mental Health Assessment/Evaluation Testing;

(2) Alcohol and/or Substance Abuse Services Assessment and Treatment Plan Development;

(3) Crisis Intervention Services;

(4) Medication Training and Support;

(5) Individual/interactive Psychotherapy;

(6) Group Psychotherapy; and

(7) Family Psychotherapy.

(b) Behavioral health professional therapy services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified mental health and/or substance abuse disorder(s). A minimum of a 45 to 50 minute standard clinical session must be completed by an I/T/U in order to bill an encounter for the session. Treatment must be documented in accordance with OAC 317:30-5-248.

(c) In order to support access to mental health services, these services may be provided in settings outside of the I/T/U. Offsite services must take place in a confidential setting.

(d) The outpatient behavioral health services' provider enrollment and reimbursement process in no way changes the OHCA's policy with regard to reimbursement of practitioners. Licensed clinical social workers ~~(LSW-C)~~(LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), ~~and~~ licensed alcohol and drug counselors (LADC), and licensure candidates are not eligible for direct reimbursement as practitioners. Their services are compensable only when billed by their employers and when provided in those clinical settings in which they are currently approved to render services. Licensure candidates must meet the requirements contained in OAC 317:30-5-240.3.

(e) For the provision of behavioral health related case management services, I/T/U providers must meet the requirements found at OAC ~~317:30-5-585 through 317:30-5-589 and OAC 317:30-5-595 through 317:30-5-599~~317:30-5-240 through 317:30-5-249, and be contracted as such. The provision of these services is considered to be outside of the I/T/U encounter. Contracted behavioral health case management providers are responsible for obtaining all necessary prior authorizations, if needed, and will be paid at the current fee-for-service rate.

(f) For the provision of psychosocial rehabilitation services, I/T/U facilities meet the requirements found at OAC 317:30-5-240 through ~~317:30-5-248~~317:30-5-249, and must contract as an outpatient behavioral health agency. The provision of these services is considered to be outside of the I/T/U encounter. Contracted psychosocial rehabilitation service providers are responsible for obtaining all necessary prior authorizations, if needed, and will be paid at the current fee-for-service rate.

317:30-5-1095. I/T/U services not compensable under outpatient encounters

~~(a)~~ I/T/U services that are not compensable under outpatient encounters include:

(1) group or mass information programs, health education classes, or group education activities, including media productions and publications;

(2) vaccines covered by the Vaccines for Children program [refer to OAC 317:30-5-14(a)(1)];

(3) group or sports physicals and medical reports;

(4) drug samples or other prescription drugs provided to the clinic free of charge;

(5) administrative medical examinations and report services; and

(6) gauze, band-aids, or other disposable products used during an office visit.

~~(b) Exclusions from the definition of I/T/U encounters include but are not limited to:~~

~~(1) Durable medical equipment or medical supplies not generally provided during the course of a clinic visit such as diabetic supplies;~~

~~(2) Pharmaceutical or biologicals not generally provided during the clinic visit. For example, sample medications are part of the encounter but dispensing a prescription is billed separately under the fee for service pharmacy program;~~

~~(3) Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act.~~

~~(4) Eyeglasses (refer to OAC 317:30-5-450);~~

~~(5) Emergency ambulance transportation (refer to OAC 317:30-5-335);~~

~~(6) Non-emergency transportation;~~

~~(7) Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;~~

~~(8) Behavioral health rehabilitative services [see OAC 317:30-5-241];~~

~~(9) hearing aids; and~~

~~(10) Behavioral health case management service [refer to OAC 317:30-585 through 317:30-589 and OAC 317:30-5-595 through 317:30-5-599].~~

317:30-5-1096. I/T/U off-site services

I/T/U covered services provided off-site or outside of the I/T/U setting, including mobile clinics or places of residence, are compensable when billed by the I/T/U. ~~The I/T/U must have a written contract with the physician and other practitioners that specifies that the I/T/U will bill SoonerCare for services provided off-site and how such providers will be compensated.~~ The I/T/U must meet provider participation requirements listed in 317:30-5-1088. I/T/U off-site services may be covered if the services rendered were within the provider's scope of practice and are of the same integrity of services rendered at the I/T/U facility.

317:30-5-1098. I/T/U outpatient encounters

(a) I/T/U outpatient encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by the OHCA. These services include health services included in the State Plan under Title XIX or Title XXI of the Social Security Act.

(b) The following words and terms have the following meaning unless the context clearly indicates otherwise:

~~(1) An I/T/U outpatient encounter is a face-to-face contact between a health care professional and a CDIB card eligible SoonerCare member for the provision of Title XIX and Title XXI covered outpatient services in an I/T/U facility within a 24-hour period ending at midnight, as documented in the patient's medical record.~~

(1) An I/T/U encounter means a face to face or telemedicine contact between a health care professional and an IHS eligible SoonerCare member for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a 24-hour period ending at midnight, as documented in the patient's record.

~~(2) An I/T/U encounter means outpatient services that may be covered when furnished to a patient by employees of the I/T/U facility at the I/T/U facility or other location, including the patient's place of residence.~~

(2) An I/T/U outpatient encounter means outpatient services that may be covered when furnished to a patient by a contracted SoonerCare provider employed by the I/T/U facility and rendered at the I/T/U facility or other location, including the patient's place of residence.

(c) The following services may be considered reimbursable encounters subject to the limitations of the Oklahoma State Plan and include any related medical supplies provided during the course of the encounter:

(1) Medical;

(2) Diagnostic;

(3) Behavioral Health services [refer to OAC 317:30-5-1094];

(4) Dental, Medical and Mental Health Screenings;

(5) Vision;

(6) Physical Therapy;

(7) Occupational Therapy;

(8) Podiatry;

(9) Speech;

(10) Hearing;

(11) Visiting Nurse Service [refer to OAC 317:30-5-1093];

(12) Smoking and Tobacco Use Cessation Counseling

(13) Other Title XIX or XXI services as allowed under OHCA's SoonerCare State Plan and OHCA Administrative Rules;

(14) Drugs or medication treatments provided during a clinic visit are part of the encounter rate. For example, a member has come into the clinic with high blood pressure and is treated at the clinic with a hypertensive drug or drug sample. Drug samples are included in the encounter rate. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy;

(15) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members; and

(16) I/T/U Multiple Outpatient Encounters.

(A) OHCA will cover one medically necessary outpatient medical encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit with a different diagnosis. Then, a second encounter is allowed.

(B) OHCA will cover one dental encounter per member per day regardless of how many procedures are done or how many providers are seen unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(C) OHCA will cover one behavioral health professional outpatient encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit and has

a different diagnosis. Then, a second encounter is allowed.

(D) Each service must have distinctly different diagnoses in order to meet the criteria for multiple I/T/U outpatient encounters. ~~For example, a medical visit and a dental visit on the same day are considered different services with distinctly different diagnoses.~~

~~(E) Similar services, even when provided by two different I/T/U health care practitioners, are not considered multiple encounters. Situations that would not be considered multiple encounters provided on the same date of service include, but are not limited to:~~

~~(i) A well child check and an immunization;~~

~~(ii) A preventive dental screen and fluoride varnish application in a single setting;~~

~~(iii) A medical encounter with a mental health or addiction diagnosis on the same day as a mental health or addiction encounter;~~

~~(iv) A mental health and addiction encounter with similar diagnosis;~~

~~(v) Any time a member receives only a partial service with one provider and partial service from another provider. This would be considered a single encounter.~~

~~(d) More than one outpatient visit with a medical professional within a 24-hour period for distinctly different diagnoses may be reported as two encounters. This does not imply that if a member is seen at a single office visit with multiple problems that multiple encounters can be billed. For example, a member comes to the clinic in the morning for an immunization, and in the afternoon, the member falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a member who comes to the I/T/U facility for a prenatal visit in the morning and delivers in the afternoon would not be considered a distinctly different diagnosis and can only be billed as a single encounter.~~

(d) More than one outpatient visit with a medical professional within a 24-hour period for distinctly different diagnoses may be reported as two encounters. This does not imply that if a member is seen at a single office visit with multiple problems that multiple encounters can be billed. For example, a member comes to the clinic in the morning for an immunization, and in the afternoon, the member falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a member who comes to the I/T/U facility for a diabetic wellness screening and is then referred to a podiatrist within the clinic for diabetes-related follow-up on the same date of service would not be considered a distinctly different diagnosis and can only be billed as a single encounter.

(e) The following services may be considered as separate or multiple encounters when two or more services are provided on the same date of service with distinctly different diagnoses:

(1) Medical Services;

(2) Dental Services;

(3) Mental Health and addiction services with similar diagnoses can only be billed as one encounter. In addition, if the member is also seen for a medical office visit with a mental health or addiction diagnosis, then it is considered a single encounter;

(4) Physical or occupational therapy (PT/OT). If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter;

(5) Administration of immunizations. If no other medical office visit occurs on the same date of services; and

(6) Tobacco cessation limited to state plan services. If no other medical or addiction encounter occurs on the same date of service.

(f) I/T/U outpatient encounters for ~~CDIB~~IHS eligible SoonerCare members whether medical, dental, or behavioral health, are not subject to prior authorization. Other State Plan covered services that the I/T/U facility chooses to provide but which are not part of the I/T/U encounter are subject to all applicable SoonerCare regulations which govern the provision and coverage for that service.

317:30-5-1099. I/T/U service limitations

Service limitations governing the provision of all Oklahoma SoonerCare services will apply pursuant to Chapter 30 of the OHCA rules. In addition, the following limitations and requirements apply to services provided by I/T/U facilities:

(1) **Multiple encounters.** An I/T/U facility may bill for more than one encounter per 24 hour period under certain conditions.

(2) **Behavioral Health services.** Behavioral Health Services are limited to those services furnished to members at or on behalf of the I/T/U facility.

(3) **Laboratory procedures.** Laboratory procedures performed by an I/T/U outpatient facility (not an independently certified enrolled laboratory) on the same date of service are considered part of the health care practitioner's service and are included in the I/T/U encounter.

317:30-5-1100. Inpatient care provided by IHS facilities

Inpatient practitioner services are separately contracted and paid at a fee-for-service rate. Each individual inpatient practitioner must be contracted with SoonerCare and attached to a SoonerCare contracted medical group. The Inpatient hospital per diem rate for inpatient medical care provided by IHS facilities is published annually in the Federal Register or Federal Register Notices. In order to receive the inpatient hospital per diem rate, the IHS or Tribal 638 facility must:

(1) be contracted as a provider with the Oklahoma Health Care Authority; and

(2) appear on the IHS maintained listing of IHS-operated and Indian health care facilities operating under a 638 agreement. It is the sole responsibility of the facility to petition IHS for placement on this list.

[OAR Docket #16-504; filed 6-15-16]

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

[OAR Docket #16-506]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-131.2. [AMENDED]
(Reference APA WF # 15-38)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1925.1 of Title 63 of Oklahoma Statutes
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ANALYSIS:
Proposed Quality of Care (QOC) policy revisions clarify procedures for the completion and submission of the QOC Report. Rules will be amended to correctly list the types of employee positions that are counted in staffing ratios and outline procedures for counting non-direct care workers when those employees are rendering direct care. Language is updated to eliminate references to outdated submission methods such as certified mail, diskettes and electronic mail, while adding a requirement to submit QOC reports via the provider portal. Proposed policy revisions clarify the types of information required in the QOC report and update staff unit terminology.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-131.2. Quality of care fund requirements and report

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

(1) **"Nursing Facility and Intermediate Care Facility for Individuals with Intellectual Disabilities"** means any home, establishment, or institution or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes.

(2) **"Quality of Care Fee"** means the fee assessment created for the purpose of quality care enhancements pursuant to Section 2002 of Title 56 of the Oklahoma Statutes upon each nursing facility and intermediate care facility for individuals with intellectual disabilities licensed in this State.

(3) **"Quality of Care Fund"** means a revolving fund established in the State Treasury pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(4) **"Quality of Care Report"** means the monthly report developed by the Oklahoma Health Care Authority to document the staffing ratios, total patient gross receipts, total patient days, and minimum wage compliance for specified staff for each nursing facility and intermediate care facility for individuals with intellectual disabilities licensed in the State.

(5) **"Staffing ratios"** means the minimum direct-care-staff-to-resident ratios pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(6) **"Peak In-House Resident Count"** means the maximum number of in-house residents at any point in time during the applicable shift.

(7) **"Staff Hours worked by Shift"** means the number of hours worked during the applicable shift by direct-care staff.

(8) **"Direct-Care Staff"** means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and intermediate care facility for individuals with intellectual disabilities pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statues, pursuant to OAC 310:675-1 et seq., and as defined in subsection (c) of this Section.

(9) **"Major Fraction Thereof"** is defined as an additional threshold for direct-care-staff-to-resident ratios at which another direct-care staff person(s) is required due to the peak in-house resident count exceeding one-half of the minimum direct-care-staff-to-resident ratio pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(10) **"Minimum wage"** means the amount paid per hour to specified staff pursuant to Section 5022.1 of Title 63 of the Oklahoma Statutes.

(11) **"Specified staff"** means the employee positions listed in the Oklahoma Statutes under Section 5022.1 of Title 63 and as defined in subsection (d) of this Section.

(12) **"Total Patient Days"** means the monthly patient days that are compensable for the current monthly Quality of Care Report.

(13) **"Total Gross Receipts"** means all cash received in the current Quality of Care Report month for services rendered to all residents in the facility. Receipts should include all Medicaid, Medicare, Private Pay and Insurance including receipts for items not in the normal per diem rate. Charitable contributions received by the nursing facility are not included.

(14) **"Service rate"** means the minimum direct-care-staff-to-resident rate pursuant to Section 1-1925.2 of Title 63 of Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(b) **Quality of care fund assessments.**

(1) The Oklahoma Health Care Authority (OHCA) was mandated by the Oklahoma Legislature to assess a monthly service fee to each Licensed Nursing Facility in the State. The fee is assessed on a per patient day basis. The amount of the fee is uniform for each facility type. The fee is determined as six percent (6%) of the average total gross receipts divided by the total days for each facility type.

(2) In determination of the fee for the time period beginning October 1, 2000, a survey was mailed to each licensed nursing facility requesting calendar year 1999 Total Patient Days, Gross Revenues and Contractual Allowances and Discounts. This data is used to determine the amount of the fee to be assessed for the period of 10-01-00 through 06-30-01. The fee is determined by totaling the "annualized" gross revenue and dividing by the "annualized" total days of service. "Annualized" means that the surveys received that do not cover the whole year of 1999 are divided by the total number of days that are covered and multiplied by 365.

(3) The fee for subsequent State Fiscal Years is determined by using the monthly gross receipts and census reports for the six month period October 1 through March 31 of the prior fiscal year, annualizing those figures, and then determining the fee as defined above. As per 56 O.S. Section 2002, as amended, the fees are frozen at the amount in effect at July 1, 2004. Also, the fee will be monitored to never surpass the federal maximum.

(4) The fee is authorized through the Medicaid State Plan and by the Centers for Medicare and Medicaid Services (CMS) regarding waiver of uniformity requirements related to the fee.

(5) Monthly reports of Gross Receipts and Census are included in the monthly Quality of Care Report. The data required includes, but is not limited to, the Total Gross Receipts and Total Patient Days for the current monthly report.

(6) The method of collection is as follows:

(A) The Oklahoma Health Care Authority assesses each facility monthly based on the reported patient days from the Quality of Care Report filed two months prior to the month of the fee assessment billing. As defined in this subsection, the total assessment is the fee times the total days of service. The Oklahoma Health Care Authority notifies the facility of its assessment by the end of the month of the Quality of Care Report submission date.

(B) Payment is due to the Oklahoma Health Care Authority by the 15th of the following month. Failure to pay the amount by the 15th or failure to have the payment mailing postmarked by the 13th will result in a debt to the State of Oklahoma and is subject to penalties of 10% of the amount and interest of 1.25% per month. The Quality of Care Fee must be submitted no later than the 15th of the month. If the 15th falls upon a holiday or weekend (Saturday-Sunday), the fee is due by 5 p.m. (Central Standard Time) of the following business day (Monday-Friday).

(C) The monthly assessment including applicable penalties and interest must be paid regardless of any appeals action requested by the facility. If a provider fails to pay the Authority the assessment within the time frames noted on the second invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments. Adjustments to prior months' reported amounts for gross receipts or patient days may be made by filing an amended part C of the Quality of Care Report.

(D) The Quality of Care fee assessments excluding penalties and interest are an allowable cost for Oklahoma Health Care Authority Cost Reporting purposes.

(E) The Quality of Care fund which contains assessments collected excluding penalties and interest as described in this subsection and any interest attributable to investment of any money in the fund must be deposited in a revolving fund established in the State Treasury. The funds will be used pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(c) **Quality of care direct-care-staff-to resident-ratios.**

(1) Effective September 1, 2000, all nursing facilities and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) subject to the Nursing Home Care Act, in addition to other state and federal staffing requirements, must maintain the minimum direct-care-staff-to-resident ratios or direct-care service rates as cited in Section 1-1925.2 of Title 63 of the Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(2) For purposes of staff-to-resident ratios, direct-care staff are limited to the following employee positions:

(A) Registered Nurse

(B) Licensed Practical Nurse

(C) Nurse Aide

(D) Certified Medication Aide

(E) Qualified Intellectual Disability Professional (ICFs/IID only)

(F) Physical Therapist

(G) Occupational Therapist

(H) Respiratory Therapist

(I) Speech Therapist
(J) Therapy Aide/Assistant
~~(K) Social Services Director/Social Worker~~
~~(L) Other Social Services Staff~~
~~(M) Activities Director~~
~~(N) Other Activities Staff~~
~~(O) Combined Social Services/Activities~~

(3) ~~Prior to September 1, 2003, activity and social services staff who did not provide direct, hands-on care may be included in the direct-care-staff-to-resident ratio in any shift or direct-care-service rates. On and after September 1, 2003, such persons are not included in the direct-care-staff-to-resident ratio or direct-care service rates.~~The hours of direct care rendered by persons filling non-direct care positions may be used when those persons are certified and rendering direct care in the positions listed in OAC 317:30-5-131.2(c)(2) when documented in the records and time sheets of the facility.

(4) In any shift when the direct-care-staff-to-resident ratio computation results in a major fraction thereof, direct-care staff is rounded to the next higher whole number.

(5) To document and report compliance with the provisions of this subsection, nursing facilities and intermediate care facilities for individuals with intellectual disabilities must submit the monthly Quality of Care Report pursuant to subsection (e) of this Section.

(d) **Quality of care minimum wage for specified staff.** Effective November 1, 2000, all nursing facilities and private intermediate care facilities for individuals with intellectual disabilities receiving Medicaid payments, in addition to other federal and state regulations, must pay specified staff not less than in the amount of $6.65 per hour. Employee positions included for purposes of minimum wage for specified staff are as follows:

(1) Registered Nurse
(2) Licensed Practical Nurse
(3) Nurse Aide
(4) Certified Medication Aide
(5) Other Social Service Staff
(6) Other Activities Staff
(7) Combined Social Services/Activities
(8) Other Dietary Staff
(9) Housekeeping Supervisor and Staff
(10) Maintenance Supervisor and Staff
(11) Laundry Supervisor and Staff

(e) **Quality of care reports.** Effective September 1, 2000, all nursing facilities and intermediate care facilities for individuals with intellectual disabilities must submit a monthly report developed by the Oklahoma Health Care Authority, the Quality of Care Report, for the purposes of documenting the extent to which such facilities are compliant with the minimum direct-care-staff-to-resident ratios or direct-care service rates.

(1) The monthly report must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility must retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, "*Whoever...(2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefit or payment...shall (i) in the case of such statement, representation, concealment, failure, or conversion by any person in connection with furnishing (by that person) of items or services for which payment is or may be made under this title (42 U.S.C. '1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both.*"

(4) The Quality of Care Report must be submitted by 5 p.m. (CST) on the 15th of the following month. If the 15th falls upon a holiday or a weekend (Saturday-Sunday), the report is due by 5 p.m. (CST) of the following business day (Monday - Friday).

(5) The Quality of Care Report will be made available in an electronic version for uniform submission of the required data elements.

(6) Facilities must submit the monthly report ~~either through electronic mail to the Opportunities for Living Life Division, Long Term Care Quality Initiatives Unit or send the monthly report in disk or paper format by certified mail and pursuant to subsection (e)(14) of this section. The submission date is determined by the date and time recorded through electronic mail or the postmark date and the date recorded on the certified mail receipt~~through the OHCA Provider Portal.

(7) Should a facility discover an error in its submitted report for the previous month only, the facility must provide to the ~~Opportunities for Living Life Division, Long Term Care Quality Initiatives Unit~~Long Term Care Financial Management Unit written notification with adequate, objective and substantive documentation within five business days following the submission deadline. Any documentation received after the five business day period will not be considered in determining compliance and for reporting purposes by the Oklahoma Health Care Authority.

(8) An initial administrative penalty of $150.00 is imposed upon the facility for incomplete, unauthorized, or non-timely filing of the Quality of Care Report. Additionally, a daily administrative penalty will begin upon the Authority notifying the facility in writing that the report was not complete or not timely submitted as required. The $150.00 daily administrative penalty accrues for each calendar day after the date the notification is received.

The penalties are deducted from the Medicaid facility's payment. For 100% private pay facilities, the penalty amount(s) is included and collected in the fee assessment billings process. Imposed penalties for incomplete reports or non-timely filing are not considered for Oklahoma Health Care Authority Cost Reporting purposes.

(9) The Quality of Care Report includes, but is not limited to, information pertaining to the necessary reporting requirements in order to determine the facility's compliance with subsections (b) and (c) of this Section. Such reported information includes, but is not limited to: ~~staffing ratios; peak in-house resident count; staff hours worked by shift; total patient days; available bed days; Medicare bed days; Medicaid bed days; and total gross receipts~~total gross receipts, patient days, available bed days, direct care hours, Medicare days, Medicaid days, number of employees, monthly resident census, and tenure of Certified Nursing Assistants, nurses, directors of nursing, and administrators.

(10) Audits may be performed to determine compliance pursuant to subsections (b), (c) and (d) of this Section. Announced/unannounced on-site audits of reported information may also be performed.

(11) Direct-care-staff-to-resident information and on-site audit findings pursuant to subsection (c), will be reported to the Oklahoma State Department of Health for their review in order to determine "willful" non-compliance and assess penalties accordingly pursuant to Title 63 Section 1-1912 through Section 1-1917 of the Oklahoma Statutes. The Oklahoma State Department of Health informs the Oklahoma Health Care Authority of all final penalties as required in order to deduct from the Medicaid facility's payment. Imposed penalties are not considered for Oklahoma Health Care Authority Cost Reporting purposes.

(12) If a Medicaid provider is found non-compliant pursuant to subsection (d) based upon a desk audit and/or an on-site audit, for each hour paid to specified staff that does not meet the regulatory minimum wage of $6.65, the facility must reimburse the employee(s) retroactively to meet the regulatory wage for hours worked. Additionally, an administrative penalty of $25.00 is imposed for each non-compliant staff hour worked. For Medicaid facilities, a deduction is made to their payment. Imposed penalties for non-compliance with minimum wage requirements are not considered for Oklahoma Health Care Authority Cost Reporting purposes.

(13) Under OAC 317:2-1-2, Long Term Care facility providers may appeal the administrative penalty described in (b)(5)(B) and (e)(8) and (e)(12) of this section.

(14) Facilities that have been authorized by the Oklahoma State Department of Health (OSDH) to implement flexible staff scheduling must comply with OAC 310:675-1 et seq. The authorized facility is required to complete the flexible staff scheduling section of Part A of the Quality of Care Report. The Owner, authorized Corporate Officer or Administrator of the facility must complete the flexible staff scheduling signature block, acknowledging their OSDH authorization for Flexible Staff Scheduling.

[OAR Docket #16-506; filed 6-15-16]

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

[OAR Docket #16-497]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-22. [AMENDED]
317:30-5-22.1. [AMENDED]
Part 19. Certified Nurse Midwives
317:30-5-226. [AMENDED]
317:30-5-229. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
Part 75. Federally Qualified Health Centers
317:30-5-664.8. [AMENDED]
(Reference APA WF # 15-07A)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1902 of Social Security Act; 42 CFR 483.40
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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September 1, 2016
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Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-22. [AMENDED]
317:30-5-22.1 [AMENDED]
Gubernatorial approval:
June 30, 2015
Register publication:
32 Ok Reg 731
Docket number:
15-744
(Reference APA WF # 15-07)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed Obstetrical policy revisions decrease the number of ultrasounds and biophysical profiles/non-stress test for high risk pregnancy members. The proposed revisions also amend rules to allow for a general OB to request the high risk obstetrical (HROB) services/package for pregnant women to

ensure pregnant women with high risk conditions receive HROB services. The proposed General Coverage policy revisions revoke payment for removal of benign skin lesions for adults and eliminate coverage for adult sleep studies. Further proposed revisions to Obstetrical policy modify the billing and payment methodology for obstetrical care. Additional changes amend the General Coverage policy to clarify the separate note and signature requirement for providers performing tobacco use cessation counseling. The revisions clarify that the separate note requirement must address the 5A's and the signature is one office note signature provided at the end of the visit. An additional change includes general clean-up of terms.

CONTACT PERSON:

Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA) SoonerCare program, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

(A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgery center (ASC) or a Medicare certified hospital that offers outpatient surgical services.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies ~~or opportunistic infections~~.

(G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning. SoonerCare Choice members are exempt from the four visits per month limitation.

(H) Direct physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare member, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms as per current guidelines.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs administered by OHCA. A copy of the authorization, OKDHS form 08MA016E, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for the insertion and/or implantation of contraceptive devices during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.

(P) Genetic counseling.

(Q) Laboratory testing ~~(such as complete blood count (CBC), platelet count, or urinalysis) for monitoring members receiving chemotherapy, radiation therapy, or medications that require monitoring during treatment~~.

(R) Payment for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(S) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

~~(T) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:~~

~~(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;~~

~~(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;~~

~~(iii) Hold unrestricted license to practice medicine in Oklahoma;~~

~~(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;~~

~~(v) Seeing members without supervision;~~

~~(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;~~

~~(vii) Submit billing in own name with appropriate Oklahoma SoonerCare provider number;~~

~~(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.~~

(~~U~~T) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and signs off on the billed encounter;

(ii) Attending physician is present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(~~V~~U) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;

(ii) The contact must be documented in the medical record.

(~~W~~V) The payment to a physician for medically directing the services of a CRNA or for the direct supervision of the services of an Anesthesiologist Assistant (AA) is limited. The maximum allowable fee for the services of both providers combined is limited to the maximum allowable had the service been performed solely by the anesthesiologist.

~~(X) One pap smear per year for women of child bearing age. Two follow up pap smears are covered when medically indicated.~~

(W) Screening and follow up Pap Smears as per current guidelines.

(~~Y~~X) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(iv) Procedures considered experimental or investigational are not covered.

(~~Z~~Y) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

~~(i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.~~

~~(ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.~~

(Z) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure. Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.

(AA) Total parenteral nutritional therapy (TPN) for identified diagnoses and when prior authorized.

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(EE) Smoking and Tobacco Use Cessation Counseling for treatment of ~~individuals~~members using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the member to describe their smoking use;

(II) Advising the member to quit;

(III) Assessing the willingness of the member to quit;

(IV) Assisting the member with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, advanced registered nurse practitioners, certified nurse midwives, dentists, Oklahoma State Health Department and FQHC nursing staff, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS). It is reimbursed in addition to any other appropriate ~~global payments~~claims for obstetrical care, PCP care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note ~~and~~that addresses the 5A's and office note signature along with 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 and not separately billable.

(FF) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

(GG) Genetic testing is covered when medically necessary. Genetic testing may be considered medically necessary when the following conditions are met:

(i) The member displays clinical features of a suspected genetic condition or is at direct risk of inheriting the genetic condition in question (e.g., a causative familial variant has been identified); and

(ii) Clinical studies published in peer-reviewed literature have established strong evidence that the result of the test will positively impact the clinical decision-making or clinical outcome for the member; and

(iii) The testing method is proven to be scientifically valid for the identification of a specific genetically-linked inheritable disease or clinically important molecular marker; and

(iv) ~~Documentation is provided from a licensed genetic counselor or physician with genetic that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.~~A medical geneticist physician or licensed genetic counselor provides documentation that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.

(2) General coverage exclusions include the following:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) ~~Refractions and visual aids.~~Routine eye examinations for the sole purpose of prescribing glasses or visual aids, determination of refractive state, treatment of refractive errors or purchase of lenses, frames or visual aids.

(E) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomies.

(I) Medical services considered experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(O) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(P) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(Q) Speech and Hearing services.

(R) Mileage.

(S) A routine hospital visit on the date of discharge unless the member expired.

(T) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(U) Inpatient chemical dependency treatment.

(V) Fertility treatment.

(W) Payment for removal of benign skin lesions ~~unless medically necessary~~.

(X) Sleep studies.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. For services rendered to a minor child, the child's parent or court-appointed legal guardian must provide written authorization prior to the service being rendered, unless there is an explicit state or federal exception to this requirement. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.

(A) All residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25,317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements are not authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements is proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency.

(7) **General exclusions.** The following are excluded from coverage for members under the age of 21:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(G) Non-therapeutic hysterectomies.

(H) Medical Services considered experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(L) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(M) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(O) Mileage.

(P) A routine hospital visit on date of discharge unless the member expired.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. Claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment ~~or~~and within one year of the date of service in order to be considered timely filed.

(1) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment ~~or~~and within one year from the date of service.

(2) If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for the denial.

317:30-5-22. Obstetrical care

~~(a) Obstetrical (OB) care is billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery is used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the ante partum visits. The ante partum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.~~

~~(b) Procedures paid separately from total obstetrical care are listed in (1) - (8) of this subsection.~~

(a) Providers of obstetrical services must bill each antepartum visit separately, utilizing the appropriate evaluation and management service code. The OHCA does not recognize the codes for "global obstetrical care" which bundle these services under a single procedure code. Delivery only and postpartum care services are also billed separately by the rendering provider.

(b) The following routine obstetrical services are covered as detailed below:

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form or form covering same elements as ACOG and the most recent version of the Oklahoma Health Care Authority's Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one assessment per provider and no more than two per pregnancy.

(2) Medically necessary real time ~~ante partum~~antepartum diagnostic ultrasounds will be paid ~~for~~ in addition to ~~ante partum~~antepartum care, delivery and ~~post partum~~postpartum obstetrical care under defined circumstances. To be eligible for payment, all ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One abdominal or vaginal ultrasound will be covered in the first trimester of pregnancy. The ultrasound must be performed by a ~~board certified~~Board Eligible/Board Certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Board Eligible/Board Certified Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with a certification in obstetrical ultrasonography.

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

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

(C) One additional detailed ultrasound is allowed by a Board Eligible/Board Certified Maternal Fetal Specialist or general obstetrician with documented specialty training in performing detailed ultrasounds. This additional ultrasound is allowed to identify or confirm a suspected fetal/maternal anomaly. This additional ultrasound does not require prior authorization. Any subsequent ultrasounds will require prior authorization.

(3) Standby attendance at Cesarean Section (C-Section), for the purpose of attending the baby, is compensable when billed by a physician or qualified health care provider not participating in the delivery.

(4) ~~Spinal anesthesia~~Anesthesia administered by the attending physician is a compensable service and ~~is~~may be billed separately from the delivery.

(5) ~~Amniocentesis is not included in routine obstetrical care and is billed separately.~~ Payment may be made for an evaluation and management service and a medically indicated amniocentesis on the same date of service. This is an exception to general information regarding surgery found at OAC 317:30-5-8.

(6) Additional payment is not made for the delivery of ~~twins~~multiple gestations. If one ~~twin~~fetus is delivered vaginally and ~~one is~~additional fetus(es) are delivered by C-section by the same physician, the higher level procedure is paid. If one ~~twin~~fetus is delivered vaginally and ~~one twin is~~ additional fetus(es) are delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at C-Section.

~~(7) One non-stress test and/or biophysical profile to confirm a suspected high risk pregnancy diagnosis. The non-stress test and/or biophysical profile must be performed by an active candidate or Board Certified diplomate in Maternal Fetal Medicine, or Board Certified Obstetrician-Gynecologist (OB-GYN).~~

(~~8~~7) Reimbursement is allowed for nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section may bill separately for the ~~prenatal~~antenatal and ~~the six weeks~~ postpartum office ~~visit~~visits.

(d) Procedures listed in (1) - (5) of this subsection are not ~~paid or not covered separately from total obstetrical care~~separately reimbursable.

(1) ~~Additional non-stress tests~~Non stress test, unless the pregnancy is determined medically high risk. See OAC 317:30-5-22.1.

(2) Standby at C-Section is not compensable when billed by a physician participating in delivery.

~~(3) Payment is not made for an assistant surgeon for obstetrical procedures that include prenatal or post partum care.~~

(~~4~~3) An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.

(~~5~~4) Fetal scalp blood sampling is considered part of ~~the total OB care~~DRG reimbursement.

(e) ~~Obstetrical coverage for children is the same as for adults with additional procedures being covered due to EPSDT provisions if determined to be medically necessary.~~Obstetrical coverage for children is the same as for adults. Additional procedures may be covered under EPSDT provisions if determined to be medically necessary.

(1) Services deemed medically necessary and allowable under federal Medicaid regulations are covered by the EPSDT/OHCA Child Health Program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.

(2) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-22.1. Enhanced services for medically high risk pregnancies

(a) **Enhanced services.** Enhanced services are available for pregnant women eligible for SoonerCare and are in addition to services for uncomplicated maternity cases. Women deemed high risk based on criteria established by the OHCA ~~may~~must receive prior authorization for medically necessary enhanced benefits which include:

(1) prenatal at risk ~~ante partum~~antepartum management;

(2) a combined maximum of ~~12~~five fetal non stress test(s) and biophysical profiles (additional units can be prior authorized for multiple fetuses)~~; and~~ with one test per week beginning at 32 weeks gestation and continuing to 38 weeks; and

(3) a maximum of ~~6 repeat~~three follow-up ultrasounds not covered under OAC 317:30-5-22(b)(2).

(b) **Prior authorization.** To receive enhanced services, the following documentation must be received by the OHCA Medical Authorizations Unit for review and approval:

(1) ACOG or other comparable comprehensive prenatal assessment;

(2) chart note identifying and detailing the qualifying high risk condition; and

(3) an OHCA High Risk OB Treatment Plan/Prior Authorization Request (CH-17) signed by a Board Eligible/Board Certified Maternal Fetal Medicine (MFM) specialist, or Board Eligible/Board Certified Obstetrician-Gynecologist (OB-GYN).

(c) **Reimbursement.** When prior authorized, enhanced benefits will be reimbursed as follows:

(1) ~~Ante partum~~Antepartum management for high risk is reimbursed to the primary obstetrical provider. If the primary provider of obstetrical care is not the MFM and wishes to request authorization of the ~~ante partum~~antepartum management fee, the OHCA CH-17 must be signed by the primary provider of OB care. Additionally, reimbursement for enhanced at risk ~~ante partum~~antepartum management is not made during an in-patient hospital stay.

(2) Non stress tests, biophysical profiles and ultrasounds ~~(~~[in addition to those covered under OAC 317:30-5-22(a)(2) subparagraphs (A) through (C)] are reimbursed when prior authorized.

(3) Reimbursement for enhanced at risk ~~ante-partum~~antepartum management is not available to physicians who already qualify for enhanced reimbursement as state employed physicians.

PART 19. CERTIFIED NURSE MIDWIVES

317:30-5-226. Coverage by category

(a) **Adults and children 21 and under.** Payment is made for certified nurse midwife services within the scope of practice as defined by state law including obstetrical care such as antepartum care, delivery, postpartum care, and care of the normal newborn during the first 28 days of life. Obstetrical care should be billed using the appropriate evaluation and management codes for antepartum care, as well as the appropriate delivery only and postpartum care services when rendered. Ultrasounds and other procedures for obstetrical care are paid in accordance with OAC 317:30-5-22(b).

~~(1) Providers must use OKDHS Form FSS-NB-1, or the eNB1 application on the Secure Website to notify the county DHS office of the child's birth. A claim may then be filed for charges for the baby under the case number and the baby's name and assigned person code.~~

~~(2) Charges billed on the mother's person code for services rendered to the child will be denied.~~

~~(3) Obstetrical care should be billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery should be used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. The date the patient was first seen must be on the claim form. Payment for total obstetrical care includes all routine care. Ultrasounds and other procedures reimbursed separately from total obstetrical care are paid in accordance with provisions found at OAC 317:30-5-22(b). For payment of total OB care, the provider must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB provider outside of antepartum visits. The antepartum care during the prenatal care period includes all care by the OB provider except major illness distinctly unrelated to the pregnancy.~~

(b) **Newborn.** Payment to nurse midwives for services to newborn is the same as for adults and children under 21. A newborn is an infant during the first 28 days following birth.

(1) Providers must use OKDHS Form FSS-NB-1, or the eNB1 application on the Secure Website to notify the county DHS office of the child's birth. A claim may then be filed for charges for the baby under the case number and the baby's name and assigned person code.

(2) Charges billed on the mother's person code for services rendered to the child will be denied.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

317:30-5-229. Reimbursement

In accordance with the Omnibus Budget Reconciliation Act of 1993, effective October 1, 1993, certified nurse midwife services include maternity services, as well as services outside the maternity cycle within the scope of their practice under state law.

(1) Medical verification of pregnancy is required. A ~~letter or~~ written statement from the physician or certified nurse midwife verifying the applicant is pregnant and the expected date of delivery is acceptable. Pregnancy may also be verified by submission of a copy of a laboratory report indicating the individual is pregnant.

(2) Newborn charges billed on the mother's person code will be denied.

(3) Providers must use OKDHS Form FSS-NB-1 to notify the county DHS office of the child's birth.

(4) ~~Obstetrical care should be billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery should be used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. The date the patient was first seen must be on the claim form. Payment for total obstetrical care includes all routine care performed by the attending provider. For payment of total OB care, the provider must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB provider outside of antepartum visits. The antepartum care during the prenatal care period includes all care by the OB provider except major illness distinctly unrelated to the pregnancy.~~ Obstetrical care should be billed using the appropriate evaluation and management codes for antepartum care, as well as the appropriate delivery only and postpartum care services when rendered.

PART 35. RURAL HEALTH CLINICS

317:30-5-356. Coverage for adults

Payment is made to rural health clinics for adult services as set forth in this Section.

(1) **RHC services.** Payment is made for one encounter per member per day. Payment is also limited to four visits per member per month. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-65.2 for exceptions to the four visit limit for children under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Additional preventive service exceptions include:

(A) **Obstetrical care.** A Rural Health Clinic should have a written contract with its physician, nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how obstetrical

care will be billed to SoonerCare, in order to avoid duplicative billing situations. The agreement should also specifically identify the physician's compensation for rural health and non-rural health clinic (other ambulatory) services.

(i) If the clinic compensates the physician, nurse midwife or advanced practice nurse to provide obstetrical care, then the clinic must bill the SoonerCare program for each prenatal visit using the appropriate CPT evaluation and management codes.

(ii) ~~If the clinic does not compensate its practitioners to provide obstetrical care, then the independent practitioner must bill the OHCA for prenatal care according to the global method described in the SoonerCare provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).~~If the clinic does not compensate its practitioners to provide obstetrical care, then the independent practitioner must bill the SoonerCare program for each prenatal visit using the appropriate CPT code described in the SoonerCare provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).

~~(iii) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.~~

(B) **Family planning services.** Family planning services are available only to members with reproductive capability. Family planning visits do not count as one of the four RHC visits per month.

(2) **Other ambulatory services.** Services defined as "other ambulatory" services are not considered a part of a RHC visit and are therefore billable to the SoonerCare program by the RHC or provider of service on the appropriate claim forms. Other ambulatory services are subject to the same scope of coverage as other SoonerCare services billed to the program, i.e., limited adult services and some services for under 21 subject to same prior authorization process. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-57, 317:30-5-59, and 317:30-3-60 for general coverage and exclusions under the SoonerCare program. Some specific limitations are applicable to other ambulatory services as set forth in specific provider rules and excerpted as follows: Coverage under optometrists for adults is limited to treatment of eye disease not related to refractive errors. There is no coverage for eye exams for the purpose of prescribing eyeglasses, contact lenses or other visual aids. (See OAC 317:30-5-431.)

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-664.8. Obstetrical care provided by Health Centers

(a) **Billing written agreement.** In order to avoid duplicative billing situations, a Health Center must have a written agreement with its physician, certified nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how obstetrical care will be billed. The agreement must specifically identify the service provider's compensation for Health Center core services and other health services that may be provided by the Center.

(b) **Prenatal or postpartum services.**

(1) If the Health Center compensates the physician, certified nurse midwife or advanced practice nurse for the provision of obstetrical care, then the Health Center bills the OHCA for each prenatal and postpartum visit separately using the appropriate CPT evaluation and management code(s) as provided in the Health Center billing manual.

(2) ~~If the clinic does not compensate the provider for the provision of obstetrical care, then the provider must bill the OHCA for prenatal care according to the global method described in the SoonerCare Traditional provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).~~If the clinic does not compensate its practitioners to provide obstetrical care, then the independent practitioner must bill the SoonerCare program for each prenatal visit using the appropriate CPT code described in the SoonerCare provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).

~~(3) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.~~

(c) **Delivery services.** Delivery services are billed using the appropriate CPT codes for delivery. If the clinic does not compensate the provider for the provision of obstetrical care, then the provider must be individually enrolled and bill for those services using his or her assigned provider number. The costs associated with the delivery must be excluded from the cost settlement/encounter rate setting process (see OAC 317:300-5-664.11).

[OAR Docket #16-497; filed 6-15-16]

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

[OAR Docket #16-499]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians

317:30-5-20. [AMENDED]
317:30-5-20.1. [NEW]
(Reference APA WF # 15-08)

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 410.32; Section 1902 of Social Security Act

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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15-739
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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Proposed urine drug screening policy establishes rules for the appropriate administration of urine drug screening and testing. Current policy does not specify controls on this service other than general medical necessity. Additionally, revisions are proposed to clean-up reimbursement language found in general laboratory services policy. The proposed Urine Drug Screening policy is also revised to add clarification to distinguish types of urine drug tests, and general clean-up for the administration of urine drug screenings. Lastly, proposed revisions include additional changes to reimbursement language for general laboratory services.

CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-20. Laboratory services

This Section covers the guidelines for payment of laboratory services by a provider in his/her office, a certified laboratory and for a pathologist's interpretation of laboratory procedures.

(1) **~~Covered lab~~Compensable services.** Providers may be ~~paid~~reimbursed for ~~covered~~compensable clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a provider refers specimen to a certified laboratory or a hospital laboratory serving outpatients, the certified laboratory or the hospital must bill for performing the test.

(A) Reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from CMS and have a current contract on file with the OHCA.

~~(B) Reimbursement rate for laboratory procedures is the lesser of the CMS National 60% fee or the local carrier's allowable (whichever is lower).~~

~~(C) Medically necessary laboratory services are covered.~~

(B) Only medically necessary laboratory services are compensable.

~~(2) **Compensable outpatient laboratory services.** Medically necessary laboratory services are covered.~~

(~~3~~2) **Non-compensable laboratory services.**

(A) Separate payment is not made for blood specimens obtained by venipuncture or urine specimens collected by a laboratory. These services are considered part of the laboratory analysis.

(B) Claims for inpatient full service laboratory procedures are not covered since this is considered a part of the hospital rate.

~~(C) Billing multiple units of nucleic acid detection, whether using the direct probe or amplified probe technique, for single infectious organisms when testing for more than one infectious organism in a specimen is not permissible.~~

(C) Billing multiple units of nucleic acid detection for individual infectious organisms when testing for more than one infectious organism in a specimen is not permissible. Instead, OHCA considers it appropriate to bill a single unit of a procedure code indicated for multiple organism testing.

(D) Laboratory services~~ not considered medically necessary are not covered.~~ must be medically indicated to be compensable.

(~~4~~3) **Covered services by a pathologist.**

(A) A pathologist may be paid for the interpretation of inpatient surgical pathology specimen~~. The appropriate CPT procedure code and modifier is~~

~~used.~~ when the appropriate CPT procedure code and modifier is used.

(B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or Ambulatory Surgery Center setting.

(~~5~~4) **Non-compensable services by a pathologist.** The following are non-compensable pathologist services:

~~(A) Tissue examinations for identification of teeth and foreign objects.~~

(~~B~~A) Experimental or investigational procedures.

(~~C~~B) Interpretation of clinical laboratory procedures.

317:30-5-20.1. Urine drug screening and testing

(a) **Purpose.** Urine Drug Testing (UDT) is performed for undisclosed drug use and/or abuse, and to verify compliance with treatment. Testing for drugs of abuse to monitor treatment compliance should be included in the treatment plan for pain management when chronic opioid therapy is involved.

(1) Qualitative (presumptive) drug testing may be used to determine the presence or absence of a drug or drug metabolite in the urine sample and is expressed as a positive or negative result. Qualitative testing can be performed by a CLIA waived or moderate complexity test, or by a high complexity testing method.

(2) Quantitative (definitive) drug testing is specific to the drug or metabolite being tested and is expressed as a numeric result or numeric level which verifies concentration.

(3) Specimen validity testing is used to determine if a urine specimen has been diluted, adulterated or substituted.Specimen validity tests include, but are not limited to, creatinine, oxidants, specific gravity, urine pH, nitrates and alkaloids.

(b) **Eligible providers.** Providers performing urine drug testing should have CLIA certification specific to the level of testing performed as described in 317:30-5-20(1)(A).

(c) **Compensable services.** Urine drug testing must be ordered by the physician or non-physician provider and must be individualized to the patient and the patient's medical history or assessment indicators as evidenced in the medical documentation.

(1) Compensable testing must be medically indicated as evidenced by patient specific indications in the medical record.

(A) Testing is only compensable if the results will affect patient care.

(B) Drugs or drug classes being tested should reflect only those likely to be present.

(2) The frequency of urine drug screening and/or testing is determined by the patient's history, patient's physical assessment, behavioral assessment, risk assessment, treatment plan and medication history.

(3) Quantitative (definitive) urine drug testing may be indicated for the following:

(A) To identify a specific substance or metabolite that is inadequately detected or undetectable by a qualitative (presumptive) test; or

(B) To definitively identify specific drugs in a large family of drugs; or

(C) To identify drugs when a definitive concentration of a drug is needed to guide management; or

(D) To identify a negative, or confirm a positive, qualitative (presumptive) result that is inconsistent with a patient's self-report, presentation, medical history or current prescribed medication plan; or

(E) To identify a non-prescribed medication or illicit use for ongoing safe prescribing of controlled substances.

(d) **Non-compensable services.** The following tests are not medically necessary and therefore not covered by the OHCA:

(1) Specimen validity testing is considered a quality control measure and is not separately compensable;

(2) Drug testing for patient sample sources of saliva, oral fluids, or hair;

(3) Testing of two different specimen types (urine and blood) from the same patient on the same date of service;

(4) Drug testing for medico-legal purposes (court ordered drug screening) or for employment purposes;

(5) Non-specific, blanket panel or standing orders for urine drug testing, custom panels specific for the ordering provider, routine testing of therapeutic drug levels or drug panels which have no impact to the member's plan of care;

(6) Scheduled and routine urine drug testing (i.e. testing should be random);

(7) Reflex testing for any drug is not medically indicated without specific documented indications;

(8) Confirmatory testing exceeding three specific drug classes at an interval of greater than every 30 days will require specific documentation in the medical record to justify the medical necessity of testing; and

(9) Quantitative (definitive) testing of multiple drug levels that are not specific to the patient's medical history and presentation are not allowed. Justification for testing for each individual drug or drug class level must be medically indicated as reflected in the medical record documentation.

(e) **Documentation requirements.** The medical record must contain documents to support the medical necessity of drug screening and/or testing. Medical records must be furnished on request and may include, but are not limited to, the following:

(1) A current treatment plan;

(2) Patient history and physical;

(3) Review of previous medical records if treated by a different physician for pain management;

(4) Review of all radiographs and/or laboratory studies pertinent to the patient's condition;

(5) Opioid agreement and informed consent of UDT, as applicable;

(6) List of prescribed medications;

(7) Risk assessment, as identified by use of a validated risk assessment tool/questionnaire, with appropriate risk stratification noted and utilized;

(8) Office/provider monitoring protocols, such as random pill counts; and

(9) Review of prescription drug monitoring data or pharmacy profile as warranted.

[OAR Docket #16-499; filed 6-15-16]

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

[OAR Docket #16-496]

RULEMAKING ACTION:
PERMANENT final adoption
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Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
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(Reference APA WF # 15-06)
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Subchapter 5. Individual Providers and Specialties
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(Reference APA WF # 15-06)
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n/a
ANALYSIS:
The proposed policy revisions restrict coverage for continuous positive airway pressure devices (CPAP) to children only.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-210.2. Coverage for children

(a) **Coverage.** Coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for children includes the specified coverage for adults found in OAC 317:30-5-211.1 through OAC 317:30-5-211.18. In addition the following are covered items for children only:

(1) Orthotics and prosthetics.

(2) Enteral nutrition is considered medically necessary for certain conditions in which, without the products, the member's condition would deteriorate to the point of severe malnutrition.

(A) Enteral nutrition must be prior authorized. PA requests must include:

(i) the member's diagnosis;

(ii) the impairment that prevents adequate nutrition by conventional means;

(iii) the member's weight history before initiating enteral nutrition that demonstrates oral intake without enteral nutrition is inadequate;

(iv) the percentage of the member's average daily nutrition taken by mouth and by tube; and

(v) prescribed daily caloric intake.

(B) Enteral nutrition products that are administered orally and related supplies are not covered.

(3) Continuous positive airway pressure devices (CPAP).

(b) **EPSDT.** Services deemed medically necessary and allowable under federal regulations may be covered by the EPSDT Child Health program even though those services may not be part of the SoonerCare program. These services must be prior authorized.

(c) **Medical necessity.** Federal regulations require OHCA to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or that are considered experimental.

[OAR Docket #16-496; filed 6-15-16]

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

[OAR Docket #16-505]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211.15. [AMENDED]
(Reference APA WF # 15-36)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed revisions remove specific quantity limits to diabetic testing supplies to replace with more general language about testing supplies being based on insulin use or type of diabetes. Proposed revisions also specify that a prior authorization may be required for supplies beyond the standard allowance.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.15. Supplies

~~(a)~~ The OHCA provides coverage for medically necessary supplies that are prescribed by the appropriate medical provider~~,medically necessary~~ and meet the special requirements below~~.~~:

~~(b) Special requirements:~~

(1) **Intravenous therapy.** Supplies for intravenous therapy are covered items. Drugs for IV therapy are covered items only as specified by the Vendor Drug program.

(2) **Diabetic supplies.** Glucose test strips and lancets are covered when medically necessary and prescribed by a physician, physician assistant, or an advanced practice nurse. ~~A maximum of 100 glucose test strips and 100 lancets per month are covered items for insulin dependent members and a maximum of 100 glucose test strips and 100 lancets per 90 days are covered for non insulin dependent members. Members diagnosed with gestational diabetes may receive a maximum of 150 glucose test strips and 150 lancets per month when the appropriate diagnostic classification for gestational diabetes is used. Diabetic supplies in excess of these parameters must be prior authorized.~~Testing supplies may be limited based on insulin use or type of diabetes. Prior authorization may be required for supplies beyond the standard allowance.

(3) **Catheters.** Permanent indwelling catheters, male external catheters, drain bags and irrigation trays are covered items. Single use self catheters when the member has a history of urinary tract infections is a covered item. The prescription from the attending physician must indicate such documentation is available in the member's medical record.

(4) **Colostomy and urostomy supplies.** Colostomy and urostomy bags and accessories are covered items.

[OAR Docket #16-505; filed 6-15-16]

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

[OAR Docket #16-483]

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ANALYSIS:
Proposed physician policy changes will allow payment for a joint injection and office visit if the claim is billed appropriately and medical documentation supports separate payments.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-9. Medical services

(a) **Use of medical modifiers.** The Physicians' Current Procedural Terminology (CPT) and the second level HCPCS provide for 2-digit medical modifiers to further describe medical services. Modifiers are used when appropriate.

(b) **Covered office services.**

(1) Payment is made for four office visits (or home) per month per member, for adults (over age 21), regardless of the number of physicians involved. Additional visits per month are allowed for services related to emergency medical conditions.

(2) Visits for the purpose of family planning are excluded from the four per month limitation.

(3) Payment is allowed for the insertion and/or implantation of contraceptive devices in addition to the office visit.

(4) Separate payment will be made for the following supplies when furnished during a physician's office visit.

(A) Casting materials

(B) Dressing for burns

(C) Contraceptive devices

(D) IV Fluids

(5) Payment is made for routine physical exams only as prior authorized by the OKDHS and are not counted as an office visit.

(6) Medically necessary office lab and X-rays are covered.

(7) Hearing exams by physician for members between the ages of 21 and 65 are covered only as a diagnostic exam to determine type, nature and extent of hearing loss.

(8) Hearing aid evaluations are covered for members under 21 years of age.

(9) IPPB (Intermittent Positive Pressure Breathing) is covered when performed in physician's office.

~~(10) Payment is made for both an office visit and an injection of joints performed during the visit if the joint injection code does not have a global coverage designation.~~

(~~11~~10) Payment is made for an office visit in addition to allergy testing.

(~~12~~11) Separate payment is made for antigen.

(~~13~~12) Eye exams are covered for members between ages 21 and 65 for medical diagnosis only.

(~~14~~13) If a physician personally sees a member on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(~~15~~14) Separate payment is made for the following specimen collections:

(A) Catheterization for collection of specimen; and

(B) Routine Venipuncture.

(~~16~~15) The Professional Component for electrocardiograms, electroencephalograms, electromyograms, and similar procedures are covered on an inpatient basis as long as the interpretation is not performed by the attending physician.

(~~17~~16) Cast removal is covered only when the cast is removed by a physician other than the one who applied the cast.

(c) **Non-covered office services.**

(1) Payment is not made separately for an office visit and rectal exam, pelvic exam or breast exam. Office visits including one of these types of exams should be coded with the appropriate office visit code.

(2) Payment cannot be made for prescriptions or medication dispensed by a physician in his office.

(3) Payment will not be made for completion of forms, abstracts, narrative reports or other reports, separate charge for use of office or telephone calls.

(4) Additional payment will not be made for mileage.

(5) Payment is not made for an office visit where the member did not keep appointment.

(6) Refractive services are not covered for persons between the ages of 21 and 65.

(7) Removal of stitches is considered part of post-operative care.

(8) Payment is not made for a consultation in the office when the physician also bills for surgery.

(9) Separate payment is not made for oxygen administered during an office visit.

(d) **Covered inpatient medical services.**

(1) Payment is allowed for inpatient hospital visits for all SoonerCare covered admissions. Psychiatric admissions must be prior authorized.

(2) Payment is allowed for the services of two physicians when supplemental skills are required and different specialties are involved.

(3) Certain medical procedures are allowed in addition to office visits.

(4) Payment for critical care is all-inclusive and includes payment for all services that day. Payment for critical care, first hour is limited to one unit per day.

(e) **Non-covered inpatient medical services.**

(1) For inpatient services, all visits to a member on a single day are considered one service except where specified. Payment is made for only one visit per day.

(2) A hospital admittance or visit and surgery on the same day would not be covered if post-operative days are included in the surgical procedure. If there are no post-operative days, a physician can be paid for visits.

(3) Drugs administered to inpatients are included in the hospital payment.

(4) Payment will not be made to a physician for an admission or new patient work-up when the member receives

surgery in out-patient surgery or ambulatory surgery center.

(5) Payment is not made to the attending physician for interpretation of tests on his own patient.

(f) **Other medical services.**

(1) Payment will be made to physicians providing Emergency Department services.

(2) Payment is made for two nursing facility visits per month. The appropriate CPT code is used.

(3) When payment is made for "Evaluation of arrhythmias" or "Evaluation of sinus node", the stress study of the arrhythmia includes inducing the arrhythmia and evaluating the effects of drugs, exercise, etc. upon the arrhythmia.

(4) When the physician bills twice for the same procedure on the same day, it must be supported by a written report.

[OAR Docket #16-483; filed 6-15-16]

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

[OAR Docket #16-480]

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317:30-5-47. [AMENDED]
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The proposed policy revisions clarify reimbursement methodology for DRG hospitals. DRG outlier payments to transferring hospitals, previously removed in emergency rules, is restored.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-41. Inpatient hospital coverage/limitations

(a) Covered hospital inpatient services are those medically necessary services which require an inpatient stay ordinarily furnished by a hospital for the care and treatment of inpatients and which are provided under the direction of a physician or dentist in an institution approved under OAC:317:30:5-40.1(a) or (b). ~~Effective October 1, 2005, claims for inpatient admissions provided on or after October 1st in acute care or critical access hospitals are reimbursed utilizing a Diagnosis Related Groups (DRG) methodology.~~Claims for inpatient admissions in acute care or critical access hospitals are reimbursed the lesser of the billed charges or the Diagnosis Related Groups (DRG) amount.

(b) **Inpatient status.** OHCA considers a member an inpatient when the member is admitted to the hospital and is counted in the midnight census. In situations when a member inpatient admission occurs and the member dies, is discharged following an obstetrical stay, or is transferred to another facility on the day of admission, the member is also considered an inpatient of the hospital.

(1) **Same day admission.** If a member is admitted and dies before the midnight census on the same day of admission, the member is considered an inpatient.

(2) **Same day admission/discharge ~~C~~ obstetrical and newborn stays.** A hospital stay is considered inpatient stay when a member is admitted and delivers a baby, even when the mother and baby are discharged on the date of admission (i.e., they are not included in the midnight census). This rule applies when the mother and/or newborn are transferred to another hospital.

(3) **Same day admission/discharges other than obstetrical and newborn stays.** In the event a member is admitted as an inpatient, but is determined to not qualify for an inpatient payment based on OHCA criteria, the

hospital may bill on an outpatient claim for the ancillary services provided during that time.

(4) **Discharges and Transfers.** A hospital inpatient is considered discharged from a hospital paid under the DRG-based payment system when:

~~(A) **Discharges.** A hospital inpatient is considered discharged from a hospital paid under the DRG-based payment system when:~~

(~~i~~A) The patient is formally released from the hospital; or

(~~ii~~B) The patient dies in the hospital; or

(~~iii~~C) The patient is transferred to a hospital that is excluded from the DRG-based payment system, or transferred to a distinct part psychiatric or rehabilitation unit of the same hospital. Such instances will result in two or more claims. Effective January 1, 2007, distinct part psychiatric and rehabilitation units excluded from the Medicare Prospective Payment System (PPS) of general medical surgical hospitals will require a separate provider identification number.

317:30-5-47. Reimbursement for inpatient hospital services

Reimbursement will be made for inpatient hospital services ~~rendered on or after October 1, 2005,~~ in the following manner:

(1) Covered inpatient services provided to eligible SoonerCare members admitted to in-state acute care and critical access hospitals will be reimbursed ~~at a prospectively set rate which compensates hospitals an amount per discharge for discharges classified according to the Diagnosis Related Group (DRG) methodology. For each SoonerCare member's stay, a peer group base rate is multiplied by the relative weighting factor for the DRG which applies to the hospital stay.~~ the lesser of the billed charges or the Diagnosis Related Group (DRG) amount. In addition to the billed charges or DRG payment, whichever is less, an outlier payment may be made to the hospital for very high cost stays. Additional outlier payment is applicable if ~~the DRG payment~~ either the amount billed by the hospital or DRG payment, whichever applies, is less than a threshold amount of the hospital cost. Each inpatient hospital claim is tested to determine whether the claim qualified for a cost outlier payment. Payment is equal to a percentage of the cost after the threshold is met.

(2) ~~The DRG payment~~The lesser of the billed charges or DRG amount and outlier, if applicable, represent full reimbursement for all non-physician services provided during the inpatient stay. Payment includes but is not limited to:

(A) laboratory services;

(B) prosthetic devices, including pacemakers, lenses, artificial joints, cochlear implants, implantable pumps;

(C) technical component on radiology services;

(D) transportation, including ambulance, to and from another facility to receive specialized diagnostic and therapeutic services;

(E) pre-admission diagnostic testing performed within 72 hours of admission; and

(F) organ transplants.

(3) Hospitals may submit a claim for payment only upon the final discharge of the patient or upon completion of a transfer of the patient to another hospital.

(4) Covered inpatient services provided to eligible members of the Oklahoma SoonerCare program, when treated in out-of-state hospitals will be reimbursed in the same manner as in-state hospitals.

(5) Cases which indicate transfer from one acute care hospital to another will be monitored under a retrospective utilization review policy to help ensure that payment is not made for inappropriate transfers.

(6) The transferring hospital will be paid the lesser of the calculated transfer fee or the DRG base payment amount for a non-transfer.

(~~6~~7) If the transferring or discharge hospital or unit is exempt from the DRG, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or units.

(~~7~~8) Covered inpatient services provided in out-of-state specialty hospitals may be reimbursed at a negotiated rate not to exceed 100% of the cost to provide the service. Negotiation of rates will only be allowed when the OHCA determines that the specialty hospital or specialty unit provides a unique (non-experimental) service required by SoonerCare members and the provider will not accept the DRG payment rate. Prior authorization is required.

(~~8~~9) New providers entering the SoonerCare program will be assigned a peer group and will be reimbursed at the peer group base rate for the DRG payment methodology or the statewide median rate for per diem methods.

(~~9~~10) When services are delivered via telemedicine to hospital inpatients, the originating site facility fee will be paid outside the DRG payment.

(~~10~~11) All inpatient services are reimbursed per the ~~DRG~~ methodology described in this section and/or as approved under the Oklahoma State Medicaid Plan.

[OAR Docket #16-480; filed 6-15-16]

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

[OAR Docket #16-486]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacies

317:30-5-72.1. [AMENDED]

(Reference APA WF # 15-15)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Oklahoma State Plan Attachment 3.1-A, Page 5a-1.1; 42 U.S.C. 1396r-8(d)(2)

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ANALYSIS:
Proposed pharmacy policy changes will reflect guidance in federal law regarding included and excluded prescription drug coverage and it will update the list of covered over-the-counter drugs. This proposal will also update items within the State Plan.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACIES

317:30-5-72.1. Drug benefit

OHCA administers and maintains an Open Formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The OHCA covers a drug that has been approved by the Food and Drug Administration (FDA) and whose manufacturers have entered into a drug rebate agreement with the Centers for Medicare and Medicaid Services (CMS), subject to the following exclusions and limitations.

(1) The following drugs, classes of drugs, or their medical uses are excluded from coverage:

(A) Agents used to promote fertility.

(B) Agents primarily used to promote hair growth.

(C) Agents used for cosmetic purposes.

(D) Agents used primarily for the treatment of anorexia or weight gain. Drugs used primarily for the treatment of obesity, such as appetite suppressants are not covered. Drugs used primarily to increase weight are not covered unless otherwise specified.

(E) Agents that are experimental or whose side effects make usage controversial.

(F) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or designee.

(G) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

(2) The drug categories listed in (A) through (E) of this paragraph are covered at the option of the state and are subject to restrictions and limitations. An updated list of products in each of these drug categories is included on the OHCA's public website.

(A) Agents used for the systematic relief of cough and colds. Antihistamines for allergies or antihistamine use associated with asthmatic conditions may be covered when medically necessary and prior authorized.

(B) Vitamins and Minerals. Vitamins and minerals are not covered except under the following conditions:

(i) prenatal vitamins are covered for pregnant women up to age 50;

(ii) fluoride preparations are covered for persons under 16 years of age or pregnant;

(iii) vitamin D, metabolites, and analogs when used to treat end stage renal disease are covered;

(iv) iron supplements may be covered for pregnant women if determined to be medically necessary;

(v) vitamin preparations may be covered for children less than 21 years of age when medically necessary and furnished pursuant to EPSDT protocol; and

(vi) some vitamins are covered for a specific diagnosis when the FDA has approved the use of that vitamin for a specific indication.

(C) Agents used for smoking cessation. A limited smoking cessation benefit is available.

(D) Coverage of non-prescription or over the counter drugs is limited to:

~~(i) Insulin, PKU formula and amino acid bars, other certain nutritional formulas and bars for children diagnosed with certain rare metabolic conditions;~~

(i) Insulin, PKU formula and amino acid bars, other certain nutritional formulas and bars for children diagnosed with certain rare metabolic conditions;

(ii) certain smoking cessation products;

(iii) family planning products;

(iv) OTC products may be covered if the particular product is both cost-effective and clinically appropriate; and

(v) prescription and non-prescription products which do not meet the definition of outpatient covered drugs, but are determined to be medically necessary.

(E) Coverage of food supplements is limited to PKU formula and amino acid bars for members diagnosed with PKU, other certain nutritional formulas and bars for children diagnosed with certain rare metabolic conditions when medically necessary and prior authorized.

(3) All covered outpatient drugs are subject to prior authorization as provided in OAC 317-30-5-77.2 and 317:30-5-77.3.

(4) All covered drugs may be excluded or coverage limited if:

(A) the prescribed use is not for a medically accepted indication as provided under 42 U.S.C. § 1396r-8; or

(B) the drug is subject to such restriction pursuant to the rebate agreement between the manufacturer and CMS.

[OAR Docket #16-486; filed 6-15-16]

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

[OAR Docket #16-509]

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RULES:
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317:30-5-740.1. [AMENDED]
317:30-5-741. [AMENDED]
317:30-5-742. [AMENDED]
317:30-5-742.2. [AMENDED]
317:30-5-743.1. [AMENDED]
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ANALYSIS:
Proposed policy replaces Inspection of Care language with the more appropriate Service Quality Review language to mirror practice and other policy changes. In addition, minor cleanup changes were made and the term outpatient was removed where referenced regarding behavioral health services to minimize confusion for Therapeutic Foster Care providers. In addition, rules are also revised to broaden the definition of employment to align with Therapeutic Foster Care (TFC) agencies' employment practices with Treatment Parent Specialist (TPS).
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES

317:30-5-740. Eligible providers

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

(1) **Therapeutic foster care (TFC) agencies.** A foster care agency is an agency that provides foster care as defined in the Code of Federal Regulations (CFR) as "24-hour substitute care for children outside their own homes." Therapeutic foster care settings are foster family homes.

(2) **Therapeutic foster care homes.** Agency-supervised private family homes in which foster parents have been trained to provide individualized, structured services in a safe, nurturing family living environment for children and adolescents with significant emotional or behavioral problems who require a higher level of care than is found in a conventional foster home but do not require placement in a more restrictive setting. Therapeutic foster care homes are considered the least restrictive out-of-home placement for children with severe emotional disorders.

(b) **TFC Agency Requirements.** Eligible TFC agencies must have:

(1) current certification from the Oklahoma Department of Human services (OKDHS) as a child placing agency;

(2) a contract with the Division of Children and Family Services of the Oklahoma Department of Human Services, or OJA;

(3) a contract with the Oklahoma Health Care Authority; and

(4) a current accreditation status appropriate to provide ~~outpatient~~ behavioral health services in a foster care setting from:

(A) The Joint Commission formerly the Joint Commission on Accreditation (JCAHO), or

(B) the Rehabilitation Accreditation Commission (CARF), or

(C) the Council on Accreditation (COA), or

(D) the American Osteopathic Association (AOA).

317:30-5-740.1. Provider qualifications and requirements

(a) **Therapeutic foster care model.** Children in the TFC environment receive intensive individualized behavioral health and other support services from qualified staff. Because TFC children require exceptional levels of skill, time and supervision, the number of unrelated children placed per home is limited; no more than two TFC children in a home at any one time unless additional cases are specifically authorized by OKDHS, Division of Children and Family Services or OJA.

(b) **Treatment team.** TFC agencies are primarily responsible for treatment planning and coordination of the child's treatment team. This team is typically composed of an OKDHS or OJA caseworker, the child, the child's parents, others closely involved with the child and family. It also includes the following:

(1) **Certified Behavioral Health Case Manager II (CM).** A bachelors level team member that may provide support services and case management. In addition to the minimum requirements at OAC 317:30-5-240.3 (c), the CM must have:

(A) a minimum of one year of experience in providing direct care and/or treatment to children and/or families, and

(B) have access to weekly consultation with a licensed behavioral health professional or Licensure Candidate.

(C) CM must also follow requirements at OAC 317:30-5-241.3 for providing psychosocial rehabilitation services.

(2) **Licensed Behavioral Health Professional (LBHP).** A masters level professional that provides treatment and supervision for the treatment staff to maintain clinical standards of care and provide direct clinical services. In addition to the requirements at OAC 317:30-5-240.3(a) and (b), the LBHP or Licensure Candidate in a TFC setting must demonstrate a general professional or educational background in the following areas:

(A) case management, assessment and treatment planning;

(B) treatment of victims of physical, emotional, and sexual abuse;

(C) treatment of children with attachment disorders;

(D) treatment of children with hyperactivity or attention deficit disorders;

(E) treatment methodologies for emotionally disturbed children and youth;

(F) normal childhood development and the effect of abuse and/or neglect on childhood development;

(G) anger management;

(H) crisis intervention; and

(I) trauma informed methodology.

(3) **Licensed Psychiatrist and/or psychologist.** TFC agencies must provide staff with access to professional psychiatric or psychological consultation as deemed necessary for the planning, implementation and appropriate management of the resident's treatment. See OAC 317:30-5-240.3(a) and OAC 317:25-275.

(4) **Treatment Parent Specialist (TPS).** The TPS serve as integral members of the team of professionals providing services for the child. The TPS receives special training in mental health issues, behavior management and parenting techniques; and implements the in-home portion of the treatment plan with close supervision and support. They provide services for the child, get the child to therapy and other treatment appointments, write daily notes about interventions and attend treatment team meetings. The TPS must be under the supervision of a licensed behavioral health professional of the foster care agency and meet the following criteria:

(A) have a high school diploma or equivalent;

~~(B) be employed by the foster care agency as a foster parent complete with OSBI and OKDHS background screening;~~

(B) have an employment relationship with the foster care agency as a foster parent complete with OSBI and OKDHS background screening;

(C) completion of therapeutic foster parent training outlined in this section;

(D) have a minimum of twice monthly face to face supervision with the licensed, or under-supervision for licensure, LBHP, independent of the child's family therapy;

(E) have weekly contact with the foster care agency professional staff; and

(F) complete required annual trainings.

(c) **Agency assurances.** The TFC agency must ensure that each individual that renders treatment services (whether employed by or contracted by the agency) meets the minimum provider qualifications for the service. Individuals eligible for direct enrollment must have a contract on file with the Oklahoma Health Care Authority.

(d) **Policies and Procedures.** Eligible TFC agency providers that are defined in section OAC 317:30-5-740(a) shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

(1) pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;

(2) treatment of victims of physical, emotional, and sexual abuse;

(3) treatment of children with attachment disorders;

(4) treatment of children with hyperactive or attention deficit disorders;

(5) normal childhood development and the effect of abuse and/or neglect on childhood development;
(6) treatment of children and families with substance use disorders;
(7) the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
(8) anger management;
(9) inpatient authorization procedures;
(10) crisis intervention;
(11) grief and loss issues for children in foster care;
(12) the significance/value of birth families to children receiving ~~outpatient~~ behavioral health services in a foster care setting; and
(13) trauma informed methodology.

317:30-5-741. Coverage by category

(a) **Adults.** ~~Outpatient Behavioral Health Services~~Behavioral health services in ~~Therapeutic Foster~~ therapeutic foster care settings are not covered for adults.

(b) **Children.** ~~Outpatient behavioral~~Behavioral health services are allowed in therapeutic foster care settings for certain children and youth as medically necessary. The children and youth receiving services in this setting have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must continually meet medical necessity criteria to be eligible for coverage in this setting.

(c) **Medical necessity criteria.** Medical necessity criteria is delineated as follows:

(1) A diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate as defined in OAC 317:30-5-240.3(a) and (b) within the 30 day period resulting in a diagnosis from the most recent edition of "the Diagnostic and Statistical Manual of Mental Disorders"(DSM) with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.

(2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The legal guardian/parent of the child (OKDHS/OJA if custody child) agrees to actively participate in the child's treatment needs and planning.

317:30-5-742. Description of services

(a) Treatment services must be provided in the least restrictive, non-institutional therapeutic milieu. The foster care setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting.

(b) ~~Outpatient behavioral~~Behavioral health services must include an individual plan of care for each member served. The individual plan of care requirements are set out in OAC 317:30-5-742.2(b)(1). Treatment services in a therapeutic foster care setting may include an array of services listed in (1) - (6) of this subsection as provided in the individual plan of care. Services include, but may not be limited to:

(1) Individual, family and group therapy;
(2) Substance abuse/chemical dependency education, prevention, and therapy;
(3) Psychosocial rehabilitation and support services;
(4) Behavior management
(5) Crisis intervention; and
(6) Case Management.

317:30-5-742.2. Individual plan of care and prior authorization of services

(a) All ~~outpatient~~ behavioral health services must be prior authorized by the designated agent of the Oklahoma Health Care Authority before the service is rendered by an eligible service provider. Without prior authorization, payment is not authorized. Requests for behavioral health services in a foster care setting may be approved for a maximum of three months per extension request.

(b) All ~~outpatient~~ behavioral health services in a foster care setting are provided as a result of an individual assessment of the members needs and documented in the individual plan of care.

(1) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by an LBHP or Licensure Candidate.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the child and parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include all related diagnoses from the most recent DSM edition. The assessment must contain but is not limited to the following:

(i) Date, to include month, day and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial and last name;

(iv) Gender;

(v) Birth Date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Signature of parent or guardian participating in face-to-face assessment. Signature required for members over the age of 14;

(xiv) Bio-Psychosocial information which must include:

(I) Identification of the member's strengths, needs, abilities and preferences;

(II) History of the presenting problem;

(III) Previous psychiatric treatment history, include treatment for psychiatric; substance use; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, Drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, including Department of Human Services involvement;

(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;

(VIII) Educational attainment, difficulties and history;

(IX) Cultural and religious orientation;

(X) Vocational, occupational and military history;

(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;

(XII) Marital or significant other relationship history;

(XIII) Recreation and leisure history;

(XIV) Legal or criminal record, including the identification of key contacts, (e.g. attorneys, probation officers~~, etc.~~);

(XV) Present living arrangements;

(XVI) Economic resources;

(XVII) Current support system including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding but not limited to the following:

(I) Physical presentation, such as general appearance, motor activity, attention and alertness~~, etc.~~;

(II) Affective process, such as mood, affect, manner and attitude~~, etc.~~;

(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory~~, etc.~~; and

(IV) All related diagnoses from the most recent addition of the DSM.

(xvi) Pharmaceutical information to include the following for both current and past medications;

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis;

(xviii) Signature and credentials of the qualified practitioner who performed the face-to-face behavioral assessment.

(2) **Individual plan of care requirement.**

(A) **Signature Requirement.** A written individual plan of care following a comprehensive evaluation for each member must be formulated by the provider agency staff within 30 days of admission with documented input from the member, legal guardian (OKDHS/OJA) staff, the foster parent (when applicable) and the treatment provider(s). It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and have them fax back their signature; however, the provider must obtain the original signature for the clinical file within 30 days. No stamped or photocopied signatures are allowed. This plan must be revised and updated ~~each 90 days~~every three months with documented involvement of the legal guardian and resident.

(B) **Individualization.** The individual plan of care must be individualized and take into account the member's age, history, diagnosis, assessed functional levels, culture, and the effect of past and current traumatic experiences in the life of the member. It includes the member's documented diagnosis, appropriate goals, and corresponding reasonable and attainable objectives and action steps within the expected time lines. Each member's individual plan of care is to also address the provider agency's plans with

regard to the provision of services. Each plan of care must clearly identify the type of services required to meet the child's treatment needs and frequency over a given period of time.

~~(C) Requests for outpatient behavioral services in a foster care setting will be approved for a maximum of three months.~~

(~~D~~C) **Qualified professional.** This service is performed by an LBHP or Licensure Candidate.

(~~E~~D) **Time requirements.** Individual plan of care updates must be conducted face-to-face and are required every three months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the qualified practitioner and member.

(~~F~~E) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

(i) member strengths, needs, abilities, and preferences(SNAP);

(ii) identified presenting challenges, problems, needs and diagnosis;

(iii) specific goals for the member;

(iv) objectives that are specific, attainable, realistic, and time-limited;

(v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria;

(ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;

(x) updates to goals, objectives, service provider, services, and service frequency, must be documented within the individual plan of care until the review/update is due.

(xi) individual plan of care updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis, individual plan of care goals and/ or objectives;

(II) progress, or lack of, on previous individual plan of care goals and/or objectives;

(III) a statement documenting a review of the current individual plan of care and an explanation if no changes are to be made to the individual plan of care and a statement addressing the status of identified problem behaviors that lead to placement must be included;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date.

(3) **Description of Services.** Agency services include:

(A) **Individual, family and group therapy.** See OAC 317:30-5-241.2(a), (b), and (c).

(B) **Crisis/behavior management and redirection.** The provider agency must provide crisis/behavior redirection by agency staff as needed 24 hours per day, 7 days per week. The agency must ensure staff availability to respond to the residential foster parents in a crisis to stabilize members' behavior and prevent placement disruption. This service is to be provided to the member by an LBHP.

(C) **Discharge planning.** The provider agency must develop a discharge plan for each member. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow-up care and outlines plans that are in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Oklahoma Department of Human Services or the Office of Juvenile Affairs must be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan is to include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.

(D) **Substance use /chemical dependency use therapy.** Substance use/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance use and/or chemical dependency. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, addiction or nicotine use and addiction. This service is to be provided to the member by an LBHP or Licensure Candidate.

(E) **Substance Use Rehabilitation Services.** ~~Definition.~~ Covered ~~outpatient~~ substance use rehabilitation services are provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance use rehabilitation services is to begin, maintain, and/or enhance recovery from alcoholism,

problem drinking, drug use, drug dependency addiction or nicotine use and addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency approved curriculum based education and skills training. This service is to be provided to the member by a CM II.

(F) **Psychosocial rehabilitation (PSR).**

(i) ~~Definition.~~ PSR services are face-to-face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency approved curriculum based education and skills training.

(ii) ~~Clinical restrictions.~~ This service is generally performed with only the members and the qualified provider, but may include a member and the member's family/support system group that focuses on the member's diagnosis, symptom management, and recovery based curriculum. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires a licensed provider.

(iii) ~~Qualified providers.~~ CM II, LBHP or a Licensure Candidate and LBHP may perform PSR, following development of an individual plan of care curriculum approved by an LBHP or Licensure Candidate. PSR staff must be appropriately and currently trained in a recognized behavioral/ management intervention program such as MANDT or CAPE or trauma informed methodology. The CM II must have immediate access to an LBHP who can provide clinical oversight of the CM II and collaborate with the CM II in the provision of services. A minimum of one monthly face-to-face consultation with an LBHP is required.

(iv) ~~Group sizes.~~ The maximum staffing ratio is eight to one for children under the age of eighteen.

(v) Limitations.

(I) ~~Location.~~ In order to develop and improve the member's community and interpersonal functioning and self-care abilities, PSR services may take place in settings away from the ~~outpatient~~ behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(II) ~~Eligibility for PSR services.~~ PSR services are intended for children with Serious Emotional Disturbance (SED), and children with other emotional or behavioral disorders. Children under age 6, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity, are not eligible for PSR services.

(III) ~~Billing limits.~~ PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to compliment more intensive behavioral health therapies. Service limits are based on the member's needs according to the CAR or other approved tool, the requested placement based on the level of functioning rating, medical necessity, and best practice. Service limitations are designed to help prevent rehabilitation diminishing return by remaining within reasonable age and developmentally appropriate daily limits.

(vi) ~~Progress Notes.~~ In accordance with OAC 317:30-5-241.1, the behavioral health individual plan of care developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, measurable, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level.

(I) Start and stop times for each day attended and the physical location in which the service was rendered;

(II) Specific goal(s) and objectives addressed during the session/group;

(III) Type of Skills Training provided each day and/or during the week including the specific curriculum used with member;

(IV) Member satisfaction with staff intervention(s);

(V) Progress, or barriers made towards goals, objectives;

(VI) New goal(s) or objective(s) identified;

(VII) Signature of the qualified provider; and

(VIII) Credentials of the qualified provider;

(vii) Additional documentation requirements. Documentation of ongoing consultation and/or collaboration with an LBHP or Licensure Candidate related to the provision of PSR services.

(viii) Non-Covered Services. The following services are not considered PSR and are not reimbursable:

(I) room and board;

(II) educational costs;

(III) supported employment; and

(IV) respite.

(G) **Social skills redevelopment.** Goal directed activities for each member to restore, retain and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual plan of care. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development. This service is to be provided to the member by the Treatment Parent Specialist (TPS). Services rendered by the TPS are limited to 1.5 hours daily.

317:30-5-743.1. ~~Inspection of Care~~Service Quality Review

~~There will be an on site Inspection of Care of each Therapeutic Foster Care (TFC) agency that provides care to members which will be performed by the OHCA or its designated agent. The OHCA will designate the members of the Inspection of Care Team. This team will consist of two team members and will be comprised of Licensed Behavioral Health Professionals and/or Registered Nurses. The Inspection may include observation and contact with members. The Inspection of Care (IOC) review will consist of members present or listed as facility residents at the beginning of the Inspection of Care visit as well as members on which claims have been filed with OHCA for TFC services. The review includes validation of certain factors, all of which must be met for the services to be compensable. Following the on site inspection, the Inspection of Care Team will report its findings to the agency. The agency will be provided with written notification if the findings of the Inspection of Care have resulted in any deficiencies. A copy of the final report will be sent to the agency's accrediting agency. Deficiencies found during the IOC may result in a recoupment of the compensation received for that service. The individual plan of care is considered to be critical to the integrity of care and treatment and must be completed within the time lines designated at OAC 317:30-5-742.2. If the individual plan of care is missing or it is found that the child did not meet medical necessity criteria at any time, all paid services will be recouped for each day the individual plan of care was missing from the date the plan of care was due for completion.~~

There will be an on-site Service Quality Review (SQR) performed by the OHCA or its designated agent of each Therapeutic Foster Care (TFC) agency that provides care to members. The OHCA will designate the members of the SQR Team. This team will consist of at least two team members and will be comprised of Licensed Behavioral Health Professionals and/or Registered Nurses. The SQR will consist of a survey of current members receiving services as well as members for which claims have been filed with OHCA for TFC services. Observation and contact with members may be incorporated. The review includes validation of certain factors, all of which must be met for the services to be compensable. Following the on-site inspection, the SQR Team will report its findings to the agency. The agency will be provided with written notification if the findings of the SQR have resulted in any deficiencies. A copy of the final report will be sent to the agency's accrediting body. Deficiencies found during the SQR may result in a recoupment of the compensation received for that service. The individual plan of care is considered to be critical to the integrity of care and treatment and must be completed within the time lines designated at OAC 317:30-5-742.2. If the individual plan of care is missing or it is found that the child did not meet medical necessity criteria at any time, all paid services will be recouped for each day the individual plan of care was missing from the date the plan of care was due for completion or the date from which medical necessity criteria was no longer met.

[OAR Docket #16-509; filed 6-15-16]

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

[OAR Docket #16-485]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 85. Advantage Program Waiver Services
317:30-5-763. [AMENDED]
(Reference APA WF # 15-14B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, 42 CFR 441.301, 441.710, and 441.730
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
September 1, 2016

SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 85. Advantage Program Waiver Services
317:30-5-763. [AMENDED]
Gubernatorial approval:
January 13, 2016
Register publication:
33 Ok Reg 365
Docket number:
16-124
(Reference APA WF # 15-14B)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
ADvantage Policy is revised to comply with 42 CFR 441.301 regarding conflict of interest provisions for case management services. These policy revisions are necessary as the regulation states providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, must not provide case management services or develop the person centered service plan. The State is currently out of compliance. Without the recommended changes, the State may be in risk of losing federal funding.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-763. Description of services

Services included in the ADvantage Program are ~~as follows~~:

(1) **Case ~~Management~~management.**

(A) Case ~~Management~~management services ~~are services that~~ assist a member in gaining access to medical, social, educational, or other services, regardless of payment source ~~of services,~~ that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish ~~waiver~~Waiver program eligibility. Case managers develop the member's comprehensive service plan ~~of care~~, listing only services ~~which are~~ necessary to prevent institutionalization of the member, as determined through the assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate service plan ~~of care~~ reviews. Case managers submit an individualized Form 02CB014, Services Backup Plan, on all initial service plans, annually at reassessment, and on updates as appropriate throughout the year, reflecting risk factors and measures in place to minimize risks.~~If~~ When a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay,~~and~~ helps the member transition from institution to home by updating the service plan, and preparing services to start on the date the member is discharged from the institution. Case ~~Managers~~managers must meet ADvantage Program minimum requirements for qualification and training prior to providing services to ADvantage members. Providers of ADvantage services for the member, or for those who have an interest in, or are employed by an ADvantage provider for the member must not provide case management or develop the person-centered service plan, except when the AA demonstrates the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area, also provides other ADvantage services. Prior to providing services to members receiving Consumer-Directed Personal Assistance Services and Supports (CD-PASS), ~~Case Managers~~case manager supervisors and case managers are required to receive training and demonstrate knowledge regarding the CD-PASS service delivery model, "Independent Living Philosophy," and demonstrate ~~competency in Person-centered planning~~ person-centered planning competency.

(B) Providers may only claim time for billable ~~Case Management~~case management activities described as ~~follows~~:

(i) ~~A billable case management activity is~~ any task or function ~~defined under~~per Oklahoma Administrative Code ~~OAC~~(OAC) 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training, or authority~~,~~ can perform on behalf of a member; and

(ii) ~~Ancillary~~ancillary activities, such as clerical tasks ~~like~~including, but not limited to, mailing, copying, filing, faxing, ~~drive~~driving time, or supervisory~~/~~and administrative activities are not billable case management activities~~,and although the~~. The administrative cost of these activities and other normal and customary business overhead costs ~~have been~~are included in the reimbursement rate for billable activities.

(C) Case ~~Management~~management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard ~~Rate~~rate: Case ~~Management~~management services are billed using a ~~Standard~~standard rate for reimbursement for billable service activities provided to a member

who resides in a county with a population density greater than 25 persons per square mile.

(ii) Very ~~Rural/Difficult Service Area Rate~~rural/difficult service area rate: Case ~~Management~~management services are billed using a ~~Very Rural/Difficult Service Area~~very rural/difficult service area rate for billable service activities provided to a member who resides in a county with a population density equal to, or less than 25 persons per square mile. ~~An exception would be~~Exceptions are services to members ~~that~~who reside in Oklahoma Department of Human Services~~/~~ Aging Services ~~Division (OKDHS/ASD)~~(DHS AS) identified zip codes in Osage County adjacent to the metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the ~~Standard~~standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to, or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. ~~They~~Services are provided on a short-term basis ~~because of~~due to the primary caregiver's absence or need for relief ~~of the primary caregiver~~. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care ~~will~~is only ~~be~~ utilized when other sources of care and support ~~have been~~are exhausted. Respite care ~~will~~is only ~~be~~ listed on the service plan ~~of care~~ when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the service plan ~~of care~~.

(B) ~~In Home Respite~~In-home respite services are billed per 15-minute ~~unit~~units of service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) ~~Facility Based Extended Respite~~Facility-based extended respite is filed for a per diem rate ~~if~~when provided in ~~Nursing Facility~~a nursing facility. Extended ~~Respite~~respite must be at least eight hours in duration.

(D) ~~In Home Extended Respite~~In-home extended respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(3) **Adult ~~Day Health Care~~ day health care.**

(A) Adult ~~Day Health Care~~day health care is furnished on a regularly scheduled basis for one or more days per week in an outpatient setting. It provides both health and social services ~~which are~~ necessary to ensure the member's optimal functioning ~~of the member~~. Physical, occupational, and~~/or~~ speech therapies ~~may~~are only ~~be~~ provided as an enhancement to the basic ~~Adult Day Health Care~~adult day health care service when authorized by the service plan ~~of care~~ and are billed as a separate procedure. Meals provided as part of this service do not constitute a full nutritional regimen. Personal ~~Care~~care service enhancement in ~~Adult Day Health Care~~adult day health care is assistance in bathing,~~and/or~~ hair ~~washing~~care, or laundry service, authorized by the service plan ~~of care~~ and billed as ~~a~~ separate ~~procedure~~procedures. Most assistance with activities of daily living (ADL), such as eating, mobility, toileting, and nail care~~,~~ are ~~services that are~~ integral services to ~~the Adult Day Health Care~~adult day health care service and are covered by the ~~Adult Day Health Care~~adult day health care basic reimbursement rate. Assistance with bathing, hair care, or laundry service is not a usual and customary adult day health care service. Enhanced personal care in adult day health care for assistance with bathing, hair care, or laundry ~~will be~~service is authorized when an ADvantage ~~waiver~~Waiver member who uses adult day health care requires assistance with bathing, hair care, or laundry service to maintain his or her health and safety.

(B) Adult ~~Day Health Care~~day health care is a 15-minute unit of service. No more than ~~8~~eight hours,~~(32 units)~~ 32 units, are authorized per day. The number of units of service a member may receive is limited to the number of units approved on the member's approved service plan ~~of care~~.

(C) Adult ~~Day Health Care Therapy Enhancement~~day health care therapy enhancement is a maximum of one session unit per day ~~unit~~ of service.

(D) Adult ~~Day Health Personal Care Enhancement~~day health personal care enhancement is a maximum of one unit per day ~~unit~~ of bathing, hair care, or laundry service.

(4) **Environmental ~~Modifications~~modifications.**

(A) Environmental ~~Modifications~~modifications are physical adaptations to the home, required by the member's service plan ~~of care, which~~that are necessary to ensure the health, welfare, and safety of the ~~individual,~~member or ~~which~~ enable the ~~individual~~member to function with greater independence in the home and that without ~~which~~such, the member would require institutionalization. Adaptations or improvements to the home ~~which are~~ not of direct medical or remedial benefit to the ~~waiver~~Waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized ~~Medical Equipment~~medical equipment and ~~Supplies~~supplies.**

(A) Specialized ~~Medical Equipment~~medical equipment and ~~Supplies~~supplies are devices, controls, or appliances specified in the service plan ~~of care, which~~that enable members to increase their

abilities to perform ~~activities of daily living~~ADLs, or to perceive, control, or communicate with the environment in which they live. ~~Also included are items necessary~~Necessary items for life support, ancillary supplies, and equipment necessary ~~to~~for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan are also included. This service excludes any equipment and/or supply items ~~which are~~ not of direct medical or remedial benefit to the ~~waiver~~Waiver member. This service is necessary to prevent institutionalization.

(B) Specialized ~~Medical Equipment~~medical equipment and ~~Supplies~~supplies are billed using the appropriate ~~HCPC procedure code~~HealthCare Common Procedure Code (HCPC). Reoccurring supplies ~~which are~~ shipped and delivered to the member are compensable only when the member remains eligible for ~~waiver~~Waiver services, continues to reside in the home, and is not institutionalized in a hospital, skilled nursing facility, or nursing home. It is the provider's responsibility to verify the member's status prior to shipping and delivering these items. Payment for medical supplies is limited to the ~~the~~ SoonerCare rate if established, to the Medicare rate, or to actual acquisition cost, plus 30 percent. All services must ~~be~~have prior ~~authorized~~authorization.

(6) **Advanced ~~Supportive/Restorative~~Assistance supportive/restorative assistance.**

(A) Advanced ~~Supportive/Restorative~~Assistance supportive/restorative assistance services are maintenance services used to assist a member who has a chronic, yet stable~~,~~ condition. These services assist with ~~activities of daily living which~~ADLs that require devices and procedures related to altered body functions. ~~This service is~~These services are for maintenance only and ~~is~~are not utilized as ~~a~~ treatment ~~service~~services.

(B) Advanced ~~Supportive/Restorative Assistance~~ supportive/restorative assistance service is billed per 15-minute unit of service. The number of units of ~~this~~ service a member may receive is limited to the number of units approved on the service plan ~~of care~~.

(7) **Nursing.**

(A) Nursing services are services listed in the service plan ~~of care which~~that are within the scope of the Oklahoma Nursing Practice Act.~~and~~ These services are provided by a registered ~~professional~~ nurse (RN), ~~or~~a licensed practical nurse (LPN), or a licensed vocational nurse (LVN) under the supervision of ~~a registered nurse,~~an RN licensed to practice in the ~~State~~state. Nursing services may be provided on an intermittent or part-time basis or may be comprised of continuous care. The provision of the nursing service ~~will work~~works to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or ~~preventive~~preventative nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services ~~which would be~~ reimbursable under either Medicaid or ~~Medicare's~~the Medicare Home Health Program. This service primarily provides nurse supervision to the ~~Personal Care Assistant~~personal care assistant or to the ~~Advanced Supportive/Restorative Assistance Aide~~ advanced supportive/restorative assistance aide and assesses the member's health and prescribed medical services to ensure ~~that~~ they meet the member's needs as specified in the service plan ~~of care~~. A nursing assessment/evaluation, on-site visit is made to each member for whom ~~Advanced Supportive/Restorative Assistance~~ advanced supportive/restorative assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report ~~will be~~is made to the ADvantage Program case manager in accordance with review schedule determined ~~in consultation~~ between the ~~Case Manager~~case manager and ~~the Nurse~~nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The ADvantage Program case manager may recommend authorization of ~~Nursing~~nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of the:

(I) ~~the~~ member's general health, functional ability, and needs; and/or

(II) ~~the~~ adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs, including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides ~~in accordance with~~per rules and regulations for the delegation of nursing tasks ~~as~~ established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the ADvantage Program case manager may recommend authorization of ~~Nursing~~nursing services ~~for the following~~to:

(I) ~~preparing~~prepare a one-week supply of insulin syringes for a ~~blind diabetic~~person who is blind and has diabetes, who can safely self-inject the medication but cannot fill ~~his/her~~his or her own syringe. This service ~~would include~~includes monitoring the member's continued ability to self-administer the insulin;

(II) ~~preparing~~prepare oral medications in divided daily compartments for a member who self-administers prescribed medications but

needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) ~~monitoring~~monitor a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence~~,~~ or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) ~~providing~~provide nail care for the ~~diabetic~~ member with diabetes or member ~~with~~who has circulatory or neurological compromise;

(V) ~~providing~~provide consultation and education to the member, member's family, ~~and/~~or other informal caregivers identified in the service plan~~,~~ regarding the nature of the member's chronic condition. ~~Provide skills~~Skills training, ~~(including return skills demonstration to establish competency)~~ including return skills demonstration to establish competency, to the member, family, ~~and/~~ or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures are also provided.

(C) Nursing service ~~can be billed for~~includes interdisciplinary team planning and recommendations for the member's service plan development and/or assessment/evaluation ~~services~~, or~~,~~ for other services within the scope of the Oklahoma Nursing Practice Act, including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for interdisciplinary team planning and recommendations for the member's service plan and for performing assessment/evaluations, ~~assessment/evaluation/service plan development nursing services and other~~ another procedure ~~codesare~~code is used to bill for all other authorized nursing services. A maximum of eight units per day of nursing for ~~assessment /evaluationand/or~~ service plan development and assessment evaluation are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement~~,~~ to provide ~~the nurse assessment identified in~~ the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied ~~if~~when the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Skilled ~~Nursing Services~~nursing services.**

(A) Skilled ~~Nursing Services~~nursing services listed in the service plan ~~of carewhich~~that are within the scope of the ~~State's~~state's Nurse Practice Act and are ordered by a licensed ~~medical~~ physician, osteopathic physician, physician assistant, or an advanced practice nurse and are provided by ~~a registered professional nurse, or licensed practical or vocational nurse~~an RN, or an LPN or LVN under the supervision of a registered nurse, licensed to practice in the ~~State~~state. Skilled ~~Nursing~~nursing services provided in the member's home or other community setting are services requiring the specialized skills of a licensed nurse. The scope and nature of these services are intended for treatment of a disease or a medical condition and are beyond the scope of ADvantage ~~Nursing Services~~nursing services. These intermittent nursing services are targeted toward a prescribed treatment or procedure that must be performed at a specific time or other predictable rate of occurrence. ~~It is the responsibility of the RN to contact~~The RN contacts the member's physician to obtain ~~any~~ necessary information or orders pertaining to the member's care ~~of the member~~. ~~If~~When the member has an ongoing need for service activities~~, which require~~ requiring more or less units than authorized, the RN ~~shall~~must recommend, in writing, that the ~~Plan of Care~~service plan be revised.

(B) Skilled ~~Nursing~~nursing services are provided on an intermittent or part-time basis, and billed ~~in units of~~per 15-minute ~~increments~~units of service. ~~ADvantage~~ Skilled ~~Nursing~~nursing services are provided when nursing services are not available through Medicare or other sources or when SoonerCare plan nursing services ~~furnished under SoonerCare plan limits~~ are exhausted. Amount, frequency, and duration of services are prior-authorized in accordance with the member's service plan.

(9) **Home ~~Delivered Meals~~delivered meals.**

(A) Home ~~Delivered Meals~~delivered meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one-third of the ~~Recommended Daily Allowance~~dietary reference intakes as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home ~~Delivered Meals~~delivered meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is ~~limited on~~in accordance with the member's service plan ~~of care~~. The provider must obtain a signature from the member or the member's representative at the time the ~~meals are~~meal is delivered. In the event ~~that~~ the member is temporarily unavailable ~~(i.e., doctor's appointment, etc.)~~, such as at a doctor's appointment and the meal is left at the member's home, the provider must document the reason a signature ~~is~~was not obtained. The signature logs must be available for review.

(10) **Occupational ~~Therapy Services~~therapy services.**

(A) Occupational ~~Therapy~~therapy services are ~~those~~ services that increase functional independence

by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence enabling him or her to reside and participate in the community. Treatment involves the therapeutic use of self-care, work,~~and~~ play activities, and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written, therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the ~~limits~~limitations of ~~their~~his or her practice, working under the supervision of ~~the~~a licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services~~, where~~ when appropriate. The occupational therapist ~~will ensure~~ensures monitoring and documentation of the member's rehabilitative progress and ~~will report~~reports to the member's case manager and physician to coordinate the necessary addition ~~and/~~or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational ~~Therapy~~therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(11) **Physical ~~Therapy Services~~therapy services.**

(A) Physical ~~Therapy~~therapy services are those services that ~~prevent~~maintain or improve physical disability through the evaluation and rehabilitation of members disabled by pain, disease, or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the use of physical therapeutic means, such as massage, manipulation, therapeutic exercise, cold and/or heat therapy, hydrotherapy, electrical stimulation, and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written, therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the ~~limits~~limitations of ~~their~~his or her practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services~~, where~~ when appropriate. The licensed physical therapist ~~will ensure~~ensures monitoring and documentation of the member's rehabilitative progress and ~~will report~~reports to the member's case manager and physician to coordinate the necessary addition ~~and/~~or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical ~~Therapy~~therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(12) **Speech and ~~Language Therapy Services~~language therapy services.**

(A) Speech~~/Language Therapy~~ and language therapy services are those that ~~prevent~~maintain or improve speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease, or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve the use of therapeutic means, such as evaluation, specialized treatment, ~~and/~~or development, and oversight of a therapeutic maintenance program. Under a physician's order, a licensed ~~Speech/Language Pathologist~~speech and language pathologist evaluates the member's rehabilitation potential and develops an appropriate, written, therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the ~~limits~~limitations of ~~their~~his or her practice, working under the supervision of the licensed ~~Speech/Language Pathologist~~speech and language pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services~~, where~~ when appropriate. The ~~Pathologist will ensure~~speech and language pathologist ensures monitoring and documentation of the member's rehabilitative progress and ~~will report~~reports to the member's case manager and physician to coordinate the necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) ~~Speech/Language Therapy~~Speech and language therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice ~~Services~~services.**

(A) Hospice ~~is~~services are palliative and~~/or~~ comfort care provided to the member and ~~his/her~~his or her family when a physician certifies ~~that~~ the member has a terminal illness ~~and has six months or less to live~~, with a life expectancy of six months or less, and orders hospice care. ADvantage ~~Hospice Care~~hospice care is authorized for a ~~six-month~~six-month period, and requires ~~a~~ physician certification of a terminal illness and orders of hospice care. ~~If~~When the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member ~~thirty~~30-calendar days prior to the initial hospice authorization end date, and re-certify that the member has a terminal illness,~~and~~ has six months or less to live, and orders additional hospice care. After the initial authorization period, additional periods of ADvantage

~~Hospice~~hospice may be authorized for a maximum of ~~60~~60-calendar day increments with physician certification that the member has a terminal illness and ~~has~~ six months or less to live. A member's service plan that includes hospice care must comply with ~~waiver~~Waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional, and spiritual stresses ~~which are~~ experienced during the final stages of illness~~and during dying~~, through the end of life, and bereavement. The member signs a statement choosing hospice care instead of routine medical care ~~that has~~with the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the ~~terminal~~ illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom ~~control~~ and pain relief, home health aide and personal care services, physical, occupational and~~/or~~ speech ~~therapy~~therapies, medical social services, dietary counseling, and grief and bereavement counseling to the member and/or the member's family. ~~A Hospice plan of care must be developed by the hospice team in conjunction with the member's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage Hospice services.~~

(C) A hospice plan of care must be developed by the hospice team in conjunction with the member's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the member to maintain ADL and basic functional skills. A member who is eligible for Medicare hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage hospice services.

(~~C~~D) Hospice services are billed per diem of service for days covered by a ~~Hospice~~hospice plan of care and ~~during which~~while the hospice provider is responsible for providing hospice services as needed by the member or member's family. The maximum total annual reimbursement for a member's ~~Hospice~~hospice care within a ~~twelve~~12-month period is limited to an amount equivalent to 85~~%~~ percent of the Medicare ~~Hospice Cap~~hospice cap payment, and must be authorized on the member's service plan.

(14) **ADvantage ~~Personal Care~~personal care.**

(A) ADvantage ~~Personal Care~~personal care is assistance to a member in carrying out ~~activities of daily living~~ADLs, such as bathing, grooming, and toileting~~,~~ or in carrying out instrumental activities of daily living (IADLs), such as preparing meals and ~~doing~~ laundry service, to ~~assure personal health and safety of the individual~~ensure the member's personal health and safety, or to prevent or minimize physical health regression or deterioration. Personal ~~Care~~care services do not include service provision of a technical nature, ~~i.e.~~such as tracheal suctioning, bladder catheterization, colostomy irrigation, ~~and~~or the~~operation/maintenance~~ operation and maintenance of equipment of a technical nature.

(B) ADvantage ~~Home Care Agency Skilled Nursing~~home care agency skilled nursing staff working in coordination with an ADvantage ~~Case Manager~~case manager are responsible for the development and monitoring of the member's ~~Personal Care plan~~personal care services.

(C) ADvantage ~~Personal Care~~personal care services are prior-authorized and billed per 15-minute unit of service, with units of service limited to the number of units on the ADvantage approved service plan ~~of care~~.

(15) **Personal ~~Emergency Response System~~emergency response system.**

(A) Personal ~~Emergency Response System~~emergency response system (PERS) is an electronic device ~~which~~that enables ~~certain individuals~~members at high risk of institutionalization, to secure help in an emergency. ~~The individual~~Members may also wear a portable "help" button to allow for mobility. ~~The system~~PERS is connected to the person's phone and programmed to signal, ~~in accordance with~~per member preference, a friend, ~~a~~ relative, or a response center, once ~~a~~the "help" button is activated. ~~The response center is staffed by trained professionals.~~ For an ADvantage ~~Program~~ member to be eligible ~~to receive~~for PERS service, the member must meet all of the ~~following~~ service criteria~~:~~ in (i) through (vi). The

(i) member has a recent history of falls as a result of an existing medical condition that prevents the ~~individual~~member from getting up unassisted from a fall ~~unassisted~~;

(ii) member lives alone and ~~has no~~without a regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) member demonstrates the capability to comprehend the purpose of and activate the PERS;

(iv) member has a health and safety plan detailing the interventions beyond the PERS to ~~assure~~ensure the member's health and safety in ~~his/her~~his or her home;

(v) member has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the

member's underlying medical condition causing the falls; and~~,~~

(vi) The service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service, or PERS purchase ~~of PERS~~. All services are ~~prior authorized~~prior authorized in accordance with the ADvantage approved service plan ~~of care~~.

(16) **Consumer-Directed Personal Assistance Services and Support (CD-PASS).**

(A) ~~Consumer-Directed Personal Assistance Services and Supports~~CD-PASS are ~~Personal Services Assistance~~personal services assistance (PSA) and ~~Advanced Personal Services Assistance~~advanced personal services assistance (APSA) that enable ~~an individual~~a member in need of assistance to reside in their home and ~~in the~~ community of their choosing rather than in an institution; and to carry out functions of daily living, ~~self-care~~self-care, and mobility. CD-PASS services are delivered as authorized on the service plan. The member becomes the employer of record and employs the ~~Personal Services Assistant (PSA)~~PSA and~~/or~~ the ~~Advanced Personal Services Assistant (APSA)~~APSA.~~and~~ The member is responsible, with assistance from ADvantage Program Administrative Financial Management Services (FMS), for ensuring ~~that~~ the employment complies with ~~State~~state and ~~Federal Labor Law~~federal labor law requirements. The member/employer may designate an adult family member or friend, ~~an individual~~ who is not a PSA or APSA to the member, as an "authorized representative" to assist in executing ~~these~~the employer functions. The member/employer:

(i) recruits, hires and, as necessary, discharges the PSA or APSA;

(ii) ~~provides~~is solely responsible to provide instruction and training to the PSA or APSA on tasks ~~to be done~~ and works with the ~~Consumer Directed Agent/Case Manager~~consumer directed agent/case manager (CDA) to obtain ADvantage skilled nursing services assistance with training, when necessary. Prior to performing an ~~Advanced Personal Services Assistance~~APSA task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the ~~ASPA's~~APSA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within ~~Individual Budget Allocation~~individual budget allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and~~,~~

(v) provides tools and materials for work to be accomplished.

(B) The ~~service Personal Services Assistance~~services the PSA may provide include:

(i) assistance with mobility and ~~with transfer~~transferring in and out of bed, wheelchair, or motor vehicle, or ~~both~~all;

(ii) assistance with routine bodily functions that may include:

(I) bathing and personal hygiene;

(II) dressing and grooming; and

(III) eating, including meal preparation and cleanup;

(iii) assistance with ~~homemaker-type~~home services that may include shopping, laundry service, cleaning, and seasonal chores;

(iv) companion ~~type~~ assistance that may include letter writing, reading mail, and providing escort or transportation to participate in approved activities or events. "Approved activities or events," means community, civic participation guaranteed to all citizens including, but not limited to, exercise of religion, voting or participation in daily life activities in which exercise of choice and decision making is important to the member ~~that~~, and may include shopping for food, clothing, or other necessities, or for participation in other activities or events ~~that are~~ specifically approved on the service plan.

(C) ~~Advanced Personal Services Assistance are maintenance services provided to assist~~An APSA provides assistance with ADLs to a member with a stable, chronic condition ~~with activities of daily living,~~ when such assistance requires devices and procedures related to altered body function if such activities, in the opinion of the attending physician or licensed nurse, may be performed if the ~~individual~~member were physically capable, and the procedure may be safely performed in the home. ~~Advanced Personal Services Assistance is a~~Services provided by the APSA are maintenance ~~service~~services and ~~should~~are never ~~be~~ used as ~~a~~ therapeutic treatment. Members who develop medical complications requiring skilled nursing services while receiving ~~Advanced Personal Services Assistance should be~~APSA services are referred to ~~their~~his or her attending physician, who ~~may, if~~when appropriate, order home health services. ~~The service of Advanced Personal Services Assistance~~APSA includes assistance with health maintenance activities that may include:

(i) routine personal care for persons with ostomies,~~(including tracheotomies, gastrostomies and colostomies with well-healed stoma) and~~ including tracheotomies, gastrostomies, and colostomies with well-healed stoma, external, indwelling, and suprapubic catheters ~~which includes~~that include changing bags and soap and water hygiene around the ostomy or catheter site;

(ii) ~~remove~~removing external catheters, ~~inspect~~inspecting skin, and reapplication of same;

(iii) ~~administer~~administering prescribed bowel program, including use of suppositories and sphincter stimulation, and enemas ~~(Pre-packaged only) with members~~(pre-packaged only without contraindicating rectal or intestinal conditions;

(iv) ~~apply~~applying medicated (prescription) lotions or ointments~~,~~ and dry, non-sterile dressings to unbroken skin;

(v) ~~use~~using a lift for transfers;

(vi) manually ~~assist~~assisting with oral medications;

(vii) ~~provide~~providing passive range of motion (non-resistive flexion of joint) therapy, delivered in accordance with the service plan ~~of care,~~ unless contraindicated by underlying joint pathology;

(viii) ~~apply~~applying non-sterile dressings to superficial skin breaks or abrasions; and

(ix) ~~use Universal~~using universal precautions as defined by the ~~Center~~Centers for Disease Control and Prevention.

(D) ~~The service FinancialManagement Services~~FMS are program administrative services provided to participating CD-PASS ~~employer/members~~members/employers by ~~theOKDHS/ASD~~DHS AS. ~~Financial Management Services~~FMS are ~~employer related~~employer-related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) processing employer payroll, after the member/employer has verified and approved the employee timesheet, at a minimum of ~~semi monthly~~semi-monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member/employer and in accordance with the member/employer's~~Individual Budget Allocation~~ individual budget allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks~~, on behalf of the member,~~ on prospective hires for PSAs or APSAs on the member/employer's behalf;

(iv) ~~providing to the member, as needed, assistance with employer related cognitive tasks, decision making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Personal Services Assistant or Advanced Personal Services Assistant~~ providing orientation and training regarding employer responsibilities, as well employer information and management guidelines, materials, tools and staff consultant expertise to support and assist the member in successfully performing employer-related functions; and

(v) ~~for~~ making ~~available~~ Hepatitis B vaccine and vaccination series available to PSA and APSA employees in compliance with ~~OSHA~~Occupational Safety and Health Administration (OSHA) standards.

(E) The ~~service of Personal Services Assistance~~PSA service is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the ~~Service Plan~~service plan.

(F) The ~~service of Advanced Personal Services Assistance~~APSA service is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the ~~Service Plan~~service plan.

(17) **~~Institution Transition Services~~Institutional transition services.**

(A) ~~Institution Transition Services~~Institutional transition services are those services ~~that are~~ necessary to enable ~~an individual~~a member to leave the institution and receive necessary support through ADvantage ~~waiver~~Waiver services in ~~their~~his or her home and~~/or in the~~ community.

(B) ~~Institution Transition Case Management Services~~Transitional case management services are services ~~as described in~~per OAC 317:30-5-763(1) required by the ~~individual's plan of care, which~~ member and included on the member's service plan that are necessary to ensure the health, welfare, and safety of the ~~individual~~member, or to enable the ~~individual~~member to function with greater independence in the home, and without which, the ~~individual~~member would continue to require institutionalization. ADvantage ~~Transition Case Management Services~~transitional case management services assist institutionalized ~~individuals that~~members who are eligible to receive ADvantage services in gaining access to needed ~~waiver~~Waiver and other State plan services, as well as needed medical, social, educational, and other services to assist in the transition, regardless of the funding source for the services to which access is gained. ~~TransitionCase Management Services~~Transitional case management services may be authorized for periodic monitoring of an ADvantage member's progress during an institutional stay~~,~~ and for assisting the member transition from institution to home by updating the service plan, including necessary ~~Institution Transition Services~~institutional transition services to prepare services and supports to be in place or to start on the date the member is discharged from the institution. ~~Transition Case Management Services~~Transitional case management services may be authorized to assist individuals that have not previously received ADvantage services, but ~~have been~~were referred by ~~the OKDHS/ASD~~DHS AS

to the ~~Case Management Provider~~case management provider for assistance in transitioning from the institution to the community with ADvantage services support.

(i) ~~Institution Transition Case Management~~Institutional transition case management services are prior authorized and billed per 15-minute unit of service using the appropriate HCPC procedure code and modifier associated with the location of residence of the member served ~~as described in~~per OAC 317:30-5-763(1)(C).

(ii) A unique modifier code is used to distinguish ~~Institution Transition Case Management~~transitional case management services from regular ~~Case Management~~case management services.

(C) Institutional ~~Transition Services~~transition services may be authorized and reimbursed ~~under the following~~per the conditions~~:~~ in (i) through (iv).

(i) The service is necessary to enable the ~~individual~~member to move from the institution to ~~their~~his or her home~~;~~.

(ii) The ~~individual~~member is eligible to receive ADvantage services outside of the institutional setting~~;~~.

(iii) Institutional ~~Transition Services~~transition services are provided to the ~~individual~~member within 180 calendar-days of discharge from the institution~~;~~.

(iv) ~~Transition Services~~services provided while the ~~individual~~member is in the institution are ~~to be~~ claimed as delivered on the day of discharge from the institution.

(D) ~~If~~When the member ~~has received Institution Transition Services~~receives institutional transition services but fails to enter the ~~waiver~~Waiver, any ~~Institution Transition Services~~institutional transition services provided are not reimbursable.

(18) **Assisted ~~Living Services~~living services.**

(A) Assisted ~~Living Services~~living services (ALS) are personal care and supportive services ~~that are~~ furnished to ~~waiver~~Waiver members who reside in a homelike, non-institutional setting that includes 24-hour, on-site response capability to meet scheduled or unpredictable ~~resident~~member needs and to provide supervision, safety, and security. Services also include social and recreational programming and medication assistance,~~(to the extent permitted under State law)~~ to the extent permitted under State law. The ~~assisted living services~~ALS provider is responsible for coordinating services provided by third parties to ADvantage members in the assisted living center. Nursing services are incidental rather than integral to the provision of ~~assisted living services~~ALS. ADvantage reimbursement for ~~Assisted Living Services~~ALS includes services of personal care, housekeeping, laundry service, meal preparation, periodic nursing evaluations, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities, and exercise, and for arranging or coordinating transportation to and from medical appointments. Services, except for planned programs for socialization, activities, and exercise~~,~~ are to meet the member's specific needs ~~of the participant~~ as determined through the individualized assessment and documented on the ~~participant's~~member's service plan.

(B) The ADvantage ~~Assisted Living Services~~ALS philosophy of service delivery promotes ~~service~~ member choice, and to the greatest extent possible, ~~service~~ member control. ~~Members have~~A member has control over ~~their~~his or her living space and his or her choice of personal amenities, ~~furnishing~~furnishings, and activities in ~~their~~the residence. The ADvantage member must have the freedom to control his or her schedule and activities. The ~~Assisted Living Service~~ALS provider's documented operating philosophy, including policies and procedures, must reflect and support the principles and values associated with the ADvantage assisted living philosophy and approach to service delivery ~~that emphasizes~~emphasizing member dignity, privacy, individuality, and independence.

(C) ADvantage ~~Assisted Living~~ALS required policies for ~~Admission/Termination~~admission and termination of services and definitions.

(i) ADvantage-certified ~~Assisted Living Centers (ALCs)~~assisted living centers (ALC) are required to accept all eligible ADvantage members who choose to receive services through the ALC, subject only to issues relating to, one or more of the following:

(I) rental unit availability;

(II) the compatibility of the ~~participant~~member with other residents; ~~and~~

(III) the center's ability to accommodate residents who have behavior problems, wander, or have needs that exceed the services the center provides; or

(IV) restrictions initiated by statutory limitations.

(ii) The ALC may specify the number of units the provider is making available to service ADvantage ~~participants~~members. The number of rental units available to service the ADvantage participants may be altered based upon written request from the provider and acceptance by the ADvantage Administration (AA).

(iii) Mild or moderate, cognitive impairment of the applicant is not a justifiable reason to deny ALC admission. Centers are required to specify

whether they are able to accommodate ~~individuals~~members who have behavior problems or wander. Denial of admission due to a determination of incompatibility must be approved by the case manager and the ADvantage Administration (AA). Appropriateness of placement is not a unilateral determination by the ALC. The ADvantage ~~Case Manager~~case manager, the member~~,and/~~or member's designated representative, and the ALC in consultation determine the appropriateness of placement.

(iv) The ALC is responsible for meeting the member's needs for privacy, ~~and~~ dignity~~.~~, respect, and freedom from coercion and restraint. The ALC must optimize the member's initiative, autonomy and independence in making life choices. The ALC must facilitate member choices regarding services and supports, and who provides them. Inability to meet those needs ~~will~~ is not ~~be~~ recognized as a reason for determining ~~that~~ an ADvantage ~~participant's~~member's placement is inappropriate. The ALC agrees to provide or arrange and coordinate all of the services listed ~~in the description of assisted living center services~~ in the Oklahoma State Department of Health regulations (OAC 310:663-3-3), except for specialized services.

(v) In addition, the ADvantage participating ALC agrees to provide or coordinate the ~~following~~ services~~:~~ listed in (I) through (III).

(I) Provide an emergency call system for each participating ADvantage member~~;~~.

(II) Provide up to three meals per day plus snacks sufficient to meet nutritional requirements, including modified special diets, appropriate to ~~members'~~the member's needs and choices; and provide members with 24-hour access to food by giving members control in the selection of the foods they eat, by allowing the member to store personal food in his or her room, by allowing the member to prepare and eat food in his or her room, and allowing him or her to decide when to eat.

(III) Arrange or coordinate transportation to and from medical appointments. The ALC must assist the member with accessing transportation for integration into the community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, and control his or her personal resources and receive services in the community to the same degree of access as residents not receiving ADvantage services.

(vi) The provider may offer any specialized service or rental unit for ~~residents~~members with Alzheimer's disease and related dementias, physical disabilities, or other special needs ~~that~~ the facility intends to market. Heightened scrutiny, through additional monitoring of the ALC by AA, will be utilized for those ALC's that also provide inpatient treatment; settings on the grounds of or adjacent to a public institution and/or other settings that tend to isolate individuals from the community. The ALC must include evidence that the ALC portion of the facility has clear administrative, financial, programmatic and environmental distinctions from the institution.

(vii) ~~If~~When the provider arranges and coordinates services for members, the provider is obligated to assure the provision of those services.

(viii) ~~Under~~Per OAC 310:663-1-2, "personal care" is defined as "assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person~~.~~, and includes assistance with toileting." For ADvantage ~~Assisted Living Services~~ALS, assistance with "other personal needs" in this definition includes assistance with ~~toileting,~~ grooming and transferring.~~and the~~ The term "assistance" is clarified to mean hands-on help, in addition to supervision.

(ix) The specific ~~Assisted Living Services~~ALS assistance provided along with amount and duration of each type of assistance is based upon the ~~individual~~ member's assessed need for service assistance and is specified in the ALC's service plan ~~which~~that is incorporated as supplemental detail into the ADvantage comprehensive service plan. The ADvantage ~~Case Manager~~case manager in cooperation with ~~the Assisted Living Center~~ALC professional staff, develops the service plan to meet member needs. As member needs change, the service plan is amended consistent with the assessed, documented need for change in services.

(x) ~~Definition of Inappropriate ALC Placement.~~ Placement, or continued placement of an ADvantage member in an ALC is inappropriate if any one or more of the ~~following~~ conditions in (I) through (IV) exist~~:~~.

(I) The member's needs exceed the level of services the center provides. Documentation must support ALC efforts to provide or arrange for the required services to accommodate participant needs~~;~~.

(II) The member exhibits behavior or actions that repeatedly and substantially ~~interferes~~interfere with the rights or well-being of other residents and the ALC has documented efforts to resolve behavior problems including medical ~~interventions~~, behavioral~~,interventions~~ and increased staffing interventions. Documentation must support ~~that~~the ALC attempted interventions to resolve behavior problems~~;~~.

(III) The member has a ~~medical condition that is~~ complex, unstable, or unpredictable medical condition and treatment cannot be

~~appropriately~~ developed and implemented appropriately in the assisted living environment. Documentation must support ~~that~~the ALC ~~attempted~~attempts to obtain appropriate member care~~for the member; or~~.

(IV) The member fails to pay room and board charges and/or ~~the OKDHS~~DHS determined vendor payment obligation.

(xi) Termination of residence when inappropriately placed. Once a determination is made that a member is inappropriately placed, the ~~assisted living center~~ALC must inform the member and~~/or~~ the member's representative, if any, the AA and the member's ADvantage ~~Case Manager~~case manager. The ALC must develop a discharge plan in consultation with the member, the member's ~~support network~~representative, the ADvantage ~~Case Manager~~case manager, and the AA. The ALC and ~~Case Manager~~case manager must ensure ~~that~~ the discharge plan includes strategies for providing increased services, when appropriate, to minimize risk and meet the higher care needs of members ~~awaiting a move~~transitioning out of the ALC, ~~if~~when the reason for discharge is inability to meet member needs. If voluntary termination of residency is not arranged, the ALC must provide written notice to the member and to the member's representative, with a copy to the member's ADvantage ~~Case Manager~~case manager and the AA, giving the member 30 calendar-days, written notice of the ALC's intent to terminate the residency agreement and move the member to ~~a more~~an appropriate care provider. The 30 calendar-day requirement ~~shall~~must not apply when emergency termination of the residency agreement is mandated by the member's immediate health needs or when the termination of the residency agreement is necessary for the physical safety of the member or other ALC residents ~~of the ALC~~. The written notice of involuntary termination of residency for reasons of inappropriate placement must include:

(I) a full explanation of the reasons for the termination of residency;

(II) the notice date ~~of the notice~~;

(III) the date notice was given to the member and the member's representative, the ADvantage Case Manager, and the AA;

(IV) the date ~~by which~~ the member must leave ~~the~~ ALC; and

(V) notification of appeal rights and the process for submitting appeal of termination of Medicaid ~~Assisted Living services~~ALS to ~~the~~ OHCA.

(D) ADvantage ~~Assisted Living Services~~ALS provider standards in addition to licensure standards.

(i) Physical environment.

(I) The ALC must provide lockable doors on the entry door of each rental unit and ~~a~~an attached, lockable compartment within each member unit for valuables. ~~Member residents~~Members must have exclusive rights to ~~their units~~his or her unit with lockable doors at the entrance of ~~their~~the individual ~~and/~~or shared rental unit~~and to a lockable compartment within each member's rental unit for valuables, except in the case of documented contraindication~~. Keys to rooms may be held by appropriate ALC staff as designated by the member's choice. Rental units may be shared only ~~if~~when a request to do so is initiated by the member~~resident~~. Members must be given the right to choose his or her roommate.

(II) The member has a legally enforceable agreement (lease) with the ALC. The member must have the same responsibilities and protections from eviction as all tenants under the landlord tenant law of the state, county, city, or other designated entity.

(~~II~~III) The ALC must provide each rental unit with a means for each member ~~resident~~ to control the temperature in the ~~individual living~~residential unit through the use of a damper, register, thermostat, or other reasonable means that is under the control of the ~~resident~~member and that preserves ~~resident~~ privacy, independence, and safety, provided that the Oklahoma State Department of Health may approve an alternate means based on documentation that the design of the temperature control is appropriate to the special needs of each member who has an alternate temperature control.

(~~III~~IV) For ~~ALCS~~ALCs built prior to January 1, 2008, each ALC individual residential unit must have a minimum total living space,~~(including closets and storage area)~~ including closets and storage areas, of 250 square feet; for ALCs built after December 31, 2007, each ALC individual residential unit must have a minimum total living space,~~(including closets and storage area)~~ including closets and storage areas, of 360 square feet.

(~~IV~~V) The ALC ~~shall~~must provide a private bathroom for each living unit ~~which~~that must be equipped with one lavatory, one toilet, and one bathtub or shower stall.

(~~V~~VI) The ALC must provide at a minimum, a kitchenette, defined as a space containing a refrigerator, adequate storage space for utensils, and a cooking appliance~~(microwave is acceptable), and adequate storage space for utensils.~~, a microwave is acceptable.

(~~VI~~VII) The member is responsible for furnishing ~~their~~the rental unit. If a member is unable to supply basic furnishings defined as a bed, dresser, nightstand, chairs, table, trash can, and lamp, or if ~~the~~ member supplied furnishings

pose a health or safety risk, the member's ~~Case Manager~~ADvantage case manager in coordination with the ALC must assist the member in obtaining basic furnishings for the rental unit. The member must have the freedom to furnish and decorate the rental unit within the scope of the lease or residency agreement.

(~~VII~~VIII) The ALC must meet the requirements of all applicable federal and state laws and regulations including, but not limited to, ~~the~~ state and local sanitary codes, state building and fire safety codes, and laws and regulations governing use and access by persons with disabilities.

(~~VIII~~IX) The ALC must ensure the design of common areas accommodates the special needs of ~~their~~the resident population and that the rental unit accommodates the special needs of the ~~individual~~member in compliance with ~~ADA Accessibility Guidelines~~the Americans with Disabilities Act accessibility guidelines per~~(28 CFR Part 36 Appendix A)~~ 28 Code of Federal Regulations,Part 36, Appendix A, at no additional cost to the member.

(~~IX~~X) The ALC must provide adequate and appropriate social and recreational space for residents and the common space must be proportionate to the number of residents and appropriate for the resident population.

(~~X~~XI) The ALC must provide appropriately monitored outdoor space for resident use.

(XII) The ALC must provide the member with the right to have visitors of his or her choosing at any time. Overnight visitation is allowed, but may be limited by the ALC to the extent to which a visitor may stay overnight.

(XIII) The ALC must be physically accessible to members.

(ii) Sanitation.

(I) The ALC must maintain the facility, including its individual rental units~~,~~ that ~~is~~are clean, safe, sanitary, insect and rodent free, odorless, and in good repair at all times.

(II) The ALC must maintain buildings and grounds in a good state of repair~~ and~~, in a safe and sanitary condition, and in compliance with the requirements of applicable regulations, bylaws, and codes.

(III) The ALC stores clean laundry in a manner that prevents contamination and changes linens at time intervals necessary to avoid health issues.

(IV) The ALC must provide housekeeping in member rental units ~~that maintains~~to maintain a safe, clean, and sanitary environment.

(V) The ALC must have policies and procedures for members' pets.

(iii) Health and Safety.

(I) The ALC must provide building security that protects ~~residents~~members from intruders with security measures appropriate to building design, ~~environment~~environmental risk factors, and the resident population.

(II) The ALC must respond immediately and appropriately to missing ~~residents~~members, accidents, medical emergencies, or deaths.

(III) The ALC must have a plan in place to prevent, contain, and report any diseases ~~that are~~ considered to be infectious ~~and/~~or are listed as diseases that must be reported to the Oklahoma State Department of Health (OSDH).

(IV) The ALC must adopt policies for the prevention of abuse, neglect, and exploitation that include screening, training, prevention, investigation, protection during investigation, and reporting.

(V) The ALC must provide services and facilities that accommodate the needs of ~~resident~~members to safely evacuate in the event of fires or other emergencies.

(VI) The ALC must ensure ~~that~~ staff is trained to respond appropriately to emergencies.

(VII) The ALC ~~staff~~ must ensure that fire safety requirements are met.

(VIII) The ALC must offer meals that provide balanced and adequate nutrition for ~~residents~~members.

(IX) The ALC must adopt safe practices for the preparation and delivery of meals~~;~~.

(X) The ALC must provide a 24-hour response to personal emergencies that is appropriate to the needs of the resident population.

(XI) The ALC must provide safe transportation to and from ALC sponsored ~~social/recreational outings~~social or recreational outings.

(iv) Staff to resident ratios.

(I) The ALC must ensure ~~that~~ a sufficient number of trained staff are on duty, awake, and present at all times, 24 hours a day, and seven days a week, to meet the needs of residents and to carry out all of the processes listed in the ALC's written emergency and disaster preparedness plan for fires and other ~~natural~~ disasters.

(II) The ALC must ensure ~~that~~ staffing is sufficient to meet the needs of the ADvantage Program ~~residents~~members in accordance with each ~~individual's~~member's ADvantage ~~Service Plan~~service plan.

(III) The ALC must have plans in place to address situations where there is a disruption to the ALC's regular work force.

(v) Staff training and qualifications.

(I) The ALC must ensure ~~that all~~ staff ~~have~~has qualifications consistent with their job responsibilities.

(II) All staff assisting in, or responsible for, food service must have attended a food service training program offered or approved by ~~the Oklahoma Department of Health~~OSDH.

(III) The ALC must provide staff orientation and ongoing training to develop and maintain ~~the~~staff knowledge and skills ~~of staff~~. All direct care and activity staff receive at least eight hours of orientation and initial training within the first month of ~~their~~ employment and at least four hours annually thereafter. Staff providing direct care on a dementia ~~or memory care~~ unit must receive four additional hours of dementia specific training. Annual first aid and cardiopulmonary resuscitation ~~CPR~~(CPR) certification do not count ~~towards~~toward the four hours of annual training.

(vi) Staff supervision.

(I) The ALC must ensure delegation of tasks to non-licensed staff must be consistent and in compliance with all applicable ~~State~~state regulations including, but not limited to, the Oklahoma Nurse Practice Act and ~~the~~ OSDH Nurse Aide Certification rules.

(II) The ALC must ensure that, where the monitoring of food intake or therapeutic diets is provided at the prescribed services level, a registered dietitian monitors ~~the member's~~member health and nutritional status.

(vii) Resident rights.

(I) The ALC must provide to each member and each member's representative, at the time of admission, a copy of the resident statutory rights listed in ~~O.S. 63-1-1918~~Section 1-1918 of Title 63 of the Oklahoma Statutes (O.S. 63-1-1918) amended to include additional rights and the clarification of rights as listed in the ADvantage ~~assisted living~~ Member Assurances. A copy of ~~the~~ resident rights must be posted in an easily accessible, conspicuous place in the facility. The facility must ensure that ~~its~~ staff is familiar with~~,~~ and observes, the resident rights.

(II) The ALC must conspicuously post for display in an area accessible to residents, employees, and visitors, the assisted living center's complaint procedures and the name, address, and telephone number of a person authorized to receive complaints. A copy of the complaint procedure must also be given to each ~~resident~~member, the ~~resident's~~member's representative, or ~~where appropriate,~~ the ~~court appointed~~legal guardian. The ALC must ensure ~~that~~ all employees comply with the ALC's complaint procedure.

(III) The ALC must provide to each member and member's representative, at the time of admission, information about Medicaid ~~grievance/appeal~~grievance and appeal rights, including a description of the process for submitting a ~~grievance/appeal~~grievance or appeal of any decision that decreases Medicaid services to the member.

(viii) Incident reporting.

(I) The ALC must maintain a record of incidents that occur and report incidents to the member's ADvantage ~~Case Manager~~case manager and to the AA, utilizing the AA Critical Incident Reporting form. Incident reports are also to be made to Adult Protective Services (APS) and to the Oklahoma State Department of Health (OSDH), as appropriate, in accordance with the ALC's licensure rules, utilizing the specific reporting forms required.

(II) Incidents requiring report by licensed ~~Assisted Living Centers~~ALC are those defined by ~~the Oklahoma State Department of Health (OSDH) in~~OSDH per OAC 310:663-19-1 and listed on the AA Critical Incident Reporting Form.

(III) Reports of incidents must be made to the member's ADvantage ~~Case Manager~~case manager and to the AA via facsimile or mail within one business day of the reportable incident's discovery utilizing the AA Critical Incident Reporting form. If required, a follow-up report of the incident must~~will~~ be submitted via facsimile or mail to the member's ADvantage ~~Case Manager,~~ case manager and to the AA. The follow up report must be submitted within five business days ~~after~~of the incident. The final report must be filed with the member's ADvantage ~~Case Manager~~case manager and ~~to~~ the ~~ADvantage Administration~~AA when the ~~full~~ investigation is complete, not to exceed ~~ten~~10 business days after the incident.

(IV) Each ALC having reasonable cause to believe that a member is suffering from abuse, neglect, exploitation, or misappropriation of member property must make a report to ~~either the Oklahoma Department of Human Services, the office of the district attorney in the county in which the suspected abuse, neglect, exploitation, or property misappropriation occurred, or the local municipal police department or sheriff's department~~DHS Adult Protective Services (APS) as soon as the person is aware of the situation~~, in accordance with Section 10-104.A of Title 43A of Oklahoma Statutes~~ per O.S. 43A § 10-104.A. Reports ~~should~~are also ~~be~~ made to ~~the~~ OSDH, as appropriate, ~~in accordance with the ALC's~~per ALC licensure rules.

(V) The preliminary incident report must at the minimum, include who, what, when ~~and~~, where, and the measures taken to protect the member and resident(s) during the investigation. The follow-up report must at the minimum, include preliminary information, the extent of the injury or damage, if any, and preliminary investigation findings ~~of the investigation~~. The final report at ~~the~~a minimum, includes preliminary and follow-up information, a summary of investigative actions representing a thorough investigation, investigative findings and conclusions based on findings~~;~~, and corrective measures to prevent future occurrences. ~~If~~When it is necessary to omit items, the final report must include why such items were omitted and when they will be provided.

(ix) Provision of or arrangement for necessary health services.

(I) The ALC must arrange or coordinate transportation for members to and from medical appointments.

(II) The ALC must provide or coordinate with the member and the member's ADvantage ~~Case Manager~~case manager for delivery of necessary health services. The ADvantage ~~Case Manager~~case manager is responsible for monitoring ~~that~~ all health-related services required by the member as identified through assessment and documented on the service plan, are provided in an appropriate and timely manner. The member has the freedom to choose any available provider qualified by licensure or certification to provide necessary health services in the ALC.

(E) ~~Assisted Living Services~~ALS are billed per diem of service for days covered by the ADvantage member's service plan and during which the ~~Assisted Living Services~~ALS provider is responsible for providing ~~Assisted Living servicedas needed by~~ ALS for the member. The per diem rate for ~~the~~ ADvantage assisted living services for a member ~~will be~~is one of three per diem rate levels based ~~upon individual~~on a member's need for ~~service~~ type of, intensity of, and frequency of service to address member ~~ADL/IADL~~ADLs, IADLs, and health care needs. The rate level is based ~~upon (UCAT)~~on the Universal Comprehensive Assessment Tool (UCAT) assessment by the member's ADvantage ~~Case Manager~~case manager employed by a ~~Case Management~~case management agency ~~that is~~ independent of the ~~Assisted Living Services~~ALS provider. The determination of the appropriate per diem rate is made by the AA clinical review staff.

[OAR Docket #16-485; filed 6-15-16]

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

[OAR Docket #16-519]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.24. [AMENDED]
(Reference APA WF # 15-62)
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 412.27; Fla. Admin. Code R. [65E-9.007]; OAR 310:667-15-3; OAR 310:667-33-2; 42 CFR 441.152; 42 CFR 456.170
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 22, 2015
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ADOPTION:
March 24, 2016
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed policy revisions clarify nurse staffing ratio, 24 hour nursing care requirements, and outline supervisions requirements for psychiatric facilities. In addition, revisions clarify that any unit that does not allow clear line of site due to presence of walls or doors is a separate unit. Additionally, revisions include adding a requirement that admission assessments for inpatient psychiatric care both acute and residential levels must be provided in accordance to federal regulations.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.24. Prior Authorization of inpatient psychiatric services for children

(a) All inpatient psychiatric services for members under 21 years of age must be prior authorized by the OHCA or its designated agent. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. Admission requirements for services must be provided in accordance with Code of Federal Regulations, Title 42 Public Health, Part 441 and 456. Additional information will be required for a SoonerCare compensable approval on enhanced treatment units or in special population programs.

(b) Staffing ratios shall always be present for each individual unit not by facility or program. Patients shall be grouped for accommodation by gender, age, and treatment needs. At a minimum, children, adolescent, and adult treatment programs shall be separate with distinct units for each population. A unit is determined by separate and distinct sleeping, living, and treatment areas often separated by walls and/or doors. A unit that does not allow clear line of site due to the presence of walls or doors is considered a separate unit. Each individual unit shall have assigned staff to allow for appropriate and safe monitoring of patients and to provide active treatment.

(c) In an acute care setting, at least one Registered Nurse (RN) must be on duty per unit at all times, with additional RNs to meet program needs. RNs must adhere to Oklahoma Department of Health policy at OAC 310:667-15-3 and OAC 310:667-33-2(a)(3).

(~~c~~d) Regular residential treatment programs require a staffing ratio of 1:6 during routine waking hours and 1:8 during time residents are asleep with 24 hour nursing care supervised by an RN for management of behaviors and medical complications. At a minimum, the supervising RN must be available by phone and on-site within one hour. If the supervising RN is off-site, then an RN or LPN must be on-site to adhere to a 24 hour nursing care coverage ratio of 1:30 during routine waking hours and 1:40 during time residents are asleep.

(~~d~~e) Specialty residential treatment at this level is a longer term treatment that requires a higher staff to member ratio because of the need for constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one time a week.

(~~e~~f) A PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit.

(~~f~~g) A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the children.

(~~g~~h) Criteria for classification as a specialized PRTF will require a staffing ratio of 1:3 at a minimum during routine waking hours and 1:6 during time residents are asleep with 24 hour nursing care supervised by a RN for management of behaviors and medical complications. The PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions will be restricted to children that meet the medical necessity criteria for RTC and also meet at least two or more of the following:

(1) Have failed at other levels of care or have not been accepted at other levels of care;

(2) Behavioral, emotional, and cognitive problems requiring secure residential treatment that includes 1:1, 1:2, or 1:3 staffing due to the member being a danger to themselves and others, for impairments in socialization problems, communication problems, and restricted, repetitive and stereotyped behaviors. These symptoms are severe and intrusive enough that management and treatment in a less restrictive environment places the child and others in danger but, do not meet acute medical necessity criteria. These symptoms which are exhibited across multiple environments must include at least two or more of the following:

(A) Marked impairments in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;

(B) Inability to regulate impulse control with frequent displays of aggression or other dangerous behavior toward self and/or others regularly;

(C) Failure to develop peer relationships appropriate to developmental level;

(D) Lack of spontaneously seeking to share enjoyment, interests, or achievements with other people;

(E) Lack of social or emotional reciprocity;

(F) Lack of attachment to caretakers;

(G) Require a higher level of assistance with activities of daily living requiring multiple verbal cues 50 percent of the time to complete tasks;

(H) Delay, or total lack of, the development of spoken language which is not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime;

(I) Marked impairment in individuals with adequate speech in the ability to initiate or sustain a conversation with others;

(J) Stereotyped and repetitive use of language or idiosyncratic language;

(K) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(L) Encompassing preoccupation with one or more stereotyped and restricted pattern and interest that is abnormal in intensity of focus;

(M) Inflexible adherence to specific, nonfunctional routines or rituals;

(N) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole body movements);

(O) Persistent occupation with parts of objects;

(3) Member is medically stable, but has co-morbid medical conditions which require specialized medical care during treatment;

(4) Full scale IQ below 40 (profound mental retardation intellectual disability).

(~~h~~i) Non-authorized inpatient psychiatric services will not be SoonerCare compensable.

(~~i~~j) The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in OAC 317:30-5-95.25 through 317:30-5-95.31.

(~~j~~k) Out of state placements must be approved by the agent designated by the OHCA and subsequently approved by the OHCA, Medical Services Behavioral Health Division. Requests for admission to Psychiatric Residential Treatment Facilities or acute care units will be reviewed for consideration of level of care, availability, suitability, and proximity of suitable services. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under SoonerCare provisions as part of the per-diem rate.

(~~k~~l) Inpatient psychiatric services in all acute hospitals and psychiatric residential treatment facilities are limited to the approved length of stay. OHCA, or its designated agent, will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria as described in OAC 317:30-5-95.25 through OAC 317:30-5-95.31. The approved length of stay applies to both hospital and physician services. The Child and Adolescent Level of Care Utilization System (CALOCUS®) is a level of care assessment that will be used as a tool to determine the most appropriate level of care treatment for a member by LBHPs in the community.

[OAR Docket #16-519; filed 6-15-16]

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

[OAR Docket #16-517]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.25. [AMENDED]
317:30-5-95.26. [AMENDED]
317:30-5-95.33. [AMENDED]
317:30-5-95.34. [AMENDED]
317:30-5-95.41. [AMENDED]
317:30-5-95.42. [AMENDED]
(Reference APA WF # 15-58)
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 440.160; 441.155; 42 CFR 456.170; 42 CFR 456.652
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed policy revisions remove outdated references to Axis I and II diagnosis language. Additional revisions clarify assessment and evaluation criterion and include cleanup to outdated language. Rules are also revised to remove outdated references to provider manual to reflect current medical necessity manual. In addition policy is revised to include Service Quality Review requirements for Ad Hoc reviews.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.25. Medical necessity criteria for acute psychiatric admissions for children

Acute psychiatric admissions for children must meet the terms or conditions contained in (1), (2), (3), (4) and one of (5)(A) to (5)(D), and one of (6)(A) to (6)(C) of this subsection.

(1) ~~An Axis I~~A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying ~~Axis I~~ diagnosis, children 18-21 years of age may have ~~an Axis II~~ a diagnosis of any personality disorder.

(2) Conditions are directly attributable to a psychiatric disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses). Adjustment or substance related disorder may be a secondary ~~Axis I~~ diagnosis.

(3) It has been determined by the OHCA designated agent that the current disabling symptoms could not have been managed or have not been manageable in a lesser intensive treatment program.

(4) Child must be medically stable.

(5) Within the past 48 hours, the behaviors present an imminent life threatening emergency such as evidenced by:

(A) Specifically described suicide attempts, suicide intent, or serious threat by the patient.

(B) Specifically described patterns of escalating incidents of self-mutilating behaviors.

(C) Specifically described episodes of unprovoked significant physical aggression and patterns of escalating physical aggression in intensity and duration.

(D) Specifically described episodes of incapacitating depression or psychosis that result in an inability to function or care for basic needs.

(6) Requires secure 24-hour nursing/medical supervision as evidenced by:

(A) Stabilization of acute psychiatric symptoms.

(B) Needs extensive treatment under physician direction.

(C) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.

317:30-5-95.26. Medical necessity criteria for continued stay - acute psychiatric admission for children

For continued stay acute psychiatric admissions for children must meet all of the conditions set forth in (1) to (4) of this subsection.

(1) ~~An Axis I~~A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-Codes, adjustment disorders, and substance abuse related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying ~~Axis I~~ diagnosis, children 18-20 years of age may have ~~an Axis II~~ a diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary ~~Axis I~~ diagnosis.

(2) Patient continues to manifest a severity of illness that requires an acute level of care as defined in the admission criteria and which could not be provided in a less restrictive setting.

(A) Documentation of regression is measured in behavioral terms.

(B) If condition is unchanged, evidence of re-evaluation of treatment objectives and therapeutic interventions.

(3) Conditions are directly attributable to a mental disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses).

(4) Documented efforts of working with the child's family, legal guardians and/or custodians and other human service agencies toward a tentative discharge date.

317:30-5-95.33. Individual plan of care for children

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

(1) **"Licensed Behavioral Health Professional (LBHP)"** means licensed psychologists, licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), licensed alcohol and drug counselors (LADC), and advanced practice nurses (APN).

(2) **"Licensure Candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) **"Individual plan of Care (IPC)"** means a written plan developed for each member within four calendar days of any admission to an acute psychiatric facility or a PRTF and is the document that directs the care and treatment of that member. In Community Based Transitional RTC, the IPC must be completed within 7 days. The individual plan of care must be recovery focused, trauma informed, and specific to culture, age and gender and includes:

(A) A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-Codes, adjustment disorders, and substance abuse related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary diagnosis.

(B) the current functional level of the individual;

(C) treatment goals and measurable time limited objectives;

(D) any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the member;

(E) plans for continuing care, including review and modification to the plan of care; and

(F) plan for discharge, all of which is developed to improve the child's condition to the extent that the inpatient care is no longer necessary.

(b) The individual plan of care:

(1) must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the individual

member and reflects the need for inpatient psychiatric care;

(2) must be developed by a team of professionals as specified in OAC 317:30-5-95.35 in collaboration with the member, and his/her parents for members under the age of 18, legal guardians, or others in whose care he/she will be released after discharge;

(3) must establish treatment goals that are general outcome statements and reflective of informed choices of the member served. Additionally, the treatment goal must be appropriate to the member's age, culture, strengths, needs, abilities, preferences and limitations;

(4) must establish measurable and time limited treatment objectives that reflect the expectations of the member served and parent/legal guardian (when applicable) as well as being age, developmentally and culturally appropriate. When modifications are being made to accommodate age, developmental level or a cultural issue, the documentation must be reflected on the individual plan of care. The treatment objectives must be achievable and understandable to the member and the parent/guardian (when applicable). The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;

(5) must prescribe an integrated program of therapies, activities and experiences designed to meet the objectives;

(6) must include specific discharge and after care plans that are appropriate to the member's needs and effective on the day of discharge. At the time of discharge, after care plans will include referral to medication management, out-patient behavioral health counseling and case management to include the specific appointment date(s), names and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the member into their family, school, and community;

(7) must be reviewed every five to nine calendar days when in acute care and a regular PRTF, every 11 to 16 calendar days in the OHCA approved longer term treatment programs or specialty PRTF and every 30 days in Community Based Transitional treatment programs by the team specified to determine that services are being appropriately provided and to recommend changes in the individual plan of care as indicated by the member's overall adjustment, progress, symptoms, behavior, and response to treatment;

(8) development and review must satisfy the utilization control requirements for physician re-certification and establishment of periodic reviews of the individual plan of care; and,

(9) each individual plan of care and plan of care review must be clearly identified as such and be signed and dated individually by the physician, LBHP or licensure candidate, member, parent/guardian (for members under the age of 18), registered nurse, and other required team members. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill or ~~their~~ the member's acuity level precludes ~~them~~ him/her from signing. If the member ~~was~~ is too physically ill or ~~their~~ the member's acuity level ~~precluded them~~ precludes him/her from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when ~~their~~ his/her condition improves but before discharge. The documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature. Individual plans of care and individual plan of care reviews are not valid until completed and appropriately signed and dated. All requirements for the individual plan of care or individual plan of care reviews must be met or a partial per diem recoupment will be merited. If the member's parent/guardian is unable to sign the IPC or IPC review on the date it is completed, then within 72 hours the ~~Provider~~provider must in good faith and with due diligence attempt to telephonically notify the parent/guardian of the document's completion and review it with them. Documentation of reasonable efforts to make contact with the member's parent/guardian must be included in the clinical file. In those instances where it is necessary to mail or fax an ~~Individual Plan of Care or Individual Plan of Care~~IPC or IPC review to a parent or OKDHS/OJA worker for review, the parent and/or OKDHS/OJA worker may fax back their signature. The ~~Provider~~provider must obtain the original signature for the clinical file within 30 days. Stamped or photocopied signatures are not allowed for any parent or member of the treatment team.

317:30-5-95.34. Active treatment for children

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

(1) **"Discharge/Transition Planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the patient's potential needs at the time of admission and continues throughout the patient's stay. Active collaboration with the patient, family and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the ~~Wraparound~~wraparound process through Systems of Care, counseling, case management and other supports in their community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.

(2) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (ROPES), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(3) **"Family therapy"** means interaction between an LBHP or licensure candidate, member and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding.

(4) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the

individual care plan which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living.

(5) **"Individual rehabilitative treatment"** means a face to face, one on one interaction which is performed to assist members who are experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform activities of daily living.

(6) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face to face, one on one interaction between an LBHP or ~~Licensure Candidate~~licensure candidate and a member to promote emotional or psychological change to alleviate disorders.

(7) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between an LBHP or licensure candidate as defined in OAC 317:30-5-240.3, and two or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "Active Treatment". Active Treatment involves the member and their family or guardian from the time of an admission throughout the treatment and discharge process. Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well documented in the member's treatment plan. For individuals in the age range of 18 up to 21, it is understood that family members and guardians will not always be involved in the member's treatment. Active Treatment also includes an ongoing program of assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician. Evidence based practices such as trauma informed methodology should be utilized to minimize the use of seclusion and restraint.

(c) For individuals age 18 up to 21, the Active Treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric-social functioning. The services and individual plan of care must be recovery focused, trauma informed, specific to culture, age and gender, and provided face-to-face. Services, including type and frequency, will be specified in the Individual Plan of Care.

(d) For individuals under age 18, the components of Active Treatment consist of face-to-face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age, and gender. Individuals in acute care must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours being dedicated to core services as described in (1) below. Individuals in PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours being dedicated to core services as described in (1) below. Individuals in Community Based Transitional (CBT) must receive ten (10) hours of documented active treatment services each week, with 4 of those hours being dedicated to core services as described in (1) below. The remainder of the active treatment services may include any or all of the elective services listed in (2) below or additional hours of any of the core services. Sixty minutes is the expectation to equal one hour of treatment. When appropriate to meet the needs of the child, the 60 minute timeframe may be split into sessions of no less than 15 minutes each on the condition that the Active Treatment requirements are fully met by the end of the treatment week. The following components meet the minimum standards required for Active Treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) **Core Services.**

(A) **Individual treatment provided by the physician.** Individual treatment provided by the physician is required three times per week for acute care and one time a week in Residential Treatment Facilities. Individual treatment provided by the physician will never exceed ten calendar days between sessions in PRTFs, never exceed seven calendar days in a specialty PRTF and never exceed 30 calendar days in CBTs. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.

(B) **Individual therapy.** LBHPs or licensure candidates performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two hours per week in acute care and one hour per week in residential treatment by an LBHP or licensure candidate as described in OAC 317:30-5-240.3. One hour of family therapy may be substituted for one hour of individual therapy at the treatment team's discretion.

(C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one hour per week for acute care and residential. One hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by an

LBHP or licensure candidate as described in OAC 317:30-5-240.3.

(D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three hours per week in acute care and two hours per week in residential treatment by an LBHP or licensure candidate as defined in OAC 317:30-5-240.3. In lieu of one hour of process group therapy, one hour of expressive group therapy provided by an LBHP, licensure candidate, or Licensed Therapeutic Recreation Specialist may be substituted.

(E) **Transition/Discharge Planning.** Transition/discharge planning must be provided one hour per week in acute care and thirty minutes per week in residential and CBT. Transition/Discharge planning can be provided by any level of inpatient staff.

(2) **Elective services.**

(A) **Expressive group therapy.** Through active expression, inner-strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant Bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy.

(B) **Group rehabilitative treatment.** Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care.

(C) **Individual rehabilitative treatment.** Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the member's diagnosis.

(D) **Recreation therapy.** Services will be provided to reduce psychiatric and behavioral impairment as well as to restore, remediate and rehabilitate an individual's level of functioning and independence in life activities. Services will also be provided in such a way as to promote health and wellness as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e. to provide some social or recreational outlet for the individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a Licensed Therapeutic Recreation Specialist.

(E) **Occupational therapy.** Services will be provided to address developmental and/or functional needs related to the performance of self-help skills, adaptive behavioral, and/or sensory, motor and postural development. Services include therapeutic goal-directing activities and/or exercises used to improve mobility and activities of daily living (ADL) functions when such functions have been impaired due to illness or injury. Services must be provided by an occupational therapist appropriately licensed in the state in which they practice.

(F) **Wellness resource skills development.** Services include providing direction and coordinating support activities that promote good physical health. The focus of these activities should include areas such as nutrition, exercise, support with averting or managing physical health concerns like heart disease, diabetes, and cholesterol, and support regarding the effects of medications have on physical health. Services can include support groups, exercise groups, and individual physical wellness plan development, implementation assistance and support.

(3) **Modifications to active treatment.** When a member is too physically ill or their acuity level precludes them from active behavioral health treatment, documentation must demonstrate that alternative clinically appropriate services were provided.

(e) The expectation is that active treatment will occur regularly throughout the treatment week. A treatment week in Acute is based on the number of days of acute service, beginning the day of admission (day 1). Required active treatment components will be based upon the length of stay as described below. A treatment week in RTC, PRTF and CBT is considered to be a calendar week (i.e. Sunday through Saturday). When a child is admitted to RTC, PRTF or CBT level of care on a day other than Sunday, or discharges on a day other than Saturday, the week will be considered a partial week and services will be required as described below. Active treatment components ~~do not~~ may include assessments/evaluations to serve as the initial individual or family session if completed by an LBHP or licensure candidate. Start and stop time must be documented.

Active treatment begins the day of admission. Days noted are calendar days.

(1) **Individual treatment provided by the physician.**

(A) In acute, by day two, 1 visit is required. By day 4, 2 visits are required. By day 7, 3 visits are required.

(B) In RTC, PRTF or CBT, one visit during admission week is required. In RTCs, 1 visit during the admission week is required, then once a week thereafter. In PRTFs, one visit during the admission week is required, then once a week thereafter. In CBT, 1 visit is required within 7 days of admission. Individual treatment provided by the physician will never exceed 10 days between sessions in PRTFs, never exceed 7 days in a specialty PRTF and never exceed 30 days in CBTs. The completion of a psychiatric evaluation or a combined psychiatric evaluation and a History and Physical (H&P) evaluation may count as the first visit by the physician if the evaluation was personally rendered by the psychiatrist. If the member is admitted on the last day of the admission week, then the member must be seen by a physician within 24 hours of admission time.

(2) **Individual therapy.**

(A) In acute, by day 3, 30 minutes of treatment are required. By day 5, 1 hour of treatment is required. Beginning on day 7, 2 hours of treatment are required each week. This does not include admission assessments/evaluations or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(B) In residential treatment (including PRTF and CBT), by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. The treatment week is defined as Sunday through Saturday. Individual therapy may not exceed a total of 10 days between sessions. This does not include admission assessment/ evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(3) **Family therapy.**

(A) In acute, by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admission assessments/evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessments/evaluation or Psychosocial Evaluation has not been used to substitute the initial individual therapy requirement.

(B) In residential treatment (including PRTF and CBT), by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admissions assessment/evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessment/evaluation or Psychosocial Evaluation has not been used to substitute the initial individual therapy requirement. Family therapy provided by the LBHP or licensure candidate should not exceed 10 days in between sessions.

(f) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff (RN/LPN), documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

317:30-5-95.41. Documentation of records for children's inpatient services

(a) All documentation for services provided under active treatment must be documented in an individual note and reflect the content of each session provided. Individual, Family, Process Group, Expressive Group, Individual Rehabilitative and Group Rehabilitative Services documentation must include, at a minimum, the following:

(1) date;

(2) start and stop time for each session;

(3) dated signature of the therapist and/or staff that provided the service;

(4) credentials of the therapist;

(5) specific problem(s) addressed (problems must be identified on the plan of care);

(6) method(s) used to address problems;

(7) progress made towards goals;

(8) member's response to the session or intervention; and

(9) any new problem(s) identified during the session.

(b) Signatures of the member, parent/guardian for members under the age of 18, doctor, Licensed Behavioral Health Professional (LBHP), and RN are required on the individual plan of care and all plan of care reviews. The individual plan of care and plan of care review are not valid until signed and separately dated by the member, parent/legal guardian for members under the age of 18, doctor, RN, LBHP, and all other requirements are met. All treatment team staff providing individual therapy, family therapy and process group therapy must sign the individual plan of care and all plan of care reviews. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill, or the member's acuity level precludes him/her from signing. If the member is too physically ill or the member's acuity level precludes him/her from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when his/her condition improves but before discharge. Documentation should indicate the reason the member was unable to sign and when the next review will occur to obtain the signature.

317:30-5-95.42. Service quality review of psychiatric facilities providing services to children

(a) The Service Quality Review conducted by OHCA or its designated agent meets the utilization control requirements as set forth in 42 CFR 456.

(b) There will be an on-site Service Quality Review (SQR) of each in-state psychiatric facility that provides care to SoonerCare eligible children which will be performed by the OHCA or its designated agent. Out-of-state psychiatric facilities that provide care to SoonerCare eligible children will be reviewed according to the procedures outlined in the ~~provider manual. The Oklahoma Health Care Authority will designate the members of the Service Quality Review team.~~Medical Necessity Manual. OHCA or its designated agent may conduct ad hoc reviews. Ad hoc reviews may be conducted at the discretion of the agency.

(c) The Oklahoma Health Care Authority will designate the members of the Service Quality Review team. The SQR team will consist of one to three team members and will be comprised of Licensed Behavioral Health Professionals (LBHP) or Registered Nurses.

(d) The review will include observation and contact with members. The Service Quality Review will consist of members present or listed as facility residents at the beginning of the Service Quality Review visit as well as members on which claims have been filed with OHCA for acute or PRTF levels of care. The review includes validation of certain factors, all of which must be met for the services to be compensable.

(e) Following the on-site inspection, the SQR Team will report its findings to the facility. The facility will be provided with written notification if the findings of the review have resulted in any deficiencies. A copy of the final report will be sent to the facility's accrediting agency.

(f) Deficiencies found during the SQR may result in a partial per-diem recoupment or a full per-diem recoupment of the compensation received. The following documents are considered to be critical to the integrity of care and treatment, must be completed within the time lines designated in OAC 317:30-5-95.37, and cannot be substituted with any other evaluation/assessments not specifically mentioned:

(1) History and physical evaluation;
(2) Psychiatric evaluation;
(3) Psychosocial evaluation; and
(4) Individual Plan of Care.

(g) For each day that the History and Physical evaluation, Psychiatric evaluation, Psychosocial evaluation and/or Individual Plan of Care are not contained within the member's records, those days will warrant a partial per-diem recoupment.

(h) If the review findings have resulted in a partial per-diem recoupment of $50.00 per event, the days of service involved will be reported in the notification. If the review findings have resulted in full per-diem recoupment status, the non-compensable days of service will be reported in the notification. In the case of non-compensable days full per diem or partial per diem, the facility will be required to refund the amount.

(i) In the event that CMS recoups from OHCA an amount that exceeds the provider's liability for findings described in this Section, the provider will not be held harmless and will be required to reimburse OHCA the total federal amount identified by CMS and/or its designated audit contractor.

~~(j) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not compensable or billable to the member or the member's family.~~

(j) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not compensable or billable to the member or the member's family.

[OAR Docket #16-517; filed 6-15-16]

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

[OAR Docket #16-520]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.35. [AMENDED]
317:30-5-95.37. [AMENDED]
(Reference APA WF # 15-65)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Title 43A Mental Health Law; Behavioral Practitioner Act; Section 1930 of Title 59 of Oklahoma Statutes; 42 CFR 456.170; 42 CFR 482.22
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ANALYSIS:
Proposed policy revisions clarify that candidates for licensure can perform assessments and psychosocial evaluations when appropriate and medically necessary. In addition, revisions clarify that for existing evaluations of 30 days or less, must be reviewed, when a member changes provider or level of care. The evaluation(s) must be updated as necessary and signed and dated by the appropriate level of professional.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.35. Credentialing requirements for treatment team members for children

(a) The team developing the individual plan of care for the child must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U), and

(2) a behavioral health professional licensed to practice by one of the following boards: Psychology (health service specialty only); Social Work (clinical specialty only); Licensed Professional Counselor, Licensed Behavioral Practitioner; Licensed Alcohol and Drug Counselor (LADC), (or) Licensed Marital and Family Therapist or Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided), and

(3) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

(b) Candidates for licensure for Licensed Professional Counselor, Social Work (clinical specialty only), Licensed Marital and Family Therapist, Licensed Behavioral Practitioner, Licensed Alcohol and Drug Counselor and Psychology (health services specialty only) can provide assessments, psychosocial evaluations, individual therapy, family therapy and process group therapy as long as they are involved in the supervision that complies with their respective approved licensing regulations and the Department of Health and their work must be co-signed and dated by a licensed LBHP who is additionally a member on the treatment team. Individuals who have met their supervision requirements and are waiting to be licensed by one of the licensing boards in OAC 317:30-5-95.35(a)(1) must have their work co-signed by a licensed MHP who is additionally a member on the treatment team. All co-signatures by fully licensed LBHPs must be accompanied by the date that the co-signature was made. Documentation of the service is not considered complete until it is signed and dated by a fully licensed LBHP.

(c) Services provided by treatment team members not meeting the above credentialing requirements are not SoonerCare compensable and can not be billed to the SoonerCare member.

317:30-5-95.37. Medical, psychiatric and social evaluations for inpatient services for children

The member's medical record must contain complete medical, psychiatric and social evaluations.

(1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:

(A) History and physical evaluation must be completed within 24 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) and within 7 days in a CBT.

(B) Psychiatric evaluation must be completed within 60 hours of admission by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry and within 7 calendar days in a CBT.

(C) Psychosocial evaluation must be completed within 72 hours of an acute admission, within seven calendar days of admission to a PRTF and within 7 calendar days in a CBT by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.), a licensed behavioral health professional (LBHP), or Licensure Candidate as defined in OAC 317:30-5-240.3.

(2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.

(3) Each of the evaluations must be completed when the member changes levels of care if the existing evaluation is more than 30 calendar days from admission. For continued stays at the same level of care, evaluations remain current for 12 months from the date of admission and must be updated annually within seven calendar days of that anniversary date.

(4) Existing evaluations of 30 days or less may be used when a member changes provider or level of care. The evaluation(s) must be reviewed, updated as necessary and signed and dated by the appropriate level of professional as defined by the type of evaluation.

[OAR Docket #16-520; filed 6-15-16]

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

[OAR Docket #16-498]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationship
317:35-5-2. [AMENDED]
Subchapter 22. Pregnancy Related Benefits Covered Under Title XXI
317:35-22-2. [AMENDED]
(Reference APA WF # 15-07B)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1902 of Social Security Act
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ANALYSIS:
Proposed Obstetrical policy amends the reimbursement structure for OB services. Currently the agency utilizes the global care CPT codes for routine obstetrical care billing, which can be used if the provider rendered care for a member for greater than one trimester. The proposed policy will require obstetrical care be billed using the appropriate evaluation and management codes for antepartum care, as well as the appropriate delivery only and postpartum care services when rendered. The change allows for more accurate tracking of antepartum and postpartum services.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

317:35-5-2. Categorically related programs

(a) In order to be eligible for SoonerCare, an individual must first meet the description of a member eligibility group. For individuals related to the aged, blind, or disabled groups, categorical relationship is established using the same definitions of age, disability and blindness as used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is a SSA/SSI recipient in current payment status (including presumptive eligibility), a TANF recipient, an adoption assistance or kinship guardianship assistance recipient, or is under age 19, categorical relationship is automatically established. Categorical relationship to the ~~pregnancygroup~~pregnancy group is established when the determination is made by medical evidence that the individual is or has been pregnant. Effective January 1, 2014, verification of pregnancy is only required if the individual's declaration that she is pregnant is not reasonably compatible with other information available to the agency. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and postpartum periods for women in this pregnancy group; see Subchapter 22 of this Chapter for services for unborn children covered under Title XXI. For an individual age 19 or over to be related to the parent and caretaker relative group, the individual must have a minor dependent child. For an individual to be related to the former foster care children group, the individual must not be eligible for the Title XIX pregnancy or parent or caretaker relative groups, must be aged 19-26, and must have been receiving SoonerCare as a foster care child when he/she aged out of foster care in Oklahoma. There is no income or resource test for the former foster care children group. Categorical relationship to Refugee services is established in accordance with OAC 317:35-5-25. Categorical relationship for the Breast and Cervical Cancer Treatment program is established in accordance with OAC 317:35-21. Categorical relationship for the SoonerPlan Family Planning Program is established in accordance with OAC 317:35-5-8. Categorical relationship for pregnancy related benefits covered under Title XXI is established in accordance with OAC 317:35-22. ~~Benefits for pregnancies covered under Title XXI medical services are provided within the scope of the program during the prenatal, delivery and postpartum care when included in the global delivery payment. To be eligible for SoonerCare benefits, an individual must be related to one of the following eligibility groups:~~Benefits for pregnancies covered under Title XXI medical services are provided within the limited scope of this particular program for antenatal care and delivery only. Each service must be billed using the appropriate CPT codes. To be eligible for SoonerCare benefits, an individual must be related to one of the following eligibility groups:

(1) Aged
(2) Disabled
(3) Blind
(4) Pregnancy
(5) Children, also including
  (A) Newborns deemed eligible, and
  (B) Grandfathered CHIP children
(6) Parents and Caretaker Relatives
(7) Refugee
(8) Breast and Cervical Cancer Treatment program
(9) SoonerPlan Family Planning Program
(10) Benefits for pregnancies covered under Title XXI
(11) Former foster care children.

(b) The Authority may provide SoonerCare to reasonable categories of individuals under age 21.

(1) Individuals eligible for SoonerCare benefits include individuals between the ages of 19 and 21:
  (A) for whom a public agency is assuming full or partial financial responsibility who are in custody as reported by the Oklahoma Department of Human

Services (OKDHS) and in foster homes, private institutions or public facilities; or

(B) in adoptions subsidized in full or in part by a public agency; or

(C) individuals under age 21 receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age 21 are provided under the State Plan and the individuals are supported in full or in part by a public agency; or

(2) Individuals eligible for SoonerCare benefits include individuals between the ages of 18 and 21 if they are in custody as reported by OKDHS on their 18th birthday and living in an out of home placement.

SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI

317:35-22-2. Scope of coverage for Title XXI Pregnancy

(a) ~~Pregnancy related services provided are prenatal, delivery, postnatal care when included in the global delivery fee, and other related services that are medically necessary to optimize pregnancy outcomes within the defined program benefits.~~Pregnancy related services provided are for antepartum and delivery only.

(b) ~~Only two visits per month for other related services to evaluate and/or treat conditions that may adversely impact the pregnancy are covered.~~Only two additional visits per month to other medical consultants, such as a dietitian or licensed genetic counselor for related services to evaluate and/or treat conditions that may adversely impact the fetus are covered.

[OAR Docket #16-498; filed 6-15-16]

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

[OAR Docket #16-510]

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PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.1. [AMENDED]
317:35-5-41.6. [AMENDED]
(Reference APA WF # 15-50)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 USC 1396p(d)(3)(A)(i)
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ANALYSIS:
Proposed policy changes amend countable resource rules which stated that home property in a revocable trust retained certain exemptions outlined in another section of policy. Home property in a revocable trust does not retain those exemptions thus it was deleted from policy.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41.1. Home/real property

(a) Home property is excluded from resources regardless of value unless the individual is applying for long-term care services. [See 317:35-5-41.8(a) (relating to eligibility for long-term care services)]

(b) For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile. Home property includes all property which is adjacent to the home. ~~Home property in a revocable trust under the direct control of the individual, spouse, or legal representative retains the exemption as outlined in OAC 317:35-5-41.8(a)(2).~~ Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered.

(1) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. When it is determined that the member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of

the property is considered in relation to the resource. The member is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the member is making an effort to make the resource available, a reasonable period of time is given (not to exceed 90 days) to convert the resource. He/she is advised in writing that the 90-day period begins with the determination that the property be considered in relation to the resource. The 90-day period is given only if efforts are in progress to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member. A written notification is also provided to the member at any time an extension is allowed. Detailed documentation in the case record is required.

(2) If the member fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the member is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum allowable resources provided other conditions of eligibility continue to be met.

(3) When a member sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to be not in excess of a 90-day period. Extensions beyond the 90 days may be justified only after interviewing the member, determining that a good faith effort is still being made and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(4) At the point a member decides not to reinvest the proceeds from the sale of his/her home in another home, the member's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(5) A home traded for another home of equal value does not affect the member's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(6) Absences from home for up to 90 days for trips or visits or six months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence.

(7) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource. However, mineral rights which are not associated with the home property are considered as a resource. Since evaluation and scalability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property. Refer to (11)(B) of this subsection for treatment of mineral rights as non-trade or non-business property.

(8) The market value of real estate other than home property owned by the member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the member of a merchantable title to be determined when the resource approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral or written information which the applicant has on hand ~~and~~and counsel with persons who have specialized knowledge about this kind of resource. Refer to (11) of this subsection for exclusion of real estate that produces income.

(9) Land which is held by an enrolled member of an Indian tribe is excluded from resources as it cannot be sold or transferred without the permission of other individuals, the tribe, or a federal agency. If permission is needed, the land is excluded as a resource.

(10) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the member's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the member does not accept as valid the value of the life estate as established through this method, the member must secure written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the member will jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current market values and who is acceptable to both the member and the worker.

(11) Real and/or personal property which produces income is excluded if it meets the following conditions.

(A) **Trade or business property.** The existence of a trade or business may be established through business tax returns that would be used to compute self-employment earnings. If the current business tax return is unavailable, the existence of the business may be determined through other business forms, records, partnership, a detailed description of the business and its activities, etc. Once it is established that a trade or business exists, any property (real or personal) connected to it and in current use is excluded. This exclusion includes liquid assets, such as a bank account(s) necessary for the business operation. All property used by a trade or business and all property used by an employee in connection with employment is excluded as property essential to self support. The income from the trade or business is determined as any other self-employment income.

(B) **Non-trade or non-business property.** Property which produces income but is not used in a trade or business is excluded if the total equity value does not exceed $6000, and the net return equals at least 6% of the equity annually. An equity value in excess of $6000 is a countable resource. If the equity exceeds $6000 and 6% return is received on the total equity, only the amount in excess of $6000 is a countable resource. An annual return of less than 6% is acceptable if it is beyond the individual's control, and there is a reasonable expectation of a future 6% return. Liquid resources cannot be excluded as income producing property or meeting the $6000/6% rule (mortgages, including contract for deed, and notes which are income producing are considered as liquid resources). The $6000/6% rule applies to all resources in total, and not separately. Examples of non-business income producing property are rental property, timber rights, mineral rights, etc.

317:35-5-41.6. Trust accounts

Monies held in trust for an individual applying for or receiving SoonerCare must have the availability of the funds determined. Funds held in trust are considered available when they are under the direct control of the individual or his/her spouse, and disbursement is at their sole discretion. Funds may also be held in trust and under the control of someone other than the individual or his/her spouse, such as the courts, agencies, other individuals, etc., or the Bureau of Indian Affairs (BIA).

(1) **Availability determinations.** The worker should be able to determine the availability of a trust using the definitions and explanations listed in (2) of this subsection. However, in some cases, the worker may wish to submit a trust to the OKDHS State Office for determination of availability. In these instances, all pertinent data is submitted to Family Support Services Division, Attention: Health Related and Medical Services Section, for a decision.

(2) **Definition of terms.** The following words and terms, when used in this paragraph, have the following meaning, unless the context clearly indicates otherwise:

(A) **Beneficiary.** Beneficiary means the person(s) who is to receive distributions of either income or principal, or on behalf of whom the trustee is to make payments.

(B) **Corpus/principal.** Corpus/principal means the body of the trust or the original asset used to establish the trust, such as a sum of money or real property.

(C) **Discretionary powers.** Discretionary powers means the grantor gives the trustee the power to make an independent determination whether to distribute income and/or principal to the beneficiary(ies) or to retain the income and add it to the principal of the trust.

(D) **Distributions.** Distributions means payments or allocations made from the trust from the principal or from the income produced by the principal (e.g., interest on a bank account).

(E) **Grantor (trustor/settlor).** Grantor (trustor/settlor) means the individual who establishes the trust by transferring certain assets.

(F) **Irrevocable trust.** Irrevocable trust means a trust in which the grantor has expressly not retained the right to terminate or revoke the trust and reclaim the trust principal and income.

(G) **Pour over or open trust.** Pour over or open trust means a trust which may be expanded from time to time by the addition to the trust principal (e.g., a trust established to receive the monthly payment of an annuity, a workers' compensation settlement, a disability benefit or other periodic receivable). The principal may accumulate or grow depending upon whether the trustee distributes the receivable or permits it to accumulate. Generally, the terms of the trust will determine the availability of the income in the month of receipt and the availability of the principal in subsequent months.

(H) **Primary beneficiary.** Primary beneficiary means the first person or class of persons to receive the benefits of the trust.

(I) **Revocable trust.** Revocable trust means a trust in which the grantor has retained the right to terminate or revoke the trust and reclaim the trust principal and income. Unless a trust is specifically made irrevocable, it is revocable. Even an irrevocable trust is revocable upon the written consent of all living persons with an interest in the trust.

(J) **Secondary beneficiary.** Secondary beneficiary means the person or class of persons who will receive the benefits of the trust after the primary beneficiary has died or is otherwise no longer entitled to benefits.

(K) **Testamentary trust.** Testamentary trust means a trust created by a will and effective upon the death of the individual making the will.

(L) **Trustee.** Trustee means an individual, individuals, a corporation, court, bank or combination thereof with responsibility for carrying out the terms of the trust.

(3) **Documents needed.** To determine the availability of a trust for an individual applying for or receiving SoonerCare, copies of the following documents are obtained:

(A) Trust document;

(B) When applicable, all relevant court documents including the Order establishing the trust, Settlement Agreement, Journal Entry, etc.; and

(C) Documentation reflecting prior disbursements (date, amount, purpose).

(4) **Trust accounts established on or before August 10, 1993.** The rules found in (A) - (C) of this paragraph apply to trust accounts established on or before August 10, 1993.

(A) **Support trust.** The purpose of a support trust is the provision of support or care of a beneficiary. A support trust will generally contain language such as "to provide for the care, support and maintenance of ...", "to provide as necessary for the support of ...", or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort and general welfare." Except as provided in (i)-(iii) of this subparagraph, the amount from a support trust deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee(s) for distribution of the maximum amount to the beneficiary. The beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise discretion with respect to distributions, may show that the amounts deemed available are not actually available by:

(i) Commencing proceedings against the trustee(s) in a court of competent jurisdiction;

(ii) Diligently and in good faith asserting in the proceedings that the trustee(s) is required to provide support out of the trust; and

(iii) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount deemed available. If the beneficiary makes the showing, the amount deemed available from the trust is the amount determined by the court. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing to make the Agency or the State of Oklahoma a party to the proceeding, or to show to the court that SoonerCare benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required.

(B) **Medicaid Qualifying Trust (MQT).** A Medicaid Qualifying Trust is a trust, or similar legal device, established (other than by will) by an individual or an individual's spouse, under which the individual may be the beneficiary of all or part of the distributions from the trust and such distributions are determined by one or more trustees who are permitted to exercise any discretion with respect to distributions to the individual. A trust established by an individual or an individual's spouse includes trusts created or approved by a representative of the individual (parent, guardian or person holding power of attorney) or the court where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse. This includes trust accounts or similar devices established for a minor child pursuant to 12 O.S. 83. In addition, a trust established jointly by at least one of the individuals who can establish an MQT and another party or parties (who do not qualify as one of these individuals) is an MQT as long as it meets the other MQT criteria. The amount from an irrevocable MQT deemed available to the individual is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the individual assuming the full exercise of discretion by the trustee(s). The provisions regarding MQT apply even though an MQT is irrevocable or is established for purposes other than enabling an individual to qualify for SoonerCare, and, whether or not discretion is actually exercised.

(i) **Similar legal device.** MQT rules listed in this subsection also apply to "similar legal devices" or arrangements having all the characteristics of an MQT except that there is no actual trust document. An example is the member petitioning the court to irrevocably assign all or part of his/her income to another party (usually the spouse). The determination whether a given document or arrangement constitutes a "similar legal device" should be made by the OKDHS Office of General Counsel, Legal Unit.

(ii) **MQT resource treatment.** For revocable MQTs, the entire principal is an available resource to the member. Resources comprising the principal are subject to the individual resource exclusions (e.g., the home property exclusion) since the member can access those resource items without the intervention of the trustee. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the member, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the member (or to use it for the member's benefit), the entire principal is an available resource to the member. Resources transferred to such a trust lose individual resource consideration (e.g., home property transferred to such a trust is no longer home property and the

home property exclusions do not apply). The value of the property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to the member (or to be used for his/her benefit), but those distributions are not made, the member's countable resources increase cumulatively by the undistributed amount.

(iii) **Income treatment.** Amounts of MQT income distributed to the member are countable income when distributed. Amounts of income distributed to third parties for the member's benefit are countable income when distributed.

(iv) **Transfer of resources.** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the trustee's access to the principal (for purposes of distributing it to the member or using it for the member's benefit) is restricted (e.g., if the trust stipulates that the trustee cannot access the principal but must distribute the income produced by that principal to the member, the principal is not an available resource and has, therefore, been transferred).

(C) **Special needs trusts.** Some trusts may provide that trust benefits are intended only for a beneficiary's "special needs" and require the trustee to take into consideration the availability of public benefits and resources, including SoonerCare benefits. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including SoonerCare benefits. If a trust contains such terms and is not an MQT, the trust is not an available resource.

(5) **Trust accounts established after August 10, 1993.** The rules found in (A) - (C) of this paragraph apply to trust accounts established after August 10, 1993.

(A) For purposes of this subparagraph, the term "trust" includes any legal document or device that is similar to a trust. An individual is considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if the trust was established other than by will and by any of the following individuals:

(i) the individual;

(ii) the individual's spouse;

(iii) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(iv) a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) Where trust principal includes assets of an individual described in this subparagraph and assets of any other person(s), the provisions of this subparagraph apply to the portion of the trust attributable to the assets of the individual. This subparagraph applies without regard to the purposes for which the trust is established, whether the trustees have or exercise any discretion under the trust, and restrictions on when or whether distributions may be made from the trust, or any restrictions on the use of the distribution from the trust.

(C) There are two types of trusts, revocable trusts and irrevocable trusts.

(i) In the case of a revocable trust, the principal is considered an available resource to the individual. ~~Home property in a revocable trust under the direct control of the individual, spouse or legal representative retains the exemption as outlined in OAC 317:35-5-41.8(a)(2).~~ Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the 60 months look back period.

(ii) In the case of an irrevocable trust, if there are any circumstances under which payments from the trust could be made to or for the benefit of the individual, the portion of the principal of the trust, or the income on the principal, from which payment to the individual could be made is considered available resources. Payments from the principal or income of the trust is considered income of the individual. Payments for any other purpose are considered a transfer of assets by the individual and are subject to the 60 months look back period. Any portion of the trust from which, or any income on the principal from which no payment could under any circumstances be made to the individual is considered as of the date of establishment of the trust (or if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of the asset transfer rules and are subject to the 60 months look back period.

(6) **Exempt trusts.** Paragraph (5) of this subsection does not apply to the following trusts:

(A) A trust containing the assets of a disabled individual under the age of 65 which was established for the benefit of such individual by the parent, grandparent, legal guardian of the individual or a court if the State receives all amounts remaining in the trust on the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual. This type of trust requires:

(i) The trust may only contain the assets of the disabled individual.

(ii) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the Oklahoma Department of Human Services or the Oklahoma Health Care Authority.

(iii) Trust records must be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.

(iv) The exception for the trust continues after the disabled individual reaches age 65. However, any addition or augmentation after age 65 involves assets that were not the assets of an individual under age 65; therefore, those assets are not subject to the exemption.

(v) Establishment of this type of trust does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under the age of 65.

(vi) Payments from the trust are counted according to SSI rules. According to these rules, countable income is anything the individual receives in cash or in kind that can be used to meet the individual's needs for food, clothing and shelter. Accordingly, any payments made directly to the individual are counted as income to the individual because the payments could be used for food, clothing, or shelter for the individual. This rule applies whether or not the payments are actually used for these purposes, as long as there is no legal impediment which would prevent the individual from using the payments in this way. In addition, any payments made by the trustee to a third party to purchase food, clothing, or shelter for the individual can also count as income to the individual. For example, if the trustee makes a mortgage payment for the individual, that payment is a shelter expense and counts as income.

(vii) A corporate trustee may charge a reasonable fee for services in accordance with its published fee schedule.

(viii) The OKDHS Form 08MA018E, Supplemental Needs Trust, is an example of the trust. Workers may give the sample form to the member or his/her representative to use or for their attorney's use.

(ix) To terminate or dissolve a Supplemental Needs Trust, the worker sends a copy of the trust instrument and a memorandum to OKDHS Family Support Services Division, Attention: Health Related and Medical Services (HR&MS) explaining the reason for the requested termination or dissolution of the Supplemental Needs Trust, and giving the name and address of the trustee. The name and address of the financial institution and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(B) A trust (known as the Medicaid Income Pension Trust) established for the benefit of an individual if:

(i) The individual is in need of long-term care and has countable income above the categorically needy standard for long-term care (OKDHS Appendix C-1 Schedule VIII.B) but less than the average cost of nursing home care per month (OKDHS Appendix C-1 Schedule VIII.B).

(ii) The Trust is composed only of pension, social security, or other income of the individual along with accumulated income in the trust. Resources cannot be included in the trust.

(iii) All income is paid into the trust and the applicant is not eligible until the trust is established and the monthly income has been paid into the trust.

(iv) The trust must retain an amount equal to the member's gross monthly income less the current categorically needy standard of OKDHS Appendix C-1. The Trustee distributes the remainder.

(v) The income disbursed from the trust is considered as the monthly income to determine the cost of their care, and can be used in the computations for spousal diversion.

(vi) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the OHCA. Trust records must be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.

(vii) The State will receive all amounts remaining in the trust up to an amount equal to the total SoonerCare benefits paid on behalf of the individual subsequent to the date of establishment of the trust.

(viii) Accumulated funds in the trust may only be used for medically necessary items not covered by SoonerCare, or other health programs or health insurance and a reasonable cost of administrating the trust. Reimbursements cannot be made for any medical items to be furnished by the nursing facility. Use of the accumulated funds in the trust for any other reason will be considered as a transfer of assets and would be subject to a penalty period.

(ix) The trustee may claim a fee of up to 3% of the funds added to the trust that month as compensation.

(x) An example trust is included on OKDHS Form 08MA011E. Workers may give this to the member or his/her representative to use or for their attorney's use as a guide for the Medicaid Income Pension Trust.

(xi) To terminate or dissolve a Medicaid Income Pension Trust, the worker sends a memorandum with a copy of the trust to OKDHS Family Support Services Division, Attention: HR&MS, explaining the reason and effective date for the requested termination or dissolution of the Medicaid Income Pension Trust, and giving the name and address of the trustee. The name and address of the financial institution, account number, and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(C) A trust containing the assets of a disabled individual when all of the following are met:

(i) The trust is established and managed by a non-profit association;

(ii) The trust must be made irrevocable;

(iii) The trust must be approved by the Oklahoma Department of Human Services and may not be amended without the permission of the Oklahoma Department of Human Services;

(iv) The disabled person has no ability to control the spending in the trust;

(v) A separate account is maintained for each beneficiary of the trust but for the purposes of investment and management of funds, the trust pools these accounts;

(vi) The separate account on behalf of the disabled person may not be liquidated without payment to OHCA for the medical expenses incurred by the members;

(vii) Accounts in the trust are established by the parent, grandparent, legal guardian of the individual, the individual, or by a court;

(viii) To the extent that amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts an amount equal to the total medical assistance paid on behalf of the individual. A maximum of 30% of the amount remaining in the beneficiary's account at the time of the beneficiary's death may be retained by the trust.

(7) **Funds held in trust by Bureau of Indian Affairs (BIA).** Interests of individual Indians in trust or restricted lands are not considered in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program.

(8) **Disbursement of trust.** At any point that disbursement occurs, the amount disbursed is counted as a non-recurring lump sum payment in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received.

[OAR Docket #16-510; filed 6-15-16]

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

[OAR Docket #16-482]

RULEMAKING ACTION:
PERMANENT final 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
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed policy changes for long-term care eligibility are to be consistent with federal regulations in regards to home equity, home exemption criteria, and the counting of annuities.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

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 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.~~

(~~H~~G) 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 (q) 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 #16-482; filed 6-15-16]

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

[OAR Docket #16-479]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 6. SoonerCare for Pregnant Women and Families with Children
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-37. [AMENDED]
317:35-6-39. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-6-64.1. [AMENDED]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-48. [AMENDED]
(Reference APA WF # 15-02)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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n/a
ANALYSIS:
Proposed Eligibility policy is amended to clean up language by referencing an OHCA income chart for determining eligibility instead of a DHS chart because OHCA now determines eligibility for certain eligibility groups. OHCA also proposes rules to update policy regarding Transitional Medical Assistance (TMA) benefits due to MAGI rules for income eligibility.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

PART 5. DETERMINATION OF ELIGIBILITY FOR SOONERCARE HEALTH BENEFITS FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

317:35-6-37. Financial eligibility of categorically needy individuals related to AFDC or pregnancy-related services

Individuals whose income is less than the ~~standards on DHS Appendix C-1~~SoonerCare Income Guidelines for the applicable eligibility group are financially eligible for SoonerCare.

(1) **~~Categorically needy standards/categorically~~Categorically related to pregnancy-related services.** For an individual related to pregnancy-related

services to be financially eligible, the countable income must be less than the appropriate standard according to the family size on ~~DHS Appendix C-1~~the SoonerCare Income Guidelines. In determining the household size, the pregnant woman and her unborn child(ren) are included.

(2) **~~Categorically needy standards/categorically~~Categorically related to children's and parent/caretakers' groups.**

(A) **~~Categorical relationship.~~Parent/caretakers' group.** For the individual ~~related to AFDC~~in the parent/caretakers' group to be considered categorically needy, the ~~standards on DHS Appendix C-1 schedules~~SoonerCare Income Guidelines must be used.

(i) **~~DHS Appendix C-1, Schedule X.~~SoonerCare Income Guidelines.** Individuals age 19 years or older, other than pregnant women, are determined categorically needy if countable income is less than the Categorically Needy Standard, according to the family size.

(ii) **~~DHS Appendix C-1, Schedule I.A.~~SoonerCare Income Guidelines.** All individuals under 19 years of age are determined categorically needy if countable income is equal to or less than the Categorically Needy Standard, according to the size of the family.

(B) **Families with children.** Individuals who meet financial eligibility criteria for the children's and parent/caretakers' groups are:

(i) All persons included in an active TANF case.

(ii) Individuals related to the children's or parent/caretakers' groups whose countable income is within the current appropriate income standard, but who do not receive TANF assistance.

(iii) All persons in a TANF case in Work Supplementation status who meet TANF eligibility conditions other than earned income.

(iv) Those individuals who continue to be eligible for Medicaid in a TANF case after they become ineligible for a TANF payment. These individuals will continue to be considered categorically needy if the TANF case was closed due to child or spousal support, the loss or reduction of earned income exemption by any member of the assistance unit, or the new or increased earnings of the caretaker relative.

317:35-6-39. General calculation of countable income for MAGI eligibility groups

(a) The income that is counted in determining eligibility for an individual is that individual's household income.

(b) In order to calculate the countable household income for an individual:

(1) Determine who is in the individual's household (see OAC 317:35-6-40 to 317:35-6-43);

(2) Identify all sources of income for all household members;

(3) Determine whether each source of income is considered for SoonerCare eligibility or is excluded (see Part 6, Countable Income, of this Subchapter);

(4) Determine the gross monthly amount of each source of countable income (see Part 6, Countable Income, of this subchapter);

(5) Determine whether each household member's income counts toward the household (see 317:35-6-44);

(6) Sum the gross monthly amounts of all countable sources of income of all household members whose income is counted;

(7) Subtract allowable adjustments to income (see OAC 317:35-6-52); and

(8) Compare the result to the income limit for the individual's eligibility group ~~(see the appropriate Schedule of OKDHS Appendix C-1)~~(see SoonerCare Income Guidelines). If the result is equal to or less than the dollar amount of the income limit, the individual is financially eligible.

(9) When calculating the percentage of the Federal Poverty Level (FPL) that corresponds to the individual's monthly countable income, subtract 5% from the FPL percentage reached to determine the countable FPL level for the individual. This countable percentage of FPL is compared to the FPL limit for the individual's eligibility group in order to determine whether the individual is financially eligible. This 5% deduction from FPL has already been accounted for in the dollar amounts of the income limits given in ~~OKDHS Appendix C-1~~the SoonerCare Income Guidelines.

(c) If an individual's household income using this methodology is over the income limit for SoonerCare eligibility and that individual's household income using the MAGI household and income-counting methodology used by the Federally Facilitated Exchange (FFE) is less than 100% of FPL, the FFE's MAGI rules, as promulgated by the Internal Revenue Service, are used to determine SoonerCare eligibility in place of the rules in this Chapter. The FFE rules including, but not limited to, those in the following areas may need to be followed in place of the SoonerCare rules in this Chapter:

(1) Rules on household composition;

(2) Rules on countable sources of income; and

(3) Rules on the budget period used to calculate income, i.e. annual income (FFE) versus current monthly income (SoonerCare).

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-6-64.1. Transitional Medical Assistance (TMA)

(a) **Conditions for TMA.**

(1) **Transitional Medical Assistance.** Health benefits are continued when the benefit group loses eligibility due to new or increased earnings of the parent(s)/caretaker relative or the receipt of ~~child or~~ spousal support. The health benefit coverage is of the same amount, duration, and scope as if the benefit group continued receiving SoonerCare. Eligibility for TMA begins with the effective date of

case closure or the effective date of closure had the income been reported timely. An individual is included for TMA only if that individual was eligible for SoonerCare and included in the benefit group at the time of the closure. To be eligible for TMA the benefit group must meet all of the requirements listed in (A) - (C) of this paragraph.

(A) At least one member of the benefit group was included in at least three of the six months immediately preceding the month of ineligibility.

(B) The health benefit cannot have been received fraudulently in any of the six months immediately preceding the month of ineligibility.

(C) The benefit group must have included a dependent child who met the age and relationship requirements for SoonerCare and whose needs were included in the benefit group at the time of closure, unless the only eligible child is a Supplemental Security Income (SSI) recipient.

(2) **Closure due to ~~child support or~~ spousal support.** Health benefits are continued if the case closure is due to the receipt of new or increased ~~child support or~~ payments for spousal support in the form of alimony. The needs of the parent(s)or caretaker relative must be included in the benefit group at the time of closure. The health benefits are continued for four months.

(3) **Closure due to new or increased earnings of parent(s) or caretaker relative.** Health benefits are continued if the closure is due to the new or increased earnings of the parent(s) or caretaker relative. The needs of the parent(s)or caretaker relative must be included in the benefit group at the time of closure. The parent(s) or caretaker relative is required to cooperate with OKDHS Oklahoma Child Support Services during the period of time the family is receiving TMA.

(4) **Eligibility period.** Health benefits may be continued for a period up to 12 months if the reason for closure is new or increased earnings of the parent(s) or caretaker relative. This period is divided into two six-month periods with eligibility requirements and procedures for each period.

(A) **Initial six-month period.**

(i) The benefit group is eligible for an initial six-month period of TMA without regard to income or resources if:

(I) an eligible child remains in the home;

(II) the parent(s) or caretaker relative remains the same; and

(III) the benefit group remains in the state.

(ii) An individual benefit group family member remains eligible for the initial six-month period of TMA unless the individual:

(I) moves out of the state,

(II) dies,

(III) becomes an inmate of a public institution,

(IV) leaves the household,

(V) does not cooperate, without good cause, with the OKDHS Oklahoma Child Support Services or third party liability requirements.

(B) **Additional Six-month period.**

(i) Health benefits are continued for the additional six-month period if:

(I) an eligible child remains in the home;

(II) the parent(s) or caretaker relative remains the same;

(III) the benefit group remains in the state;

(IV) the benefit group was eligible for and received TMA for each month of the initial six-month period;

(V) the benefit group has complied with reporting requirements in subsection (g) of this Section;

(VI) the benefit group has average monthly earned income (less child care costs that are necessary for the employment of the parent or caretaker relative) that does not exceed the 185% of the Federal Poverty Level ~~(see OKDHS Appendix C-1, Schedule I.A;)~~(see SoonerCare Income Guidelines); and

(VII) the parent(s) or caretaker relative had earnings in each month of the required three-month reporting period described in (g)(2) of this Section, unless the lack of earnings was due to an involuntary loss of employment, illness, or other good cause.

(ii) An individual benefit group family member remains eligible for the additional six-month period unless the individual meets any of the items listed in (4)(A)(ii) of this paragraph.

(b) **Income and resource eligibility.**

(1) The unearned income and resources of the benefit group are disregarded in determining eligibility for TMA. There is no earned income test for the initial six-month period.

(2) Health benefits are continued for the additional six-month period if the benefit group's countable earnings less child care costs that are necessary for the employment of the parent(s) or caretaker relative are below 185% of the Federal Poverty Level (see the standards on the OHCA website or the OKDHS Form 08AX001E, Schedule I.A) and the benefit group meets the requirements listed in (a)(4)(B).

(A) The earnings of all benefit group members are used in determining the earned income test. The only exception is that earnings of full time students included in the benefit group are disregarded.

(B) Income is determined by averaging the benefit group's gross monthly earnings (except full time student earnings) for the required three-month reporting period.

(C) A deduction from the benefit group's earned income is allowed for the cost of approved child care necessary for the employment of the parent(S) or

caretaker relative. The child care deduction is averaged for the same three-month reporting period. There is no maximum amount for this deduction.

(D) All individuals whose earnings are considered are included in the benefit group. The family size remains the same during both reporting periods.

(c) **Eligible child.** When the SoonerCare benefit is closed and TMA begins, the benefit group must include an eligible child whose needs were included in the SoonerCare benefit at the time of closure, unless the only eligible child is a SSI recipient. After the TMA begins, the benefit group must continue to include an eligible child. Age is the only requirement an eligible child must meet.

(d) **Additional members.** After the TMA begins, family members who move into the home cannot be added to the TMA coverage. This includes siblings and a natural or adoptive parent(s) or caretaker relative. If the additional member is in need of health benefits, an application for services under the SoonerCare program is completed. If a benefit group member included in TMA leaves the home and then returns, that member may be added back to TMA coverage if all conditions of eligibility are met.

(e) **Third party liability.** The benefit group's eligibility for TMA is not affected by a third party liability. However, the benefit group is responsible for reporting all insurance coverage and any changes in the coverage. The worker must explain the necessity for applying benefits from private insurance to the cost of medical care.

(f) **Notification.**

(1) **Notices.** Notices are sent to the benefit group, both at the onset of and throughout the TMA period. These notices, which are sent at specific times, inform the benefit group of its rights and responsibilities. When SoonerCare is closed and the benefit group is eligible for TMA, the computer generated closure notice includes notification of the continuation of health benefits. Another computer generated notice is sent at the same time to advise the benefit group of the reporting requirements and under what circumstances the health benefits may be discontinued. Each notice listed in (A)-(C) of this paragraph includes specific information about what the benefit group must report. The notices serve as the required advance notification in the event benefits are discontinued as a result of the information furnished in response to these notices.

(A) **Notice #1.** Notice #1 is issued in the third month of the initial TMA period. This notice advises the benefit group of the additional six-month period of TMA, the eligibility conditions, reporting requirements, and appeal rights.

(B) **Notice #2.** Notice #2 is issued in the sixth month of the TMA period, but only if the benefit group is eligible for the additional six-month period. This notice advises the benefit group of the eligibility conditions, reporting requirements, and appeal rights.

(C) **Notice #3.** Notice #3 is issued in the ninth month of the TMA period, or the third month of the additional six-month period. This notice advises the benefit group of the eligibility conditions, the reporting requirements, appeal rights, and the expiration of TMA coverage.

(2) **Notices not received.** In some instances the benefit group does not receive all of the notices listed in (1) of this subsection. The notices and report forms are not issued retroactively.

(g) **Reporting.** The benefit group is required to periodically report specific information. The information may be reported by telephone or by letter.

(1) The benefit group must report:

(A) gross earned income of the entire benefit group for the appropriate three-month period;

(B) child care expenses, for the appropriate three-month period, necessary for the continued employment of the parent(s) or caretaker relative;

(C) changes in members of the benefit group;

(D) residency; and

(E) third party liability.

(2) The reporting requirement time frames are explained in this subparagraph.

(A) The information requested in the third month must be received by the 21st day of the fourth month and is used to determine the benefit group's eligibility for the additional six-month period. While this report is due in the fourth month, negative action cannot be taken during the initial period for failure to report. If the benefit group fails to submit the requested information, benefits are automatically suspended effective the seventh month. If action to reinstate is not taken by deadline of the suspension month, the computer automatically closes the case effective the next month.

(B) The information requested in the sixth month must be furnished by the 21st day of the seventh month. The decision to continue benefits into the eighth month is determined by the information reported.

(C) The information requested in the ninth month must be furnished by the 21st day of the tenth month. The decision to continue health benefits into the 11th month is determined by the information reported. When the information is not reported timely, the TMA is automatically suspended by the computer for the appropriate effective date. If the benefit group subsequently reports the necessary information, the worker determines eligibility. If all eligibility factors are met during and after the suspension period, the health benefits are reinstated. The effective date of the reinstatement is the same as the effective date of the suspension so the benefit group has continuous medical coverage.

(h) **Termination of TMA.** The TMA coverage is discontinued any time the benefit group fails to meet the eligibility requirements as shown in this Section. If it becomes necessary to discontinue the TMA coverage for the benefit group or any member of the benefit group, the individual(s) must be advised

that he or she may be eligible for health benefits under the SoonerCare program and how to obtain these benefits.

(i) **Receipt of health benefits after TMA ends.** To ensure continued medical coverage a computer generated recertification form is mailed to the benefit group during the third month of TMA for benefits closed due to the receipt of child or spousal support or the 11th month of TMA for benefits closed due to increased earnings. The benefit group must return the form prior to the termination of the TMA benefits. When determined eligible, health benefits continue as SoonerCare, not TMA. If the benefit group fails to return the recertification form, TMA benefits are terminated.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-48. Eligibility for the SoonerPlan Family Planning Program

(a) Non-pregnant women and men ages 19 and above are eligible to receive family planning services if they meet all of the conditions of eligibility in paragraphs (1), (2), (3), and (4) of this Subsection. This is regardless of pregnancy or paternity history and includes women who gain eligibility for SoonerCare family planning services due to a pregnancy, but whose eligibility ends 60 days postpartum.

(1) The countable income is at or below the applicable standard on the ~~OKDHS Appendix C-1~~SoonerCare Income Guidelines. Prior to October 1, 2013, the standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member of the benefit group. Deductions for work related expenses for self-employed individuals are found at OAC 317:35-10-26(b)(1). Effective October 1, 2013, MAGI financial eligibility rules are used to determine eligibility for SoonerPlan.

(2) Prior to October 1, 2013, in determining financial eligibility for the SoonerPlan Family Planning program the income of the individual and spouse (if any) is considered. The individual has the option to include or exclude minor dependent children and their income in the eligibility process. October 1, 2013, MAGI household composition rules are used to determine eligibility for SoonerPlan.

(3) SoonerPlan members with minor dependent children and a parent absent from the home are required to cooperate with the Oklahoma Department of Human Services, Child Support Services Division (OCSS) in the collection of child support payments. Federal regulations provide a waiver of this requirement when cooperation is not in the best interest of the child.

(4) Individuals eligible for SoonerCare can choose to enroll only in the SoonerPlan Family Planning Program with the option of applying for SoonerCare at any time.

(5) Persons who have Medicare or creditable health insurance coverage are not precluded from applying for the SoonerPlan Family Planning program.

(b) All health insurance is listed on ~~the OKDHS computer system~~applicable systems in order for OHCA Third Party Liability Unit to verify insurance coverage. The OHCA is the payer of last resort.

(c) Income for the SoonerPlan Family Planning Program does not require verification, unless questionable. If the income is questionable the worker must verify the income.

(d) There is not an asset test for the SoonerPlan Family Planning Program.

[OAR Docket #16-479; filed 6-15-16]

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

[OAR Docket #16-493]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. ICF/IID, HCBW/IID, and Individuals Age 65 or Older in Mental Health Hospitals
Part 11. Payment, Billing, and other Administrative Procedures
317:35-9-95. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-26. [AMENDED]
(Reference APA WF # 15-40)

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 483.12

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 24, 2015

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ADOPTION:
February 11, 2016

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February 11, 2016

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:
June 9, 2016

EFFECTIVE:
September 1, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Proposed policy change would clean up existing language to reflect the elimination of hospital leave payments implemented in 2014. Hospital leave payments are no longer made to long term care facilities. Payments will continue for therapeutic leave.

CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 9. ICF/IID, HCBW/IID, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 11. PAYMENT, BILLING, AND OTHER ADMINISTRATIVE PROCEDURES

317:35-9-95. Payment to ICF/~~MR~~IID (public and private)

The Oklahoma Health Care Authority may execute agreements to provide care only with facilities which are properly licensed by the state licensing agency. The agreement is initiated by application from the facility and expires on a specified date, or with termination of the facility license, or shall be automatically terminated on notice to OHCA that the facility is not in compliance with Medicaid (or other federal long-term care) requirements.

(1) In the event that a facility changes ownership, the agreement with the previous owner may be extended to the new owner, pending certification of the new owner to provide care to individuals during the change of ownership. In the event that the new owner is not showing good faith in pursuit of certification, the OHCA will begin planning for alternate placement of Medicaid patients. The county office is immediately notified of any relevant change in facility status.

(2) Payment for long-term care is made only for those individuals who have been approved by the DHS for such care. The amount of payment is based on the actual time the individual received care (including therapeutic/hospital leave) from a nursing facility during any given month. Payment for nursing care cannot be made for any period during which the care has been temporarily interrupted for reasons other than therapeutic leave. Therapeutic leave is any planned leave other than hospitalization that is for the benefit of the patient. Therapeutic leave must be clearly documented in the patient's plan of care before payment for a reserved bed can be made by the OHCA. Hospital leave is planned or unplanned leave when the patient is admitted to a licensed hospital.

(3) A nursing facility may receive payment for up to 7 days per calendar year for each eligible individual in order to reserve a bed when the patient is on therapeutic leave.

(4) The ICF/~~MR~~IID may receive payment for a maximum of 60 days of therapeutic leave per calendar year for each recipient to reserve a bed. No more than 14 consecutive days of therapeutic leave may be claimed per absence. Recipients approved for ICF/~~MR~~IID on or after July 1 of the year will only be eligible for 30 days of therapeutic leave during the remainder of that year.

(5) The Statement of Compensable Therapeutic Leave Only form is used by the facility to record use of therapeutic leave. This form is to be made available by the local office to the nursing facility upon request.

(6) ~~Effective August 1, 1995, a nursing facility may receive payment for a maximum of three (3) days of hospital leave per calendar year for each recipient to reserve a bed when the patient is admitted to a licensed hospital, if the facility has an occupancy rate of at least 90 percent at the time of hospital admission. Claims for hospital leave are submitted on Form Adm-41 (Long Term Care Claim Form).~~No payment shall be made for hospital leave.

~~(7) Effective January 1, 1996, the nursing facility may receive payment for a maximum of five (5) days of hospital leave per calendar year for each recipient to reserve the bed when the patient is admitted to a licensed hospital.~~

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-26. Payment to NF

The OHCA may execute agreements to provide care only with facilities which are properly licensed by the state licensing agency. The agreement is initiated by application from the facility and expires on a specified date, or with termination of the facility license, or shall be automatically terminated on notice to this Authority that the facility is not in compliance with Medicaid (or other federal long-term care) requirements.

(1) In the event that a facility changes ownership, the agreement with the previous owner may be extended to the new owner, pending certification of the new owner to provide care to individuals during the change of ownership. In the event that the new owner is not showing good faith in pursuit of certification, the OHCA will begin planning for alternate placement of Medicaid patients. The county office is immediately notified of any relevant change in facility status.

(2) Payment for long-term care is made only for those individuals who have been approved by the Department of Human Services for such care. The amount of payment is based on the actual time the individual received care (including therapeutic leave) from a nursing facility during any given month. Payment for nursing care cannot be made for any period during which the care has been temporarily interrupted for reasons other than therapeutic leave. Therapeutic leave is any planned leave other than hospitalization that is for the benefit of the patient. Therapeutic leave must be clearly documented in the patient's plan of care before payment for a reserved bed can be made by the OHCA.

(3) Effective July 1, 1994, the nursing facility may receive payment for a maximum of seven days of therapeutic leave per calendar year for each eligible individual to reserve the bed.

(4) The Statement of Compensable Therapeutic Leave Only form is used by the facility to record use of therapeutic leave. This form is to be made available by the local office to the nursing facility upon request.

(5) ~~Effective August 1, 1995, a nursing facility may receive payment for a maximum of three (3) days of hospital leave per calendar year for each recipient to reserve a bed when the patient is admitted to a licensed hospital, if the facility has an occupancy rate of at least 90 percent at the time of hospital admission. Claims for hospital leave are submitted on Form Adm-41 (Long Term Care Claim Form).~~No payment shall be made for hospital leave.

~~(6) Effective January 1, 1996, the nursing facility may receive payment for a maximum of five (5) days of hospital leave per calendar year for each recipient to reserve the bed when the patient is admitted to a licensed hospital.~~

[OAR Docket #16-493; filed 6-15-16]

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

[OAR Docket #16-484]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Advantage Waiver Services
317:35-17-5. [AMENDED]
(Reference APA WF # 15-14A)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, 42 CFR 441.301, 441.710, and 441.730
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 9, 2016
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EFFECTIVE:
September 1, 2016
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Superseded rules:
Subchapter 17. Advantage Waiver Services
317:35-17-5. [AMENDED]
Gubernatorial approval:
January 13, 2016
Register publication:
33 Ok Reg 379
Docket number:
16-123
(Reference APA WF # 15-14A)
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Proposed policy is revised to comply with 42 CFR 441.301 regarding conflict of interest provisions for case management services. These policy revisions are necessary as the regulation states providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, must not provide case management services or develop the person centered service plan. The State is currently out of compliance. Without the recommended changes, the State may be in risk of losing federal funding.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-5. ADvantage program medical eligibility determination

The ~~OKDHS~~Oklahoma Department of Human Services(DHS) area nurse, or nurse designee, makes the medical eligibility determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT)Parts I~~,Part~~and III, and other ~~available~~ medical information.

(1) When ADvantage care services are requested or the UCAT I is received in the county office, the:

(A) ~~the OKDHS~~DHS nurse is responsible for completing the UCAT III~~.~~;and

(B) ~~the~~ social ~~worker~~service specialist is responsible for contacting the ~~individual~~applicant within three ~~working~~business days to initiate the financial eligibility application process.

(2) Categorical relationship must be established for determination of eligibility for ADvantage services. If a categorical relationship to disability ~~has~~was not ~~already been~~ established, the local social ~~worker~~service specialist submits the same information ~~described in OAC~~per Oklahoma Administrative Code (OAC) 317:35-5-4(2) to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on the categorical relationship to the ~~disabled~~person with the disability using the ~~same definition used by SSA~~Social Security Administration (SSA) definition. A follow-up is required by the ~~OKDHS~~DHS social ~~worker~~service specialist with ~~the Social Security Administration~~SSA to ~~be sure their~~ensure the disability decision agrees with the LOCEU decision ~~of LOCEU~~.

(3) Community agencies complete the UCAT~~, Part~~ I, and ~~forwards~~forward the form to the county office. ~~If~~When the UCAT~~, Part~~ I indicates ~~that~~ the applicant does not qualify for Medicaid long-term care services, the applicant is referred to appropriate community resources. Members may also call the care line at 800-435-4711.

(4) The ~~OKDHS~~DHS nurse ~~completes the UCAT, Part III assessment visit~~visits with the member within 10 ~~working~~business days of receipt of the referral for ADvantage services for ~~a client~~an applicant who is Medicaid eligible at the time of the request. The ~~OKDHS~~DHS nurse completes the UCAT~~, Part~~ III assessment within 20 ~~working~~business days of the date the Medicaid application is completed for new applicants.

(5) During the assessment visit, the ~~OKDHS~~DHS nurse informs the applicant of medical eligibility and provides information about the different long-term care service options. ~~If~~When there are multiple household members applying for the ADvantage program, the UCAT assessment is done for ~~the applicant household members~~them during the same visit. The ~~OKDHS~~DHS nurse documents whether the member chooses ~~NF~~nursing facility program services or ADvantage program services~~. In addition, the OKDHS nurse~~and makes a level of care and service program recommendation.

(6) The ~~OKDHS~~DHS nurse informs the member and family of agencies certified to deliver ADvantage case management and in-home care services in the local area to obtain the ~~client's~~applicant's primary and secondary informed choices~~.~~,ensuring adherence to conflict free case management requirements

(A) ~~If the member and/or family declines to make a provider choice, the OKDHS nurse documents that decision on the member choice form.~~Providers of ADvantage services for the member, or for those who have an interest in, or are employed by an ADvantage provider for the member must not provide case management or develop the person-centered service plan, except when the ADvantage Administration (AA) demonstrates the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area, also provides other ADvantage services.

(B) ~~The AA uses a rotating system to select an agency for the member from a list of all local certified case management and in-home care agencies.~~If the member and/or family declines to make a provider choice, the DHS nurse documents the decision on Form 02CB001, Member Consents and Rights.

(C) The AA uses a rotating system to select an agency for the member from a list of all local, certified case management and in-home care agencies, ensuring adherence to conflict free case management requirements.

(7) The ~~OKDHS~~DHS nurse documents the names of the chosen agencies and the agreement ~~(by dated signature)~~ of the member, by dated signature, to receive services provided by the agencies.

(8) ~~If~~When the ~~needs of the member~~member's needs require an immediate interdisciplinary team (IDT) meeting with home health agency nurse participation to develop a care plan and service plan, the ~~OKDHS~~DHS nurse documents the need for priority processing.

(9) The ~~OKDHS~~DHS nurse scores the UCAT, Part III. The ~~OKDHS~~DHS nurse forwards the UCAT, Parts I and III, documentation of financial eligibility, ~~and~~ documentation of the member's case management and in-home care agency choices to the area nurse, or nurse designee, for medical eligibility determination.

(10) If, based upon the information obtained during the assessment, the ~~OKDHS~~DHS nurse determines ~~that~~ the member may be at risk for health and safety, ~~OKDHS~~DHS Adult Protective Services ~~(APS)~~ staff ~~are~~is notified immediately and the referral is documented on the UCAT.

(11) Within ~~ten working~~10 business days of receipt of a complete ADvantage application, the area nurse~~,~~ or nurse designee, determines medical eligibility using ~~NF~~nursing facility level of care criteria and service eligibility criteria ~~[refer to~~per OAC 317:35-17-2 and ~~OAC~~ 317:35-17-3~~]~~ and enters the medical decision on the system.

(12) Upon notification of financial eligibility from the social ~~worker~~service specialist, medical eligibility ~~(MS-52)~~, and approval for ADvantage entry from the area nurse~~,~~ or nurse designee, the AA communicates with the case management provider to begin care ~~plan~~ and service plan development. The AA communicates to the ~~client's~~ case management provider, the member's name, address, case number,~~and social security~~Social Security number, the number of units of case management and, ~~if~~when applicable, the number of units of home health agency nurse evaluation authorized for ~~care plan and~~ service plan development. ~~If~~When the member requires an immediate home visit to develop a service plan within 24 hours, the AA contacts the case management provider directly to confirm availability and ~~then~~ sends the new case packet information to the case management provider via ~~facsimile~~email.

(13) ~~If~~When the services must be in place to ensure the health and safety of the member upon discharge to the home from the ~~NF~~nursing facility or ~~Hospital~~hospital, a ~~nurse~~ case manager from an ADvantage case management provider selected by the ~~client~~member and referred by the AA follows the ADvantage ~~Institution Transition~~institution transition, case management procedures for care ~~plan~~ and service plan development and implementation.

(14) A new medical level of care determination is required when a member requests any ~~of the following~~ changes in service program, from:

(A) ~~from~~ State Plan Personal Care to ADvantage services~~.~~;

(B) ~~from~~ ADvantage to State Plan Personal Care services~~.~~;

(C) ~~from Nursing Facility~~nursing facility to ADvantage services~~.~~; or

(D) ~~from~~ ADvantage to ~~Nursing Facility~~nursing facility services.

(15) A new medical level of care determination is not required when a member requests re-activation of ADvantage services after a short-term stay ~~(~~of 90 calendar-days or less~~)~~ in a ~~NursingFacility~~nursing facility when the

member has had previous ADvantage services and the ADvantage certification period has not expired.

(16) When a UCAT assessment ~~has been~~was completed more than 90 calendar-days prior to submission to the area nurse or nurse designee for a medical decision, a new assessment is required.

[OAR Docket #16-484; filed 6-15-16]

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

[OAR Docket #16-514]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 18. Programs of All-Inclusive Care for the Elderly
317:35-18-5. [AMENDED]
317:35-18-8. [AMENDED]
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed policy revisions are amended to provide clarification on enrollment standards for members who voluntarily dis-enroll and wish to transfer from one PACE site to another PACE site to align with current business practices.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 18. PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

317:35-18-5. Eligibility criteria

(a) To be eligible for participation in PACE, the applicant must:

(1) be age 55 years or older

(2) live in a PACE service area;

(3) be determined by the state to meet nursing facility level of care~~.~~; and

(4) be determined by the PACE Interdisciplinary team as able to be safely served in the community at the time of enrollment. If the PACE provider denies enrollment because the IDT determines that the applicant cannot be served safely in the community, the PACE provider must:

(A) notify the applicant in writing of the reason for the denial;

(B) refer the applicant to alternative services as appropriate;

(C) maintain supporting documentation for the denial and notify CMS and OHCA of the denial and make the supporting documentation available for review; and

(D) advise the applicant orally and in writing of the grievance and appeals process.

(b) To be eligible for SoonerCare capitated payments, the individual must:

(1) meet categorical relationship to disability (reference OAC 317:35-5-4).

(2) be eligible for Title XIX services if institutionalized as determined by the Oklahoma Department of Human Services;

(3) be eligible for SoonerCare State Plan services;

(4) meet the same financial eligibility criteria as set forth for the SoonerCare Advantage program per OAC 317:35-17-10 and 317:30-17-11;and

(5) meet appropriate medical eligibility criteria.

(c) ~~Medical determination of Eligibility.~~ The nurse designee makes the medical determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT) I, Part III, and other available medical information.

(1) When PACE services are requested:

(A) The PACE nurse or OKDHS nurse is responsible for completing the UCAT assessment.

(B) The PACE intake staff is responsible for aiding the PACE enrollee in contacting OKDHS to initiate the financial eligibility application process.

(2) The nurse completes the UCAT, Part III visit with the PACE enrollee within 10 days of receipt of the referral for PACE services.

(3) The nurse sends the UCAT, Part III to the designated OHCA nurse staff member for review and level of care determination.

(4) A new medical level of care determination may be required when a member requests any of the following changes in service programs:

(A) From PACE to Advantage.

(B) From ~~Pace~~PACE to State Plan Personal Care Services.

(C) From Nursing Facility to PACE.

(D) From Advantage to PACE if previous UCAT was completed more than 6 months prior to member requesting PACE enrollment.

(E) From PACE site to PACE site.

(d) To obtain and maintain eligibility, the individual must agree to accept the PACE providers and its contractors as the individual's only service provider. The individual may be held financially liable for services received without prior authorization except for emergency medical care.

317:35-18-8. Enrollment

(a) The provider determines whether the applicant meets PACE enrollment requirements.

(b) The enrollment effective date is the first day of the month after the provider receives the signed enrollment form.

(c) Enrollment continues until the participant's death, regardless of changes in health status, unless either of the following actions occur:

(1) The participant voluntarily disenrolls and/or elects to transfer to other eligible PACE program.

(2) The participant is involuntarily disenrolled.

[OAR Docket #16-514; filed 6-15-16]

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

[OAR Docket #16-521]

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ANALYSIS:
Proposed rule revisions will allow active military personnel who applied for Home and Community-Based Services (HCBS) in another state to have the application date honored in the state of Oklahoma.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-1. Home and Community-Based Services (HCBS) Waivers for persons with intellectual disabilities or certain persons with related conditions

(a) **Applicability.** The rules in this Section apply to services funded through Medicaid HCBS Waivers per Oklahoma Administrative Code (OAC) 317:35-9-5 and per Section 1915(c) of the Social Security Act. The specific ~~waivers~~Waivers are the In-Home Supports Waiver (IHSW) for Adults, the In-Home Supports Waiver (IHSW) for Children, the Community Waiver, and the Homeward Bound Waiver.

(b) **Program provisions.** Each individual requesting services provided through an HCBS Waiver and his or her family or guardian are responsible for:

(1) accessing, with the assistance of ~~OKDHS~~the Oklahoma Department of Human Services (DHS) staff, all benefits available under Oklahoma's Medicaid State Plan or other payment sources prior to accessing funding for those same services under a HCBS Waiver program;

(2) cooperating in the determination of medical and financial eligibility, including prompt reporting of changes in income or resources;

(3) choosing between services provided through ~~a~~an HCBS Waiver and institutional care; and

(4) reporting to DHS within 30 calendar days of moving any changes in address or other contact information.

(c) **Waiver ~~Eligibility~~eligibility.** To be eligible for Waiver services, an applicant must meet the criteria established in paragraph(1) of this Subsection and the criteria for one of the Waivers established in (1)(A),(B), or (C) of this Subsection.

(1) Services provided through an HCBS Waiver are available to Oklahoma residents meeting SoonerCare eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible for and receive services funded through any of the Waivers listed in (a) of this Section, a person must meet conditions per OAC 317:35-9-5. The individual must be determined financially eligible for SoonerCare per OAC 317:35-9-68. The

SoonerCare eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, rehabilitation facility, mental health facility, nursing facility, residential care facility per Section 1-819 of Title 63 of the Oklahoma Statutes (63 O.S. § 1-819), or Intermediate Care facility for individuals with intellectual disabilities (ICF/IID). The individual may not be receiving Developmental Disabilities Services (DDS) state-funded services, such as the Family Support Assistance Payment, Respite Voucher Program, sheltered workshop services, community integrated employment services, or assisted living without ~~waiver~~Waiver supports per OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

(A) **In-Home Supports Waivers (IHSW).** To be eligible for services funded through the ~~In-Home Supports Waiver(IHSW)~~IHSW, a person must:

(i) meet all criteria listed in (c) of this Section; and

(ii) be determined to have a disability and a diagnosis of intellectual disability by the Social Security Administration (SSA); or

(iii) be determined to have a disability, and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the ~~OHCA~~Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU);

(iv) be ~~three~~3 years of age or older;

(v) be determined by the OHCA/LOCEU to meet the ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122;

(vi) reside in:

(I) the home of a family member or friend;

(II) his or her own home;

(III) a DHS Child Welfare ~~Service~~Services (CWS) foster home; or

(IV) a CWS group home; and

(vii) have critical support needs that can be met through a combination of non-paid, non-Waiver, and SoonerCare resources available to the individual, and with HCBS Waiver resources within the annual per capita Waiver limit agreed between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).

(B) **Community Waiver.** To be eligible for services funded through the Community Waiver, the person must:

(i) meet all criteria listed in (c) of this Section;

(ii) be determined to have a disability and a diagnosis of intellectual disability by the SSA; or

(iii) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition by DDS and be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(iv) be determined to have a disability and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or the OHCA/LOCEU; and

(v) be ~~three~~3 years of age or older; and

(vi) be determined by the OHCA/LOCEU, to meet the ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122; and

(vii) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDS director or designee.

(C) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the person must:

(i) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;

(ii) meet all criteria for HCBS Waiver services listed in (c) of this Section; and

(iii) be determined to have a disability and a diagnosis of intellectual disability by SSA; or

(iv) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition per OAC 317:35-9-45 by DDS, and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(v) have a disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA/LOCEU; and

(vi) meet ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122 by the OHCA/LOCEU.

(2) The person desiring services through any of the Waivers listed in (a) of this Section participates in diagnostic evaluations and provides information necessary to determine HCBS Waiver services eligibility, including:

(A) a psychological evaluation, by a licensed psychologist that includes:

(i) a ~~full-scale~~full-scale, functional and/or adaptive assessment; and

(ii) a statement of age of onset of the disability; and

(iii) intelligence testing that yields a ~~full scale~~full-scale, intelligence quotient.

(I) Intelligence testing results obtained at 16 years of age or older are considered valid of the current status, provided they are compatible with current behavior. Intelligence testing results obtained between 7 to 16 years of age are considered current for four years when the full scale intelligence quotient is less than 40, and for two years when the intelligence quotient is 40 or above.

(II) DDS may require a current psychological evaluation when a significant change of condition, disability, or psychological status is noted;

(B) a social service summary, current within 12 months of requested approval date, that includes a developmental history; and

(C) a medical evaluation current within ~~90-calendar~~90-calendar days of requested approval date; and

(D) a completed ICF/IID Level of Care Assessment form (LTC-300); and

(E) proof of disability according to SSA guidelines. ~~If~~When a disability determination ~~has~~is not ~~been~~ made by SSA, OHCA/LOCEU may make a disability determination using the same guidelines as SSA.

(3) OHCA reviews the diagnostic reports listed in (2) of this subsection and makes a determination of eligibility for DDS HCBS Waivers.

(4) For individuals who are determined to have an intellectual disability or a related condition by DDS ~~in accordance with~~per the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, DDS reviews the diagnostic reports listed in (2) of this subsection and, on behalf of ~~the~~ OHCA, makes a determination of eligibility for DDS HCBS Waiver services and ICF/IID level of care.

(5) A determination of need for ICF/IID Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.

(d) **Request list.** When state DDS resources are unavailable for new persons to be added to services funded through an HCBS Waiver, persons are placed on a statewide Request for Waiver Services List.

(1) The Request for Waiver Services List is maintained in chronological order, based on the date of receipt of a written request for services on Form 06MP001E, Request for Developmental Disabilities Services. The applicant must submit the required documentation per Form 06MP001E, Request for Developmental Disabilities Services for initial consideration of potential eligibility. Active United States Armed Forces personnel, who have a pending HCBS Waiver application in another state for an immediate family member, may be placed on the list in accordance with the date they applied in the other state. The person's name is added to the list when they provide proof of application date from the other state.

(2) The Request for Waiver Services List for persons requesting services provided through an HCBS Waiver is administered by DDS uniformly throughout the state.

(3) An individual is removed from the Request for Waiver Services List when the individual:

(A) is found to be ineligible for services;

(B) cannot be located by DHS;

(C) fails to respond or does not provide requested information to DHS;

(D) is not a resident of the state of Oklahoma at the time of requested Waiver approval date; or

(E) declines an offer of Waiver services.

(4) An individual removed from the Request for Waiver Services List due to the inability to locate the individual by DHS, may later submit to DDS a written request to be returned to the Request for Waiver Services List. The individual ~~will be~~is returned at the same chronological place on the Request for Waiver Services List that the individual had prior to removal, provided ~~that~~ the individual was on the list prior to January 1, 2015.

(e) **Applications.** When resources are sufficient for initiation of HCBS Waiver services, DDS ensures action regarding a request for services occurs within ~~45-calendar~~45-calendar days. When action is not taken within the required ~~45-calendar~~45-calendar days, the applicant may seek resolution per OAC 340:2-5.

(1) Applicants are allowed ~~60-calendar~~60-calendar days to provide information requested by DDS to determine eligibility for services.

(2) When requested information is not provided within ~~60-calendar~~60-calendar days, the applicant is notified that the request was denied, and the individual is removed from the Request for Waiver Services List.

(f) **Admission protocol.** Initiation of services funded through an HCBS Waiver occurs in chronological order from the Request for Waiver Services List ~~in accordance with~~per (d) of this Section based on the date of DDS receipt of a completed request for services, as a result of the informed choice of the person requesting services or the individual acting on the member's behalf, and upon determination of eligibility, ~~in accordance with~~per (c) of this Section. Exceptions to the chronological requirement may be made when:

(1) an emergency situation exists in which the health or safety of the person needing services, or of others, is endangered, and there is no other resolution to the emergency. An emergency exists when:

(A) the person is unable to care for himself or herself and:

(i) the person's caretaker, ~~as defined in Section 10-103 of Title 43A of the Oklahoma Statutes:~~per 43A O.S. § 10-103:

(I) is hospitalized;

(II) has moved into a nursing facility;

(III) is permanently incapacitated; or

(IV) has died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) DHS finds the person needs protective services due to experiencing ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example,

the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so;

(2) the Legislature ~~has~~ appropriated special funds with which to serve a specific group or a specific class of individuals under the provisions of an HCBS Waiver;

(3) Waiver services are required for people who transition to the community from a public ~~or~~ ICF/IID or who are children in the State's custody receiving services from DHS. Under some circumstances Waiver services related to accessibility may be authorized in advance of transition, but may not be billed until the day the member leaves the ICF/IID and enters the Waiver;

(4) individuals subject to the provisions of Public Law 100-203 residing in nursing facilities for at least ~~30 continuous~~30-continuous months prior to January 1, 1989, and ~~who~~ are determined by Preadmission Screening and Resident Review (PASRR) evaluation conducted ~~pursuant to the provisions of 42 CFR 483.100 et seq~~per Title 42 Section 483.100 of the Federal Code of Regulations to have an intellectual disability or a related condition, who are covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, choose to receive services funded through the Community or Homeward Bound Waiver.

(g) **Movement between DDS HCBS Waiver programs.** A person's movement from services funded through one DDS-administered HCBS Waiver, to services funded through another DDS-administered HCBS Waiver is explained in this subsection.

(1) When a member receiving services funded through the IHSW for children becomes 18 years of age, services through the IHSW for adults become effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when:

(A) a member has critical health and safety support needs that cannot be met by IHSW services, non-Waiver services, or other resources as determined by the DDS director or designee; and

(B) funding is available per OAC 317:35-9-5.

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when a member's history of annual service utilization ~~has been~~was within the IHSW per capita allowance ~~of the IHSW~~.

(4) When a member served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the applicable IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(h) **Continued eligibility for HCBS Waiver services.** Eligibility for members receiving services provided through the HCBS Waiver is re-determined by the OHCA/LOCEU when a determination of disability ~~has~~was not ~~been~~ made by the Social Security Administration. The OHCA/LOCEU determines categorical relationship to the SoonerCare disabled category according to Social Security Administration guidelines. OHCA/LOCEU also approves the level of care per OAC 317:30-5-122 and confirms a diagnosis of intellectual disability ~~as defined in~~per the Diagnostic and Statistical Manual of Mental Disorders. DDS may require a new psychological evaluation and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status ~~has been~~is noted.

(i) **HCBS Waiver services case closure.** Services provided through an HCBS Waiver are terminated, when:

(1) a member or the individual action on the member's behalf chooses to no longer receive Waiver services;

(2) a member is incarcerated;

(3) a member is financially ineligible to receive Waiver services;

(4) a member is determined by the Social Security Administration to no longer have a disability qualifying the individual for services under these Waivers;

(5) a member is determined by the OHCA/LOCEU to no longer be eligible;

(6) a member moves out of state, or the custodial parent or guardian of a member who is a minor moves out of state;

(7) a member is admitted to a nursing facility, ICF/IID, residential care facility, hospital, rehabilitation facility, or mental health facility for more than 30 consecutive calendar days;

(8) the guardian of a member who is a minor or adjudicated adult fails to cooperate during the annual review process per OAC 340:100-5-50 through 340:100-5-58;

(9) the guardian of a member who is a minor or adjudicated adult fails to cooperate in the implementation of DHS policy or service delivery in a manner that places the health or welfare of the member at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services ~~have~~were not ~~been~~ effective;

(10) the member is determined to no longer be SoonerCare eligible; ~~or~~

(11) there is sufficient evidence the member or the individual acting on the member's behalf ~~has~~ engaged in fraud or misrepresentation, failed to use resources as agreed on in the Individual Plan, or knowingly misused public funds associated with these services;

(12) the member or the individual acting on the member's behalf either cannot be located, ~~has~~did not ~~responded~~respond to, or ~~has~~did not ~~allowed~~allow case management to complete plan development or monitoring activities as required by policy and the member or the individual acting on the member's behalf:

(A) does not respond to the notice of intent to terminate; or

(B) the response prohibits the case manager from being able to complete plan development or monitoring activities as required by policy;

(13) the member or the individual acting on the member's behalf fails to cooperate with the case manager to implement a Fair Hearing decision;

(14) it is determined ~~that~~ services provided through an HCBS Waiver are no longer necessary to meet the member's needs and professional documentation provides assurance the member's health, safety, and welfare can be maintained without Waiver supports;

(15) the member or the individual acting on the member's behalf fails to cooperate with service delivery;

(16) a family member, the individual acting on the member's behalf, other individual in the member's household, or persons who routinely visit, pose a threat of harm or injury to provider staff or official DHS representatives; or

(17) a member no longer receives a minimum of one Waiver service per month and DDS is unable to monitor member on a monthly basis.

(j) **Reinstatement of services.** Waiver services are reinstated when:

(1) the situation resulting in case closure of a Hissom class member is resolved;

(2) a member is incarcerated for ~~90-calendar~~90-calendar days or less;

(3) a member is admitted to a nursing facility, ICF/IID, residential care facility, hospital, rehabilitation facility, or mental health facility for ~~90-calendar~~ 90-calendar days or less; or

(4) a member's SoonerCare eligibility is re-established within ~~90-calendar~~90-calendar days of the ~~date of~~ SoonerCare ineligibility~~.~~date.

[OAR Docket #16-521; filed 6-15-16]

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

[OAR Docket #16-513]

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Subchapter 1. General Provisions
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317:45-1-4. [AMENDED]
Subchapter 3. Insure Oklahoma Carriers
317:45-3-1. [AMENDED]
317:45-3-2. [AMENDED]
Subchapter 5. Insure Oklahoma Qualified ~~Health~~Benefit Plans
317:45-5-1. [AMENDED]
317:45-5-2. [AMENDED]
Subchapter 7. Insure Oklahoma ESI Employer Eligibility
317:45-7-1. [AMENDED]
317:45-7-3. [AMENDED]
317:45-7-5. [AMENDED]
317:45-7-7. [AMENDED]
317:45-7-8. [AMENDED]
Subchapter 9. Insure Oklahoma ESI Employee Eligibility
317:45-9-1. [AMENDED]
317:45-9-4. [AMENDED]
317:45-9-6. [AMENDED]
317:45-9-7. [AMENDED]
317:45-9-8. [AMENDED]
Subchapter 11. Insure Oklahoma IP
Part 3. Insure Oklahoma IP Member Health Care Benefits
317:45-11-11. [AMENDED]
Part 5. Insure Oklahoma IP Member Eligibility
317:45-11-20. [AMENDED]
317:45-11-21. [AMENDED]
317:45-11-23. [AMENDED]
317:45-11-24. [AMENDED]
317:45-11-26. [AMENDED]
317:45-11-27. [AMENDED]
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ANALYSIS:
Proposed Insure Oklahoma policy revisions will clarify inconsistent and conflicting language. Language cleanup will reflect current OHCA practices. In addition, emergency transportation will be added to the Insure Oklahoma Individual Plan.
CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

317:45-1-3. Definitions

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) an insurance company, insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges

for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) a Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department;

(C) a domestic MEWA exempt from licensing pursuant to Title 36 O.S., Section 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36; or

(D) any entity organized pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes as authorized by Title 36 Section 607.1 of the Oklahoma Statutes and which is eligible to qualify for and hold a certificate of authority to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"Child Care Center" means a facility licensed by OKDHS which provides care and supervision of children and meets all the requirements in OAC 340:110-3-1 through OAC 340:110-3-33.3.

"College Student" means an Oklahoma resident between the age of 19 through 22 that is a full-time student at an Oklahoma accredited University or College.

"~~Covered~~ Dependent" means the spouse of the approved applicant and/or child under 19 years of age or his or her child 19 years through 22 years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.

"Eligibility period" means the period of eligibility extending from an approval date to an end date.

"Employee" means a person who works for an employer in exchange for earned income. This includes the owners of a business.

"Employer" means the business entity that pays earned income to employees.

"Employer Sponsored Insurance (ESI)" means the program that provides premium assistance to qualified businesses for approved applicants.

~~**"EOB"** means an Explanation of Benefits.~~

"Explanation of Benefit (EOB)" means a statement issued by a carrier that indicates services rendered and financial responsibilities for the carrier and Insure Oklahoma member.

"Full-time Employment" means a normal work week of 24 or more hours.

"Full-time Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.

"Individual Plan (IP)" means the safety net program for those qualified individuals who do not have access to Insure Oklahoma ESI.

"In-network" means providers or health care facilities that are part of a ~~health~~benefit plan's network of providers with which it has negotiated a discount, and services provided by a physician or other health care provider with a contractual agreement with the insurance company paid at the highest benefit level.

"Insure Oklahoma (IO)" means a ~~health~~benefit plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of ~~health~~benefit plan coverage for eligible populations.

~~**"Insure Oklahoma IP"** means the Individual Plan program.~~

~~**"Insure Oklahoma ESI"** means the Employer Sponsored Insurance program.~~

"Member" means an individual enrolled in the Insure Oklahoma ESI or IP program.

"Modified Adjusted Gross Income (MAGI)" means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

"OESC" means the Oklahoma Employment Security Commission.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

~~**"PCP"** means Primary Care Provider.~~

~~**"PEO" or** **"Professional Employer Organization (PEO)"** means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et.seq.

"Primary Care Provider (PCP)" means a provider under contract with the Oklahoma Health Care Authority to provide primary care services, including all medically necessary referrals.

"Premium" means a monthly payment to a carrier or a self-funded plan for ~~health~~benefit plan coverage.

"Qualified Benefit Plan ~~(QHP)~~(QBP)" means a ~~health~~benefit plan that has been approved by the OHCA for participation in the Insure Oklahoma program.

"Qualifying Event" means the occurrence of an event that permits individuals to join a group ~~health~~benefit plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying events are defined by the employer's ~~health~~benefit plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

"Self-funded Plan" means or meets the definition of an "employee welfare benefit plan" or "benefit plan" as authorized in 29 US Code, Section 1002. The term carrier can be replaced with self-funded plan if applicable in these rules.

"State" means the State of Oklahoma, acting by and through the Oklahoma Health Care Authority.

317:45-1-4. Reimbursement for out-of-pocket ~~medical~~ expenses

(a) Out-of-pocket ~~medical~~ expenses for all approved and eligible members (and/or their approved and eligible dependents) will be limited to 5 percent of their annual gross household income. The OHCA will provide reimbursement for out-of-pocket ~~medical~~ expenses in excess of the 5 percent annual gross household income. A ~~medical~~ expense must be for an allowed and covered service by a qualified ~~health~~benefit plan~~(QHP)~~ (QBP) to be eligible for reimbursement. For the purpose of this Section, an allowed and covered service is defined as an in-network service covered in accordance with a qualified ~~health~~benefit plan's benefit summary and policies. For instance, if a ~~QHP~~QBP has multiple in-network reimbursement percentage methodologies (80% for level 1 provider and 70% for level 2 provider) the OHCA will only reimburse expenses related to the highest percentage network.

(b) For all eligible ~~medical~~ expenses as defined above in OAC k317:45-1-4(a), the member must submit the OHCA required form and all OHCA required documentation to support that the member incurred and paid the out-of-pocket ~~medical~~ expense. ~~The required documentation must be submitted no later than 90 days after the close of the member's eligibility period.~~ The OHCA required documentation must substantiate that the member actually incurred and paid the eligible out-of-pocket expense. The OHCA may request additional documentation at any time to support a member's request for reimbursement of eligible out-of-pocket ~~medical~~ expenses.

SUBCHAPTER 3. INSURE OKLAHOMA CARRIERS

317:45-3-1. Carrier eligibility

Carriers must be able to submit all required and requested information and documentation to OHCA for each ~~health~~benefit plan to be considered for qualification. Carriers must be able to supply specific claim payment scenarios as requested by OHCA. Carriers must also provide the name, address, telephone number, and, if available, email address of a contact individual who is able to verify employer enrollment status in a qualified ~~health~~benefit plan.

317:45-3-2. ~~Audits~~Reviews

Carriers are subject to ~~audits~~reviews related to ~~health~~benefit plan qualifications. These ~~audits~~reviews may be conducted periodically to determine if each qualified ~~health~~benefit plan continues to meet all requirements as defined in 317:45-5-1.

SUBCHAPTER 5. INSURE OKLAHOMA QUALIFIED ~~HEALTH~~BENEFIT PLANS

317:45-5-1. Qualified ~~Health~~Benefit Plan requirements

(a) Participating qualified ~~health~~benefit plans must offer, at a minimum, benefits that include:

(1) hospital services;
(2) physician services;
(3) clinical laboratory and radiology;
(4) pharmacy;
(5) office visits;
(6) well baby/well child exams;
(7) age appropriate immunizations as required by law; and
(8) emergency services as required by law.

(b) The ~~health~~benefit plan, if required, must be approved by the Oklahoma Insurance Department for participation in the Oklahoma market or a self-funded plan. All ~~health~~benefit plans must share in the cost of covered services and pharmacy products in addition to any negotiated discounts with network providers, pharmacies, or pharmaceutical manufacturers. If the ~~health~~benefit plan requires co-payments or deductibles, the co-payments or deductibles cannot exceed the limits described in this subsection.

(1) An annual in-network out-of-pocket maximum cannot exceed $3,000 per individual, excluding separate pharmacy deductibles.
(2) Office visits cannot require a co-payment exceeding $50 per visit.
(3) Annual in-network pharmacy deductibles cannot exceed $500 per individual.

(c) Qualified ~~health~~benefit plans will provide an EOB, an expense summary, or required documentation for paid and/or denied claims subject to member co-insurance or member deductible calculations. The required documentation must contain, at a minimum, the:

(1) provider's name;
(2) patient's name;
(3) date(s) of service;
(4) code(s) and/or description(s) indicating the service(s) rendered, the amount(s) paid or the denied status of the claim(s);
(5) reason code(s) and description(s) for any denied service(s);
(6) amount due and/or paid from the patient or responsible party; and
(7) provider network status (in-network or out-of-network provider).

317:45-5-2. Closure criteria for ~~health~~benefit plans

Eligibility for the carrier's ~~health~~benefit plans ends when:

(1) changes are made to the design ~~or benefits~~ of the ~~health~~benefit plan such that it no longer meets the requirements to be considered a qualified ~~health~~benefit plan. Carriers are required to report to OHCA any changes in health plans potentially affecting their qualification for participation in the program not less than 90 days prior to the effective date of such change(s).

(2) the carrier no longer meets the definition set forth in 317:45-1-3.

(3) the ~~health~~benefit plan is no longer an available product in the Oklahoma market.

(4) the ~~health~~benefit plan fails to meet or comply with all requirements for a qualified ~~health~~benefit plan as defined in 317 : 45-5-1.

SUBCHAPTER 7. INSURE OKLAHOMA ESI EMPLOYER ELIGIBILITY

317:45-7-1. Employer application and eligibility requirements for Insure Oklahoma ESI

(a) In order for an employer to be eligible to participate in the Insure Oklahoma program the employer must:

(1) have no more than a total of 250 employees on its payroll if the employer is a for-profit business entity. Not-for-profit businesses may participate if the employer has no more than a total of 500 employees on its payroll. The increase in the number of employees from ~~50~~250 to ~~250~~500 will be phased in over ~~a period of~~ time as determined by the Oklahoma Health Care Authority. The number of employees is determined based on the third month employee count of the most recently filed OES-3 form with the Oklahoma Employment Security Commission (OESC). Employers may provide additional documentation confirming terminated employees that will be excluded from the OESC employee count. If the employer is exempt from filing an OES-3 form or is contracted with a PEO or is a Child Care Center in accordance with OHCA rules, this determination is based on appropriate supporting documentation~~, such as the W-2 Summary Wage and Tax form~~ to verify employee count. Employers must be in compliance with all OESC requirements to be eligible for the program. As requested by the OHCA, employers that do not file with the OESC must submit documentation that proves compliance with state law;

(2) have a business that is physically located in Oklahoma;

(3) be currently offering, or at the contracting stage to offer a qualified ~~health~~benefit plan. The qualified ~~health~~benefit plan coverage must begin on the first day of the month and continue through the last day of the month;

(4) offer qualified ~~health~~benefit plan coverage to employees; and

(5) contribute a minimum 25 percent of the eligible employee monthly ~~health~~benefit plan premium or an equivalent 40 percent of premiums for ~~covered~~ dependent children.

(b) An employer who meets all of the requirements listed in OAC 317:45-7-1(a) must complete and submit the OHCA required forms and application to be considered for participation in the program.

(c) The employer must provide its Federal Employee Identification Number (FEIN).

(d) It is the employer's responsibility to notify the OHCA of any changes that might impact eligibility in the program. Employers must notify the OHCA of any participating employee terminations, resignations, or new hires within five working days of the occurrence.

317:45-7-3. Employer cost sharing

Employers are responsible for a portion of the eligible employee's monthly ~~health~~benefit plan premium as defined in 317:45-7-1.

317:45-7-5. Reimbursement

In order to receive a premium subsidy, the employer must submit all pages of the current ~~health~~benefit plan invoice.

317:45-7-7. ~~Audits~~Reviews

Employers are subject to ~~audits~~reviews related to program eligibility requirements found at OAC 317:45-7-1 and subsidy payments. Eligibility may be revoked at any time if inconsistencies are found. Any monies paid in error are subject to recoupment.

317:45-7-8. Closure

Eligibility provided under the Insure Oklahoma ESI program may end during the eligibility period when:

(1) the employer no longer meets the eligibility requirements in 317:45-7-1;

(2) the employer fails to pay premiums to the carrier;

(3) the employer fails to provide an invoice verifying the monthly ~~health~~benefit plan premium has been paid; or

(4) ~~an audit~~a review indicates a discrepancy that makes the employer ineligible.

SUBCHAPTER 9. INSURE OKLAHOMA ESI EMPLOYEE ELIGIBILITY

317:45-9-1. Employee eligibility requirements

(a) Employees must complete and submit the OHCA required forms and application to be considered for participation in the program.

(b) The eligibility determination will be processed within 30 days from the date the application is received. The employee will be notified in writing of the eligibility decision.

(c) All eligible employees described in this section must be enrolled in their employer's qualified ~~health~~benefit plan. Eligible employees must:

(1) have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma ESI Income Guidelines form;

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma ESI ~~health~~ benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through

OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma ESI ~~Health~~ Benefits.

(2) be a US citizen or alien as described in 317:35-5-25;

(3) be Oklahoma residents;

(4) furnish, or show documentation of an application for, a Social Security number at the time of application for Insure Oklahoma ESI ~~health~~ benefits;

(5) not be receiving benefits from SoonerCare or Medicare;

(6) be employed with a qualified employer at a business location in Oklahoma;

(7) be age 19 through age 64

(8) be eligible for enrollment in the employer's qualified ~~health~~benefit plan;

(9) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2);

(10) select one of the qualified ~~health~~benefit plans the employer is offering; and

(11) provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.

(d) An employee's ~~covered~~ dependents are eligible when:

(1) the employer's ~~health~~benefit plan includes coverage for dependents;

(2) the employee is eligible;

(3) if employed, the spouse may not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1 (a) (1)-(2); and

(4) the ~~covered~~ dependents are enrolled in the same ~~health~~benefit plan as the employee.

(e) If an employee or their ~~covered~~ dependents are eligible for multiple qualified ~~health~~benefit plans, each may receive a subsidy under only one ~~health~~benefit plan.

(f) College students may enroll in the Insure Oklahoma ESI program as ~~covered~~ dependents. Effective January 1, 2016, financial eligibility for Insure Oklahoma ESI ~~health~~ benefits for college students is determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(g) ~~Covered~~Dependent children must have countable income at the appropriate standard according to the family size on the Insure Oklahoma ESI Income Limits Guidelines form. Effective January 1, 2016, financial eligibility for Insure Oklahoma ESI ~~health~~ benefits is determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(1) Children found to be eligible for SoonerCare may not receive coverage through Insure Oklahoma.

(2) Children are not eligible for Insure Oklahoma if they are a member of a family eligible for employer-sponsored dependent ~~health~~ insurance coverage under any Oklahoma State Employee ~~Health~~ Insurance Plan.

(h) ESI approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 10 days of the change.

(i) When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

317:45-9-4. Employee cost sharing

Employees are responsible for up to 15 percent of their ~~health~~benefit plan premium. The employees are also responsible for up to 15 percent of their dependent's ~~health~~benefit plan premium if the dependent is included in the program. The combined portion of the employee's cost sharing for ~~health~~benefit plan premiums cannot exceed three percent of his/her annual gross household income computed monthly. Native American children providing documentation of ethnicity are exempt from cost-sharing requirements, including premium payments and out-of-pocket expenses.

317:45-9-6. ~~Audits~~Reviews

Individuals participating in the Insure Oklahoma program are subject to ~~audits~~reviews related to their eligibility, subsidy payments, and out-of-pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

317:45-9-7. Closure

(a) Employer and employee eligibility are tied together. If the employer is no longer eligible, then the associated employees enrolled under that employer are also ineligible. Employees are mailed a notice 10 days prior to closure of eligibility.

(b) The employee's certification period may be terminated when:

(1) termination of employment, either voluntary or involuntary, occurs;

(2) the employee moves out-of-state;

(3) the covered employee dies;

(4) the employer ends its contract with the qualified ~~health~~benefit plan;

(5) the employer's eligibility ends;

(6) ~~an audit~~a review indicates a discrepancy that makes the employee or employer ineligible;

(7) the employer is terminated from the program;

(8) the employer fails to pay the premium;

(9) the qualified ~~health~~benefit plan or carrier no longer meets the requirements set forth in this Chapter;

(10) the employee becomes eligible for SoonerCare or Medicare;

(11) the employee or employer reports any change affecting eligibility;
(12) the employee is no longer listed as a covered person on the employer's ~~health~~benefit plan invoice;
(13) the employee requests closure; or
(14) the employee no longer meets the eligibility criteria set forth in this Chapter.

317:45-9-8. Appeals

~~(a)~~ Employee appeal procedures based on denial of eligibility due to income are described at OAC 317:2-1-2.

~~(b) Employee appeals regarding out-of-pocket medical expense reimbursements may be made to the OHCA. The OHCA may request documentation to support the out-of-pocket appeal. The decision of the OHCA is final.~~

SUBCHAPTER 11. INSURE OKLAHOMA IP

PART 3. INSURE OKLAHOMA IP MEMBER HEALTH CARE BENEFITS

317:45-11-11. Insure Oklahoma IP non-covered services

Certain health care services are not covered in the Insure Oklahoma IP adult benefit package listed in 317:45-11-10. These services include, but are not limited to:
(1) services not considered medically necessary;
(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;
(3) organ and tissue transplant services;
(4) weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;
(5) procedures, services and supplies related to sex transformation;
(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;
(7) cosmetic surgery, except as medically necessary and as covered in 317:30-3-59(19);
(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;
(9) experimental procedures, drugs or treatments;
(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in 317:30-5-696;
(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;
(12) physical medicine including chiropractic and acupuncture therapy;
(13) hearing services;
(14) non-emergency and emergency air transportation ~~[emergency or non-emergency (air or ground)]~~;
(15) allergy testing and treatment;
(16) hospice regardless of location;
(17) Temporomandibular Joint Dysfunction (TMD) (TMJ);
(18) genetic counseling;
(19) fertility evaluation/treatment/and services;
(20) sterilization reversal;
(21) Christian Science Nurse;
(22) Christian Science Practitioner;
(23) skilled nursing facility;
(24) long-term care;
(25) stand by services;
(26) thermograms;
(27) abortions (for exceptions, refer to 317:30-5-6);
(28) services of a Lactation Consultant;
(29) services of a Maternal and Infant Health Licensed Clinical Social Worker;
(30) enhanced services for medically high risk pregnancies as found in 317:30-5-22.1;
(31) ultraviolet treatment-actinotherapy; ~~and~~
(32) private duty nursing~~.~~;
(33) Payment for removal of benign skin lesions; and
(34) Sleep studies.

PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY

317:45-11-20. Insure Oklahoma IP eligibility requirements

(a) Oklahoma employed working adults not eligible to participate in an employer's qualified ~~health~~benefit plan, employees of non-participating employers, self-employed, unemployed seeking work, workers with a disability, and qualified college students may apply for the Individual Plan. Applicants cannot obtain IP coverage if they are eligible for ESI. Applicants, unless a qualified college student, must be engaged in employment as defined under state law, must be considered self-employed as defined under federal and/or state law, or must be considered unemployed as defined under state law.

(b) The eligibility determination will be processed within 30 days from the date the complete application is received. The applicant will be notified of the eligibility decision.

(c) In order to be eligible for the IP, the applicant must:
(1) choose a valid PCP according to the guidelines listed in 317:45-11-22, at the time he/she completes application;
(2) be a US citizen or alien as described in 317:35-5-25;
(3) be an Oklahoma resident;
(4) furnish, or show documentation of an application for, a Social Security number at the time of application for Insure Oklahoma IP ~~health~~ benefits;
(5) be not currently enrolled in~~SoonerCare or Medicare;~~, or have an open application for SoonerCare or Medicare;
(6) be age 19 through 64;

(7) make premium payments by the due date on the invoice;

(8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a) (1)-(2);

(9) be not currently covered by a private ~~health~~ insurance policy or plan; and

(10) provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.

(d) If employed and working for an approved Insure Oklahoma employer who offers a qualified ~~health~~benefit plan, the applicant must meet the requirements in subsection (c) of this Section and:

(1) have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP ~~health~~ benefits is determined using the MAGI methodology. Unless questionable, the income of applicants do not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP ~~Health~~ Benefits;

(2) be ineligible for participation in their employer's qualified ~~health~~benefit plan due to number of hours worked.

(e) If employed and working for an employer who does not offer a qualified ~~health~~benefit plan, the applicant must meet the requirements in subsection (c) of this Section and have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(1) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP ~~health~~ benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(2) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP ~~Health~~ Benefits.

(f) If self-employed, the applicant must meet the requirements in subsection (c) of this Section and:

(1) have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP ~~health~~ benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP ~~Health~~ Benefits.

(2) must not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2).

(g) If unemployed seeking work, the applicant must meet the requirements in subsection(c) of this Section and the following:

(1) Applicants must have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(2) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP ~~health~~ benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(3) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP ~~Health~~ Benefits.

(h) If working with a disability, the applicant must meet the requirements in subsection (c) of this Section and the following:

(1) Applicants must have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(2) Applicants may need to verify eligibility of their enrollment in the Ticket to Work program.

(3) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP ~~health~~ benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(4) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP ~~Health~~ Benefits.

(i) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 10 days of the change.

(j) When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

317:45-11-21. Dependent eligibility

(a) If the spouse of an Insure Oklahoma IP approved individual is eligible for Insure Oklahoma ESI, they must apply for Insure Oklahoma ESI. Spouses cannot obtain Insure Oklahoma IP coverage if they are eligible for Insure Oklahoma ESI.

(b) The employed or self-employed spouse of an approved applicant must meet the guidelines listed in 317:45-11-20 (a) through (g) to be eligible for Insure Oklahoma IP.

(c) The ~~covered~~ dependent of an applicant approved according to the guidelines listed in 317:45-11-20(h) does not become automatically eligible for Insure Oklahoma IP.

(d) The applicant and the dependents' eligibility are tied together. If the applicant no longer meets the requirements for Insure Oklahoma IP, then the associated ~~covered~~ dependent enrolled under that applicant is also ineligible.

(e) College students may enroll in the Insure Oklahoma IP program. Effective January 1, 2016, financial eligibility for Insure Oklahoma IP ~~health~~ benefits for college ~~students is~~students' are determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(f) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 10 days of the change.

(g) When the agency responsible for determining eligibility for the member becomes aware of a change in the ~~covered~~ dependents circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

317:45-11-23. ~~Employee~~Member eligibility period

(a) The rules in this subsection apply to ~~applicants eligible~~members eligibility according to 317:45-11-20(a) through (e).

(1) The ~~employee's coverage~~member's eligibility period begins only after approval of the application and receipt of the premium payment.

(A) ~~If the application is received and approved before the 15th of the month, eligibility begins the first day of the second consecutive month. If the application is not received or approved before the 15th of the month, eligibility begins the first day of the 3rd consecutive month. (Examples: An application is received and approved on January 14th and the premium is received before February 15th, eligibility begins March 1st; or an application is received and approved January 15th and the premium is received on March 15th, eligibility begins April 1st.)~~If the application is approved and the premium payment is not made by the last day of the same month, eligibility will begin the first day of the next month.

(B) ~~If premiums are paid early, eligibility still begins as scheduled.~~If the application is approved and the premium payment is made between the first and 15th day of the next month, eligibility will begin the first day of the second consecutive month.

(C) If the application is approved and the premium payment is not made within 45 days, eligibility will not begin.

(2) Employee eligibility is contingent upon the employer meeting the program guidelines.

(3) The employee's eligibility is determined using the eligibility requirements listed in 317:45-9-1 or 317:45-11-20 (a) through (e).

(4) If the employee is determined eligible for Insure Oklahoma IP, he/she is approved for a period not greater than 12 months.

(b) The rules in this subsection apply to applicants eligible according to 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h).

(1) The applicant's eligibility is determined using the eligibility requirements listed in 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h).

(2) If the applicant is determined eligible for Insure Oklahoma IP, he/she is approved for a period not greater than 12 months.

(3) The applicant's eligibility period begins only after receipt of the premium payment.

~~(A) If the application is received and approved before the 15th of the month, eligibility begins the first day of the second consecutive month. If the application is not received or approved before the 15th of the month, eligibility begins the first day of the 3rd consecutive month. (Examples: An application is approved on January 14th and the premium is received before February 15th, eligibility begins March 1st; or an application is approved January 15th and the premium is received on March 15th, eligibility begins April 1st.)~~

~~(B) If premiums are paid early, eligibility still begins as scheduled.~~

317:45-11-24. Member cost sharing

(a) Members are given monthly invoices for ~~health~~their benefit plan premiums. IP health plan premiums are established by the OHCA. The premiums are due~~,~~monthly and must be paid in full~~, no later than the 15th day of the month prior to the month of IP coverage~~.

(1) Members are responsible for their monthly premiums, in an amount not to exceed four percent of their monthly gross household income.

(2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed four percent of their monthly gross household income, based on a family size of one and capped at 100 percent of the Federal Poverty Level.

(3) Native Americans providing documentation of ethnicity are exempt from premium payments.

(b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of ~~Insufficient/Non-sufficient funds~~returned payments.

317:45-11-26. ~~Audits~~Reviews

Members participating in the Insure Oklahoma program are subject to ~~audits~~reviews related to their eligibility, subsidy payments, premium payments and out-of-pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

317:45-11-27. Closure

(a) Members are mailed a notice 10 days prior to closure of eligibility.

(b) The employer and employees' eligibility are tied together. If the employer no longer meets the requirements for Insure Oklahoma then eligibility for the associated employees enrolled under that employer are also ineligible.

(c) The employee's certification period may be terminated when:

(1) the member requests closure;

(2) the member moves out-of-state;

(3) the covered member dies;

(4) the employer's eligibility ends;

(5) ~~an audit~~a review indicates a discrepancy that makes the member or employer ineligible;

(6) the employer is terminated from Insure Oklahoma;

(7) the member fails to pay ~~the amount due within 60 days of the date on the bill;~~their premium;

(8) the qualified ~~health~~benefit plan or carrier no longer meets the requirements set forth in this chapter;

(9) the member begins receiving SoonerCare or Medicare benefits;

(10) the member begins receiving coverage by a private ~~health~~benefit~~insurance~~ policy or plan;

(11) the member or employer reports any change affecting eligibility; or

(12) the member no longer meets the eligibility criteria set forth in this Chapter.

(d) This subsection applies to applicants eligible according to 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h). The member's certification period may be terminated when:

(1) the member requests closure;

(2) the member moves out-of-state;

(3) the covered member dies;

(4) the employer's eligibility ends;

(5) ~~an audit~~a review indicates a discrepancy that makes the member or employer ineligible;

(6) the member fails to pay ~~the amount due within 60 days of the date on the bill~~their premium;

(7) the member becomes eligible for SoonerCare or Medicare;

(8) the member begins receiving coverage by a private ~~health~~benefit~~insurance~~ policy or plan;

(9) the member or employer reports any change affecting eligibility; or

(10) the member no longer meets the eligibility criteria set forth in this Chapter.

317:45-11-28. Appeals

~~(a)~~ Member appeal procedures based on denial of eligibility due to income are described at 317:2-1-2.

~~(b) Member appeals regarding out-of-pocket medical expense reimbursements may be made to the OHCA. The OHCA may request documentation to support the out-of-pocket appeal. The decision of the OHCA is final.~~

[OAR Docket #16-513; filed 6-15-16]

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

[OAR Docket #16-516]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Medically Fragile Waiver Services
317:50-1-3. [AMENDED]
317:50-1-4. [AMENDED]
317:50-1-5. [AMENDED]
317:50-1-10. [AMENDED]
317:50-1-13. [AMENDED]
317:50-1-14. [AMENDED]
317:50-1-16. [AMENDED]
(Reference APA WF # 15-57)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 1915c Waiver

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Proposed Long Term Care (LTC) policy is revised to clean the different sections of the waiver to assure that the waiver and policy language are the same and to detail operation and procedural changes that have occurred since receiving the five year renewal.

CONTACT PERSON:
Tywanda Cox, Chief of Federal & State Policy, Federal & State Policy, 405-522-7153.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. MEDICALLY FRAGILE WAIVER SERVICES

317:50-1-3. Medically Fragile Program overview

(a) The Medically Fragile Waiver program is a Medicaid Home and Community Based Services Waiver used to finance non-institutional long-term care services for a targeted group of physically disabled adults when there is a reasonable expectation that the person's health, due to disease process or disability, would, without appropriate services, deteriorate and require skilled nursing facility or hospital level of care to arrest the deterioration. Medically Fragile Waiver program members must be SoonerCare eligible and must not reside in an institution; room and board licensed residential care facility, or licensed assisted living facility. The number of members who may receive Medically Fragile Waiver services is limited.

(1) To receive Medically Fragile Waiver services, individuals must meet the following criteria:

(A) be 19 years of age or older;

(B) have a chronic medical condition which results in prolonged dependency on medical care for which daily skilled intervention is necessary and is characterized by one or more of the following:

(i) a life threatening condition characterized by reasonably frequent periods of acute exacerbation which requires frequent medical supervision and/or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(ii) require frequent time consuming administration of specialized treatments which are medically necessary;

(iii) be dependent on medical technology such that without the technology, a reasonable level of health could not be maintained.

(2) In addition, the individual must meet the following criteria:

(A) meet service eligibility criteria [see OAC 317:50-1-3(d)]; and

(B) meet program eligibility criteria [see OAC 317:50-1-3(e)].

(b) Home and Community Based Waiver Services are outside the scope of state plan Medicaid services. The Medicaid waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of persons who are categorically needy (refer to ~~OKDHS~~DHS form 08AX001E, Schedule VIII. B. 1) and without such services would be institutionalized. Services provided through the Medically Fragile Waiver are approved based on medical necessity.

(c) Services provided through the Medically Fragile Waiver are:

(1) case management;

(2) institutional transition services;

(3) respite;

(4) environmental modifications;

(5) specialized medical equipment and supplies;

(6) physical therapy, occupational therapy, respiratory therapy, speech therapy or consultation;

(7) advanced supportive/restorative assistance;

(8) skilled nursing;

(9) home delivered meals;

(10) hospice care;

(11) medically necessary prescription drugs within the limits of the waiver;

(12) Medically Fragile Waiver personal care;

(13) Personal Emergency Response System (PERS);

(14) Self Directed personal care, respite and advanced supportive/restorative assistance;

(15) Self Directed Goods and Services (SD-GS); ~~and~~

(16) ~~SoonerCare medical services within the scope of the State Plan.~~Transitional Case Management Services; and

(17) SoonerCare medical services within the scope of the State Plan.

(d) A service eligibility determination is made using the following criteria:

(1) an open Medically Fragile Waiver Program waiver slot, as authorized by the waiver document approved by the Centers for Medicare and Medicaid Services (CMS), is available to assure federal participation in payment for services to the member. If it is determined that all Medically Fragile Waiver slots are filled, the member cannot be certified as eligible for Medically Fragile Waiver services and the member's name is placed on a waiting list for entry as an open slot becomes available. Medically Fragile Waiver slots and corresponding waiting lists, if necessary, are maintained.

(2) the member is in the Medically Fragile Waiver targeted service group. The target group is an individual who is age 19 or older with a physical disability and may also have an intellectual disability or a cognitive impairment.

(3) the individual does not pose a physical threat to self or others as supported by professional documentation.

(4) members of the household or persons who routinely visit the household, as supported by professional documentation, do not pose a threat of harm or injury to the individual or other household visitors.

(e) The Medically Fragile Waiver program eligibility determination is made through the service plan approval process. The following criteria are used to make the determination that an individual is not eligible:

(1) if the individual's needs as identified by UCAT and other professional assessments cannot be met through Medically Fragile Waiver program services, SoonerCare State Plan services and other formal or informal services. The State, as part of the waiver program approval authorization, assures CMS that each waiver member's health, safety, or welfare can be maintained in their home. If an individual's identified needs cannot be met through provision of Medically Fragile Waiver program or SoonerCare State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety or welfare in their home cannot be assured.

(2) if the individual poses a physical threat to self or others as supported by professional documentation.

(3) if other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the individual or other household visitors.

(4) if the individual's needs are being met, or do not require Medically Fragile Waiver services to be met, or if the individual would not require institutionalization if needs are not met.

(5) if, after the service and care plan is developed, the risk to individual health and safety is not acceptable to the individual, or to the interdisciplinary service plan team, or to the OHCA.

(f) Professional documentation is provided to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the service plan as provider safety permits until the member is removed from the Medically Fragile Waiver program. As a part of the procedures requesting redetermination of program eligibility, the OHCA will provide technical assistance to the Provider for transitioning the member to other services.

(g) ~~Individuals determined ineligible for Medically Fragile Waiver program services are notified in writing of the determination and of their right to appeal the decision.~~Redetermination of program eligibility can be requested for the following reasons:

(1) if the member fails to comply with the community service plan;

(2) if the member's health and safety cannot be ensured;

(3) if the member is unable or unwilling to accept the negotiated risk of living in the community; or

(4) as deemed necessary by waiver review staff or the member's case manager.

(h) Individuals determined ineligible for Medically Fragile Waiver program services are notified in writing of the determination and of their right to appeal the decision.

317:50-1-4. Application for Medically Fragile Waiver services

(a) ~~If waiver slots are available, the~~The application process is initiated by the receipt of a UCAT, Part I or by ~~an oral request for services.~~receipt of the initial waiver referral form. A written financial application is not required for an individual who is a SoonerCare member at the time of application. A financial application for Medically Fragile Waiver services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

(1) All conditions of financial eligibility must be verified and documented in the case record. When current information is already available that establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(2) An individual residing in a NF or requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using ~~OKDHS~~DHS form 08MA011E, Assessment of Assets, when SoonerCare application is not being made. The individual and/or spouse must provide documentation of resources. The assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of SoonerCare long-term care eligibility is made.

(3) When SoonerCare application is being made, an assessment of resources must be completed if it was not completed when the individual entered the NF or began receiving waiver services. For applicants of the Medically Fragile waiver, those resources owned by the couple the month the application was made determines the spousal share of resources. If the individual applies for SoonerCare at the time of entry into the Medically Fragile Waiver, Form 08MA011E is not appropriate. However, the spousal share must be determined using the resource information provided on the SoonerCare application form and computed using ~~OKDHS~~DHS form 08MA12E, Title XIX Worksheet.

(b) **Date of application.** The date of application is the date the signed application is received or the date when the request for SoonerCare is made orally and the financial application form is signed later. The date of the oral request is noted above the date the form is signed.

(c) **Medically Fragile Waiver waiting list procedures.** Medically Fragile Waiver Program capacity is the number of members that may be enrolled in the Program without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. If available waiver capacity has been realized, requests for services are not processed as applications, but placed on a waiting list. As available capacity permits, the OHCA selects in chronological order (first on, first off) requests for services from the waiting list to forward for application processing. When waiver capacity exceeds the number on the waiting list and after all persons on the waiting list have been processed, waiting list procedures are suspended.

317:50-1-5. Medically Fragile Waiver program medical eligibility determination

A medical eligibility determination is made for Medically Fragile Waiver program services based on the Uniform Comprehensive Assessment Tool (UCAT) III assessment, professional judgment and the determination that the member has unmet care needs that require Medically Fragile Waiver Program, SNF or hospital services to assure member health and safety. Medically Fragile Waiver services are initiated to support the informal care that is being provided in the member's home, or, that based on the UCAT, can be expected to be provided in the member's home upon discharge of the member from a SNF or hospital. These services are not intended to take the place of regular care provided by family members and/or by significant others. When there is an informal (not paid) system

of care available in the home, Medically Fragile Waiver service provision will supplement the system within the limitations of Medically Fragile Waiver Program policy.

(1) Categorical relationship must be established for determination of eligibility for Medically Fragile Waiver services. If categorical relationship to disability has not already been established, the Level of Care Evaluation Unit (LOCEU) will render a decision on categorical relationship to the disabled using the same definition used by Social Security Administration. A follow-up is required with the Social Security Administration to be sure their disability decision agrees with the decision of LOCEU.

(2) Community agencies complete the UCAT, Part I and forward the form to the OHCA. If the UCAT, Part I indicates that the applicant does not qualify for SoonerCare long-term care services, the applicant is referred to appropriate community resources.

(3) The member and family are informed of agencies certified to deliver Medically Fragile Waiver case management and in-home care services in the local area to obtain the member's primary and secondary informed choices.

(A) If the member and/or family declines to make a provider choice, that decision is documented on the member choice form.

(B) A rotating system is used to select an agency for the member from a list of all local certified case management and in-home care agencies.

(4) The names of the chosen agencies and the agreement (by dated signature) of the member to receive services provided by the agencies are documented.

(5) If the needs of the member require an immediate interdisciplinary team (IDT) meeting with home health agency nurse participation to develop a care plan and service plan, the need is documented.

(6) If, based upon the information obtained during the assessment, the nurse determines that the member may be at risk for health and safety, ~~OKDHS~~DHS Adult Protective Services (APS) staff are notified immediately and the referral is documented on the UCAT.

(7) Within ten working days of receipt of a complete Medically Fragile Waiver application, medical eligibility is determined using level of care criteria and service eligibility criteria.

(8) Once eligibility has been established, notification is given to the member and the case management provider so that care plan and service plan development may begin. The member's case management provider is notified of the member's name, address, case number and social security number, the units of case management and, if applicable, the number of units of home health agency nurse evaluation authorized for care plan and service plan development, whether the needs of the member require an immediate IDT meeting with home health agency nurse participation and the effective date for member entry into the Medically Fragile Waiver Program.

(9) ~~If the services must be in place to ensure the health and safety of the member upon discharge to the home from the NF, the member will be provided administrative case management to develop and implement the care plan and service plan. The provider of administrative case management follows Medically Fragile Waiver case management procedures for care plan and service plan development and implementation. Once the member returns home, case management is transitioned to the Medically Fragile Waiver case management provider chosen by the member.~~If the member has a current certification and requests a change to Medically Fragile Waiver services, a new UCAT is required. The UCAT is updated when a member requests a change from Medically Fragile Waiver services to Personal Care services. If a member is receiving Medically Fragile Waiver services and requests to go to a nursing facility, a new medical level of care decision is not needed.

(10) ~~If the member has a current certification and requests a change to Medically Fragile Waiver services, a new UCAT is required. The UCAT is updated when a member requests a change from Medically Fragile Waiver services to Personal Care services, or when a member requests a change from the nursing facility to Medically Fragile Waiver services. If a member is receiving Medically Fragile Waiver services and requests to go to a nursing facility, a new medical level of care decision is not needed.~~When a UCAT assessment has been completed more than 90 days prior to submission for determination of a medical decision, a new assessment is required.

~~(11) When a UCAT assessment has been completed more than 90 days prior to submission for determination of a medical decision, a new assessment is required.~~

317:50-1-10. Medically Fragile Waiver services during hospitalization or NF placement

If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care, periodically monitors the member's progress during the institutional stay and, as appropriate, updates the service plan and prepares services to start on the date the member is discharged from the institution and returns home.

(1) **Hospital discharge.** When the member returns home from a hospital or when notified of the member's anticipated discharge date, the case manager notifies relevant providers and coordinates the resumption of services.

(2) **NF placement of less than 30 days.** When the member returns home from a NF stay of 30 days or less or when notified of the member's anticipated discharge date the case manager notifies relevant providers and coordinates the resumption of Medically Fragile Waiver services in the home.

(3) **NF placement greater than 30 days.** When the member is scheduled to be discharged and return home from a ~~SNF~~NF stay that is greater than 30 days, the member's case manager expedites the restart of Medically Fragile Waiver services for the member.

317:50-1-13. Coverage

Individuals receiving Waiver services must have been determined to be eligible for the program and must have an approved ~~plan of care.~~service plan. Any Medically Fragile Program service provided must be listed on the approved ~~plan of care~~service plan and must be necessary to prevent institutionalization of the member. Waiver services which are expansions of Oklahoma Medicaid State Plan services may only be provided after the member has exhausted these services available under the State Plan.

~~(1) To allow for development of administrative structures and provider capacity to adequately deliver Self-Directed services and Supports, availability of Self-Direction is limited to Medically Fragile Program members that reside in counties that have sufficient provider capacity to offer the Self-Directed Service option as determined by OHCA.~~

(~~2~~1) Case Managers within the Self-Directed Services approved area will provide information and materials that explain the service option to the members. The OHCA provides information and material on Self-Direction to Case Managers for distribution to members.

(~~3~~2) The member may request to Self-Direct their services from their Case Manager or call the Medically Fragile Program toll-free number to request the Self-Directed Services option.

317:50-1-14. Description of services

Services included in the Medically Fragile Waiver Program are as follows:

(1) **Case Management.**

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish Waiver program eligibility. Case managers develop the member's comprehensive ~~plan of care,~~service plan, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate ~~plan of care~~service plan reviews. If a member requires hospital or skilled nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet Medically Fragile Waiver Program minimum requirements for qualification and training prior to providing services to members. Prior to providing services to members choosing to Self-Direct their services, Case Managers are required to receive training and demonstrate knowledge regarding the Self-Directed Service delivery model.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:50-1-15(1)(A)that only a Medically Fragile case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities. Payment is not allowed for written reports or record documentation.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in OHCA identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(D) ~~Providers of Home and Community Based Services (HCBS) for the member, or those who have an interest in or are employed by a provider of HCBS for the member, must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.~~Case Managers providing Case Management services to Medically

Fragile waiver members must submit monthly monitoring case notes on a monthly basis to the OHCA Medically Fragile Waiver Staff.

(E) Providers of Home and Community Based Services (HCBS) for the member, or those who have an interest in or are employed by a provider of HCBS for the member, must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.

(2) ~~**Institutional Transition Services.**~~**Institutional Transition Case Management.**

(A) Institutional Transition Case Management Services are

Services required by the member's ~~plan of care,~~service plan, which are necessary to ensure the health, welfare and safety of the member, or to enable the member to function with greater independence in the home, and without which, the member would continue to require institutionalization.

(B) Institutional Transition Case Management services assist institutionalized members that are eligible to receive waiver services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist the transition, regardless of the funding source for the services which access is gained.

(C) Institutional Transition Case Management services may be authorized for periodic monitoring of a waiver member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the services plan, including preparing for necessary services and supports to be in place or to start on the date the member is discharged from the institution.

(3) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the ~~plan of care~~service plan when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the ~~plan of care.~~service plan.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's ~~plan of care,~~service plan, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the Waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the ~~plan of care,~~service plan, which enable members to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the Waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. Reoccurring supplies which are shipped to the member are compensable only when the member remains eligible for Waiver services, continues to reside in the home and is not institutionalized in a hospital, skilled nursing facility or nursing home. It is the provider's responsibility to verify the member's status prior to shipping these items. Payment for medical supplies is limited to the Medicare rate, or the Sooner-Care rate, or is determined through manual pricing. If manual pricing is used, the provider is reimbursed at the provider's documented Manufacturer's Suggested Retail Price (MSRP) minus 30% or invoice cost plus 30%, whichever is the lesser of the two. OHCA may establish a fair market price through claims review and analysis.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the ~~plan of care.~~service plan.

(7) **Nursing.**

(A) Nursing services are services listed in the ~~plan of care~~service plan which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services includes skilled nursing and/or private duty nursing. Skilled nursing is provided on an intermittent or part-time basis. Private duty nursing is individual and continuous care provided to a participant at home by licensed nurses. The provision of the nursing service will work to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide and assesses the member's health and prescribed medical services to ensure that they meet the member's needs as specified in the ~~plan of care.~~service plan. A skilled nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report will be made to the Medically Fragile Waiver case manager in accordance with review schedule determined in consultation between the Case Manager and the Skilled Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The case manager may recommend authorization of Skilled Nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of:

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the case manager may recommend authorization of Skilled Nursing services for the following:

(I) preparing a one-week supply of insulin syringes for a blind diabetic, who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) preparing oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological compromise;

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures.

(C) Nursing service can be billed for service plan development and/or assessment/evaluation services or, for other services within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development skilled nursing services and other procedure codes are used to bill for all other authorized nursing services. A maximum of eight units per day of skilled nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement, to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least

one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's ~~plan of care.~~service plan. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(9) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(10) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(11) **Speech and Language Therapy services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(12) **Respiratory Therapy Services.**

(A) Respiratory therapy services are provided for a member who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the member's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically

that in-home respiratory care is safe and feasible for the member. Treatment involves use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the member and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders hospice Care. Medically Fragile Waiver Hospice Care is authorized for a six month period and requires a physician certification of a terminal illness and orders of hospice care. If the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member thirty days prior to the initial hospice authorization end date and re-certify that the member has a terminal illness and has six months or less to live and orders additional hospice care. After the initial authorization period, additional periods of hospice may be authorized for a maximum of 60 day increments with physician certification that the member has a terminal illness and has six months or less to live. A member's service plan that includes hospice care must comply with waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. Hospice may be provided to the member in a Nursing Facility (NF) only when the member is placed in the NF for Medically Fragile Facility Based Extended Respite. Hospice provided as part of Facility Based Extended Respite may not be reimbursed for more than five days during any 30 day period. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive Medically Fragile Hospice services.

(C) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the hospice provider is responsible for providing hospice services as needed by the member or member's family.

(14) **Medically Fragile Waiver Personal Care.**

(A) Medically Fragile Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) Medically Fragile Home Care Agency Skilled Nursing staff working in coordination with a Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) Medically Fragile Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the approved ~~plan of care.~~service plan.

(15) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For an Medically Fragile Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the PERS;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the Medically Fragile approved ~~plan of care.~~service plan.

(16) **Prescription drugs.** Members are eligible for a maximum of six prescriptions per month with a limit of three brand name prescriptions. Seven additional generic prescriptions per month are allowed if medically necessary. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization. More information on prescription drugs is provided at 317:30-5-72.

(17) **Self-Direction.**

(A) Self-Direction is a method of service delivery that allows waiver members to determine supports and services they need to live successfully in a home or community based setting. A member choosing Self-Direction is the employer of record for his/her Personal Care and Advanced Supportive/Restorative Care service providers and must have an approved ~~plan of care~~service plan prior to initiation of any Self-Directed activities.

(B) The OHCA uses the following criteria to determine a member's service eligibility to participate in the Self-Directed Services program:

(i) residence in the Self-Directed services approved area;

(ii) member's health and safety with Self-Directed services can reasonably be assured based on a review of service history records and a review of member capacity and readiness to assume employer responsibilities under Self-Direction with any one of the following findings as basis to deny a request for Self-Direction due to inability to assure member health and safety;

(I) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Directed services responsibilities, or

(II) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the ~~Personal Services Assistant (PSA) or Advanced Personal Services Assistant (APSA)~~Personal Care Assistant (PCA) or Advanced Supportive/Restorative (ASR) service provider, or in monitoring and managing health or in preparation for emergency backup, or

(III) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention within the past 12 months and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities;

(C) The member voluntarily makes an informed choice to Self-Direct services. As part of the informed choice, decision making process for Self-Direction, the OHCA staff or the Case Manager provides consultation and assistance as the member completes a self-assessment of preparedness to assume the role of employer for their ~~Personal Services Assistant.~~Personal Care Assistant. The orientation and enrollment process will provide the member with a basic understanding of what will be expected of them under Self-Direction, the supports available to assist them to successfully perform employer responsibilities and an overview of the potential risks involved.

(D) The OHCA uses the following criteria to determine that based upon documentation, a person is no longer allowed to participate in the Self-Directed Services option:

(i) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Direction responsibilities; or

(ii) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the ~~PSA~~PCA or ~~APSA~~ASR service providers, or in monitoring and managing health or in preparation for emergency backup; or

(iii) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities; or

(iv) the member abuses or exploits their employee; or

(v) the member falsifies time-sheets or other work records; or

(vi) the member, even with Case Manager and Financial Management Services assistance, is unable to operate successfully within their Individual Budget Allocation; or

(vii) inferior quality of services provided by member/employer's employee, or the inability of the member/employer's employee to provide the number of service units the member requires, jeopardizes the member's health and/or safety.

(E) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the OHCA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Personal Services Assistance to a member may not be designated the "authorized representative" for the member.

(F) Self-Directed Services are delivered as authorized on the service plan and are limited to Personal Care, Respite and Advanced Supportive/Restorative Care. The member employs the Respite or ~~Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA)~~PCA and/or the ASR provider and is responsible, with assistance from the Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member:

(i) recruits, hires and, as necessary, discharges the ~~PSA~~PCA and ~~APSA;~~ASR

(ii) provides instruction and training to the ~~PSA~~PCA or ~~APSA~~ASR on tasks to be done and works with the Case Manager to obtain skilled nursing services assistance with training when necessary. Prior to performing an ~~Advanced Personal Services Assistance~~ASR provider task for the first time, the ~~APSA~~ASR must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the ~~APSA's~~ASR provider personnel file;

(iii) determines where and how the ~~PSA~~PCA or ~~APSA~~ASR works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(G) Financial Management Services are program administrative services provided to participating Self-Directed Service employer/members by agencies contracted with the OHCA. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the ~~PSA or APSA;~~PCA or ASR provider;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for ~~PSAs or APSAs;~~PCA or ASR provider;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Respite or ~~Personal Services Assistant or Advanced Personal Services Assistant; and~~PCA or ASR provider; and

(H) The service of Respite or ~~Personal Services Assistance~~PCA is billed per 15-minute unit of service. The number of units of ~~PSA~~PCA a member may receive is limited to the number of units approved on the Service Plan.

(I) ~~The service of Advanced Personal Services Assistance is billed per 15-minute unit of service.~~ASR services are billed per 15-minute unit of service. The number of units of ~~APSA~~ASR a member may receive is limited to the number of units approved on the Service Plan.

(J) Self-Directed Services rates are determined using the Individual Budget Allocation (IBA) Expenditure Accounts Determination process for each member. The IBA Expenditure Accounts Determination process includes consideration and decisions about the following:

(i) The Individual Budget Allocation (IBA) Expenditure Accounts Determination constrains total SoonerCare reimbursement for Self-Directed services to be less than expenditures for equivalent services using agency providers.

(ii) The ~~PSA~~PCA and ~~APSA~~ASR service unit rates are calculated by the OHCA during the Self-Directed service eligibility determination process. ~~The OHCA sets the PSA and APSA unit rates at a level that is not less than 80 percent and not more than 95 percent of the comparable Agency Personal Care (for PSA) or Advanced Supportive/Restorative (for APSA) service rate.~~ The allocation of portions of the ~~PSA~~PCA and/or ~~APSA~~ASR rate to cover salary, mandatory taxes, and optional benefits (including Worker's Compensation insurance, if available) is determined individually for each member using the Self-Directed Services Individualized Budget Allocation Expenditure Accounts Determination Process.

(iii) The IBA Expenditure Accounts Determination process defines the level of program financial resources required to meet the member's need for Self-Directed services. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources, the Case Manager, based upon an updated assessment, amends the service plan to increase Self-Directed service units appropriate to meet additional member need. The OHCA, upon favorable review, authorizes the amended plan and updates the member's IBA. Service amendments based on changes in member need for services do not change an existing ~~PSA~~PCA or ~~APSA~~ASR rate. The member, with assistance from the FMS, reviews and revises the IBA Expenditure Accounts calculation annually or more often to the extent appropriate and necessary.

(18) **Self-Directed Goods and Services (SD-GS).**

(A) Self-Directed Goods and Services (SD-GS) are incidental, non-routine goods and services that promote the member's self-care, daily living, adaptive functioning, general household activity, meal preparation and leisure skills needed to reside successfully in the community and do not duplicate other services authorized in the member's ~~plan of care~~service plan.

(B) These goods and services are purchased from the self-directed budget.All goods and services must be approved by the Medically Fragile wavier staff. Documentation must be available upon request.

(19) **Transitional Case Management Services.**

(A) Transitional Case Management Services are one-time billable expenses for members who transition from within the community to the Medically Fragile waiver.

(B) Transitional Case Management Services must be reasonable and necessary as determined through the transition plan development process and must be clearly identified in the plan.

(C) Transitional Case Management Services assist members that are eligible to receive waiver services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational, and other services to assist the transition, regardless of the funding source for the services which access is gained.

(D) Transitional Case Management Services may be authorized for assisting the member transition to the Medically Fragile Waiver by updating the service plan, including preparing for necessary services and supports to be in place or to start on the date the member is effective with the waiver.

317:50-1-16. Billing procedures for Medically Fragile Waiver services

(a) Billing procedures for long-term care medical services are contained in the OKMMIS Billing and Procedure Manual. Questions regarding billing procedures which cannot be resolved through a study of the manual should be referred to the OHCA.

(b) The approved Medically Fragile Waiver service plan is the basis for the MMIS service prior authorization, specifying:

(1) service;
(2) service provider;
(3) units authorized; and
(4) begin and end dates of service authorization.

(c) As part of Medically Fragile Waiver quality assurance, provider audits are used to evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provision will be turned over to the OHCA Provider Audit Unit for follow-up investigation.

~~(d) Service time of Personal Care, Case Management, Nursing, Advanced Supportive/ Restorative Assistance, In Home Respite and Self Direction may be documented through the Interactive Voice Response Authentication (IVRA) system when provided in the home. Providers are required to use the IVRA system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.~~

[OAR Docket #16-516; filed 6-15-16]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 10. PEACE OFFICER CERTIFICATION

[OAR Docket #16-410]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:10-1-4 [AMENDED]

390:10-1-7 [AMENDED]

AUTHORITY:

Council on Law Enforcement Education and Training; 70 O. S., Section 3311.2 through 3311.13

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 5, 2016

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ADOPTION:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 24, 2016

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 9, 2016

FINAL ADOPTION:

June 9, 2016

EFFECTIVE:

August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Amendments are necessary to remove requirement that full time officers have to provide CLEET with a residential address, aligning it with statutory changes last legislative session. Changes also formalize the practice that reinstated peace officers who worked more than 90 days during a calendar year will have 60 days from the date of return to work, to complete continuing education from a previous year.

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-945-9153 or 405-239-5100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

390:10-1-4. Peace officer employment standards

(a) A person shall comply with the requirements of 70 O.S. Section 3311(E)(F)(G) in order to be employed as a peace officer.

(b) Nothing herein shall preclude any law enforcement agency from establishing and implementing minimum employment standards in addition to those set forth by law and the rules of this chapter.

(c) All peace officers, reserve peace officers and tribal officers are required to maintain with the Council, the current ~~residential~~ addresses and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name.

(d) Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone.

390:10-1-7. Withdrawal, suspension and reinstatement of certification

(a) **"Withdrawal" defined.** A withdrawal of certification is the voluntary surrender of peace officer certification by an officer that has been certified pursuant to the provisions of 70 O.S. 3311 et seq.

(1) An officer requesting a withdrawal of certification must notify CLEET of his intent in writing to voluntarily surrender peace officer certification and have his name withdrawn from the list of Oklahoma certified peace officers.

(2) If an officer is requesting withdrawal by voluntary surrender of peace officer certification based upon completed, pending or contemplated criminal proceedings, the officer must include in the notice to withdraw certification, a certified copy of the charges, sentencing agreement or other information to support the action. This would include any deferred sentencing agreement.

(3) When a request for withdrawal of certification has been received by CLEET, the supporting documents will be verified and an investigation conducted to determine the facts for the stated underlying purpose of the withdrawal of certification.

(4) CLEET will enter a Final Order of Withdrawal which must be signed by the officer requesting the voluntary surrender of peace officer certification and the Director. The Final Order of Withdrawal must include:

(A) A statement by the officer that the withdrawal and surrender of peace officer certification is voluntary; and

(B) Acknowledgment of the underlying facts for the withdrawal; and

(C) Acknowledgment that the information gathered during the investigation of the request for withdrawal may be submitted as evidence at a hearing upon the request of the officer for reinstatement of certification;

(b) **Suspension.** The certification of a peace officer may be suspended pursuant to the provisions of 70 O.S. Section 3311 et seq.

(1) If any action against a peace officer results in the suspension of peace officer certification, the suspended officer shall not engage in law enforcement activities of any type during the period of suspension. Any peace officer found to be engaging in law enforcement activities of any kind during the period of suspension shall be subject to revocation of peace officer certification without prior notice but otherwise subject to administrative proceedings.

(2) When permitted by law, the officer and CLEET may enter an agreement for the suspension of peace officer certification. The Agreed Final Order of Suspension must include the length of the suspension.

(3) Administrative actions involving actions against a peace officer in which suspension of peace officer certification is provided by law, shall be conducted in accordance 70 O.S. 3311, the Administrative Procedures Act, OAC 390:2-1 et. seq. and this chapter.

(4) A suspension ordered after administrative hearing shall state the term of the suspension. Unless otherwise provided by law, the Hearing Examiner may establish a reasonable length of suspension.

(c) **Reinstatement.**

(1) After five years, an officer who has had peace officer certification suspended or who has voluntarily withdrawn his certification, may have peace officer certification reinstated through the following procedures:

(A) The officer shall file a request for reinstatement in writing, under oath.

(B) The request shall require the applicant to furnish information reasonably required to enable the Council to determine the fitness of the applicant for certification.

(2) The request for reinstatement shall be referred to the Assistant Director for processing of the request.

(3) The request will be reviewed by the Assistant Director and General Counsel to approve or deny the request. The following factors will be considered during the review:

(A) Circumstances surrounding the suspension or voluntary withdrawal of certification;

(B) Successful completion of the terms for suspension or voluntary withdrawal of certification;

(C) Any pending charges or actions in this state or any other state; and

(D) Activities of applicant during the period of suspension.

(4) If a request is denied, the Administrative Procedures found in OAC 390:2-1 et. seq. will govern the hearing.

(5) Individuals who have had their certification reinstated must meet the continuing education requirements described in 70 O.S. 3311.4. Individuals who have had their certification reinstated and who were employed/commissioned/appointed for ninety (90) days during the year his/her certification was suspended or he/her voluntarily withdrew his/her certification and who failed to meet the continuing education requirements in that year will have sixty (60) days to complete the mandatory continuing education requirements for that year effective the date of his/her employment/commission/appointment. If an individual fails to complete the mandatory continuing education requirement within the above time frame they may be disciplined pursuant to OAC 390:2.

(d) **Notification.** Upon the suspension, withdrawal or revocation of peace officer certification pursuant to 70 O.S. 3311 et seq. or these rules, CLEET shall provide written notification of such action to the head of the employing law enforcement agency and the district attorney in the jurisdiction where the officer is or was last employed, and to any other entity required by law.

[OAR Docket #16-410; filed 6-13-16]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 20. RESERVE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #16-411]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments remove the requirement that reserve officers must provide CLEET with their residential addresses. Also requires all reserve trainees to score a minimum of seventy percent (70%) on a reading, writing and comprehension examination pursuant to legislative changes last year.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-945-9153 or 405-239-5100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

390:20-1-2. Reserve officer defined; employment standards

(a) For the purposes of this Chapter, and pursuant to 70 O.S., Section 3311, a reserve peace officer shall mean a law enforcement officer who:

(1) May be appointed by a municipality [11 O.S. 34-101], a duly elected sheriff [19 O.S. 547], or any other agency authorized by statute to appoint such reserve peace officers.

(2) May not work as a reserve peace officer more than one hundred forty (140) hours per month unless authorized by 11 O.S. 34-101 or 19 O.S. 547.

(3) May be paid a wage or salary, or may serve as a volunteer for the appointing agency.

(4) May be appointed by any political subdivision of this state to serve as an auxiliary police or peace officer pursuant to the Oklahoma Civil Defense Act [63 O.S. 683.1 et. seq].

(5) May have the same powers, duties, and functions as regular full-time peace officers, or as prescribed by state laws, or the ordinances of the appointing municipality.

(b) Employment standards for reserve peace officer certification shall be the same as the employment standards for full-time peace officers, as set forth in 70 O.S. Section 3311, and in 390:10-1-4.

(c) The Council, or its designee, may grant an extension of the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes, upon written application by the employing agency, and when good cause is shown, as determined by the Council or its designee. Peace officers granted an extension of time to attend and complete a reserve training academy are not permitted to work in the capacity of a peace officer during the extension period.

(d) All peace officers, reserve peace officers and tribal officers are required to maintain with the Council, the current ~~residential~~ addresses and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name.

(e) Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone.

(f) All trainees shall be required to score a minimum of seventy percent (70%) on a reading and writing comprehension examination pursuant to 70 O.S. Section 3311.11.

[OAR Docket #16-411; filed 6-13-16]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #16-412]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:25-1-14 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., Section 3311 through 3311.13.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 5, 2016
COMMENT PERIOD:
January 5, 2016 through March 9, 2016
PUBLIC HEARING:
March 9, 2016
ADOPTION:
March 15, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 22, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments formalizes current practice and requires officers returning to employment who had worked 90 days or more in a previous year to completed mandatory training for that calendar year within 60 days of date of return to active status. Also advises that officers who leave and return in the same calendar year and worked more than 90 days, will have until the end of that calendar year to complete continuing education requirements.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-945-9153 or 405-239-5100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

390:25-1-14. Mandatory Continuing Education

(a) All full-time, certified, active peace officers shall successfully complete the minimum amount of hours of mandatory continuing education as set forth in 70 O.S., Section 3311.4, per year. The Council shall grant credit only for courses conducted by the Council or for courses accredited pursuant to OAC 390:25-1-8.

(1) All full-time, certified, active peace officers employed/commissioned/appointed for a period of ninety (90) days in a calendar year, who become inactive prior to the end of a calendar year, are responsible for meeting the mandatory continuing education requirements as set forth in 70 O.S., Section 3311.4 upon return to active peace officer status within sixty (60) days of the date of his/her employment/commission/appointment. Failure to complete the required mandatory continuing education within sixty (60) days may result in disciplinary action as set forth in OAC 390:2.

(2) Full-time certified peace officers who return to active status within the calendar year they became inactive will have the remaining portion of the calendar year to complete the annual mandatory continuing education requirements outlined in 70 O.S., Section 3311.4.

(b) Failure to meet annual training requirements shall subject the officer to suspension of their certification in accordance with the procedures in Chapter 2 of the Rules Governing the Council and 70 O.S., Section 3311.4.

(1) A reasonable time as set forth in 70 O.S., Section 3311.4(D) shall mean no more than thirty (30) calendar days after the notice of intent to suspend certification has been received, except in situations of documented medical or military leave. Training rosters for mandated training

should be submitted as soon as training is conducted. Intent notices will be generated based upon training rosters submitted by the first working day in January.

(2) Travel, Food and Lodging Expenses. The Council will not be responsible for travel, food and lodging expenses incurred by officers attending the mandatory training pursuant to 70 O.S., Section 3311.4. These expenses shall be the responsibility of the employing agency or the individual officer.

(c) Any full time certified active peace officer who fails to complete evidence-based sexual assault and sexual violence training by January 1, 2012, shall be subject to suspension of their certification in accordance with Chapter 2 of the rules governing the Council.

[OAR Docket #16-412; filed 6-13-16]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 27. POLICE OFFICER ANNUAL FIREARMS REQUALIFICATION

[OAR Docket #16-413]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:27-1-1 [AMENDED]
390:27-1-4 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S., Section 3311 through 3311.13
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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COMMENT PERIOD:
January 5, 2016 through March 9, 2016
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments state for firearms purposes, an officer who is employed, commissioned or appointed for one day in a calendar year must complete firearms requalification requirement.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-945-9153 or 405-239-5100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

390:27-1-1. Purpose

(a) The purpose of this chapter is to outline annual minimum firearms requalification standards, and requirements of law enforcement agencies to report such requalification to the Council and;

(b) This chapter outlines the procedures to implement requirements necessary for active full-time and reserve peace officers to meet the annual firearms requalification mandated by 70 O.S. 3311 and report same to the Council.

(c) For purposes of this chapter, active full-time and reserve peace officers shall be defined as employed/commissioned/appointed as such for one (1) day in a calendar year.

390:27-1-4. Exemptions

(a) A certified peace officer will be exempt from firearms requalification for the remainder of the calendar year in which he or she was certified.

(b) A certified peace officer must successfully complete firearms requalification during the next calendar year after he or she receives peace officer certification.

(c) Any peace officer changing employment between law enforcement agencies shall not be exempt from annual requalification requirements and must show proof of successfully requalifying during the calendar year while employed as a peace officer.

(d) One (1) day employed/commissioned/appointed as a peace officer with a law enforcement agency during the calendar year constitutes employment as a peace officer.

[OAR Docket #16-413; filed 6-13-16]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 55. FACILITIES MANAGEMENT

[OAR Docket #16-414]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:55-1-11 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S. § 3311 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 5, 2016
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Approved by Governor's Declaration on June 9, 2016
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June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Changes to this rule will designate rental rates for private office space and open office space at the K. O. Rayburn Training Center.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-945-9153 or 405-239-5100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

390:55-1-11. Fees

(a) Events not conducted or co-sponsored by CLEET shall be subject to fees authorized by 70 O.S. 3311 according to the fee schedule below:

(1) Lodging per bed - $ 20.00 per night
(2) Classrooms C111, C131, C112, C127, C124 - $ 40.00 per day
(3) Computer lab C107 - $ 250.00 per day
(4) CSI lab C115 - $ 150.00 per day
(5) Large classroom C128 - $ 60.00 per day
(6) Scenario classroom C114 - $ 60.00 per day
(7) Dining Room A104 - $ 40.00 per day
(8) Conference Room/Courtroom A107 - $ 100.00 per day
(9) Boardroom A214 - $ 40.00 per day
(10) Scenario House - $ 75.00 per day
(11) Multipurpose room E101 - $ 400.00 per day
(12) Emergency response course - $ 350.00 per day (no vehicles provided)
(13) Firearms Classroom F102 - $ 40.00 per day
(14) Baffled firing range - $ 150.00 per day
(15) Outdoor firing range - $ 80.00 per day
(16) Chair - $ 2.00. For seating in the multipurpose room that exceeds CLEET's chair availability, sponsors shall provide their own seating.
(17) Table - $ 8.00
(18) Locker room - $ 25.00 per day (men's and women's)
(19) Private office space - $12.00 to $15.00 per square foot per year, or at a rate established by Memorandum of Understanding approved by the Council.
(20) Open office area - $9.00 to $10.00 per square foot per year, or at a rate established by Memorandum of Understanding approved by the Council.

(b) Fees for one-half day or less shall be one-half of the daily rate

(c) All individuals lodging at the complex shall be subject to a $ 10.00 fee for a lost room key or magnetic access card to the room. Payment shall be made to CLEET and the fee shall be received before certifications of completion will be granted for the course or event attended.

(d) All individuals issued a magnetic access card for food services shall be subject to a $ 2.00 fee for a lost access card. Payment for the food service card shall be made directly to the food service vendor.

(e) Failure to immediately pay any assessed fees may result in denial of future participation in CLEET activities or use of the complex.

[OAR Docket #16-414; filed 6-13-16]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 60. REGULATING BAIL ENFORCERS

[OAR Docket #16-415]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Disciplinary Actions
390:60-7-8 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 59 O.S., Sections 1301, 1303, 1327, 1328, 1329, 1332 and 1332.1.1; 59 O.S., Section 1350.1 through 1350.20; 59 O.S. Section 1750.1 through 1750.14; 70 O.S., Section 3311 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 5, 2016
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January 5, 2016 through March 9, 2016
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Approved by Governor's Declaration on June 9, 2016
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June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Changes to this rule include requiring the firing or use of a weapon or any noxious substance must be reported to CLEET in writing with an original signature of the licensee.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-945-9153 or 405-239-5100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 7. DISCIPLINARY ACTIONS

390:60-7-8. Reporting the discharge of firearms

(a) The discharge or use of a firearm or a weapon or any noxious substance as defined in the Act by a Licensee shall be reported by phone immediately by the Licensee to CLEET. If the discharge of a firearm happens at times other than during normal CLEET operating hours, calls and reports shall be made the next working day to CLEET. The telephonic report shall include:

(1) name and license number of Licensee discharging firearm;

(2) name and contact information of the entity who hired the licensee;

(3) location of incident;

(4) a brief narrative of what happened;

(5) whether death, personal injury, or property damage resulted;

(6) whether the incident is being or was investigated by a law enforcement Agency, and if known, the name of the investigating Agency.

(b) CLEET, when deemed appropriate, may immediately proceed to the scene and investigate.

(c) The involved Licensee must complete a separate written report, which includes an original signature of the licensee, known as a "Report of Firearm Discharge", to be forwarded by the Licensee to CLEET within twenty-four (24) hours after the firearms discharge incident. This is an individual obligation of the Licensee and the Licensee may not rely on any other entity to submit the required reports.

[OAR Docket #16-415; filed 6-13-16]

TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION

[OAR Docket #16-477]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
420:10-1-5. Permits [AMENDED]
420:10-1-18. Insurance requirements [AMENDED]
420:10-1-20. Suspension or revocation of registration permits and fines; appeals [AMENDED]
AUTHORITY:
Oklahoma Liquefied Petroleum Gas Board; Pursuant to statute 420.3. Oklahoma Liquefied Petroleum Gas Board - Rules, regulations and specifications. Subsection (G)(H).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 25, 2016
COMMENT PERIOD:
February 16, 2016 through March 18, 2016
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Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said National Fire Protection Association published in its pamphlet No. 54 have been adopted by the legislature in 52 O.S. 1991, Section 420.3 (e) and shall be accepted standards for the State of Oklahoma.
Incorporating rules:
420:10-1-20
Availability:
Oklahoma liquefied Petroleum Gas Administration, 3815 N. Santa Fe, Suite 117, Oklahoma City, Oklahoma, 73118, 405-521-2458. Office hours are from 7:30 a.m., to 4:30 p.m., Monday through Friday.
ANALYSIS:
The proposed amendments to 420:10-1-5 increases the initial permit fee for a Class I Dealer permit from $500.00 to $1,000.00 and increases the annual permit fee from $200.00 to $400.00. The general liability insurance coverage requirement for a Class I Dealer has been increased from $500,000.00 to $1,000,000.00. The initial permit fee for a Class II Truck Transporter permit is being increased from $300.00 to $1,000.00 and the annual permit fee is increased from $200.00 to $400.00. The annual permit fee for a Class IV Installer permit with one endorsement is being increased from $50.00 to $70.00. The Class VIII Appliance Dealer permit is being stricken from the rules pursuant to the passage of HB1751 during the last session of the Legislature. HB1751 deleted the Class VIII permit class.

The proposed amendments to 420:10-1-18 increases the general liability insurance coverage requirements from $500,000.00 to $1,000,000.00 for the Class I Dealer permit, Class II Truck Transporter permit and Class III DOT Cylinder Transporter permit. The general liability insurance coverage requirement for the Class IV Installer permit is being increased from $25,000.00 to $50,000.00. The general liability insurance coverage requirement for the Class VI DOT Cylinder and/or LP Motor Fuel Station Operation permit is being increased from $50,000.00 to $100,000.00. The Class VIII Appliance Dealer permit language is being stricken from the rules in this section pursuant to the passage of HB1751. Again, HB1751 deleted the Class VIII permit class.

The proposed amendments to 420:10-1-20 increases the maximum fine to $500.00 for several offenses or violations in order to make the rules consistent with existing language for other offenses or violations. The maximum fine currently in place for these specific offenses or violations has not been sufficient to deter repeated or aggravated offenders. The amendment also changes the description of one violation from "Selling gas without proper permit" to "Failing to obtain a proper permit to operate in LP Gas industry" which is more encompassing.
CONTACT PERSON:
Mr. Ed Welton, Administrator, (405)521-2458.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

420:10-1-5. Permits

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is ~~Five Hundred Dollars ($500.00)~~One Thousand Dollars ($1,000.00) The annual fee for the Class I permit is ~~Two Hundred Dollars ($200.00)~~Four Hundred Dollars ($400.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the renewal fee, and having proper insurance requirements filed with the Administrator, before going back on active status. If requirements are not met the permit will then be revoked. All Class I holders, active and inactive, are required to pay the annual renewal fee.

(B) Applicant must furnish to the Board, evidence of the following insurance:

(i) A minimum of ~~$500,000.00~~$1,000,000.00 general liability insurance, as per 420:10-1-18;

(ii) Worker's Compensation insurance shall be required as per state requirements;

(iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

(D) Before testing for a Class I permit, an applicant must meet the following requirements as approved by the Board:

(i) Five (5) years experience as an active Class X Manager or equivalent; and

(ii) Forty (40) hours of specified training.

(2) **Class II - Truck Transporter permit.** The Class II Transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is ~~Three Hundred Dollars ($300.00)~~One Thousand Dollars ($1,000.00). The annual fee for a Class II permit is ~~Two Hundred Dollars ($200.00)~~Four Hundred Dollars ($400.00).

(3) **Class III - DOT Cylinder Transporter Permit.** The Class III DOT Cylinder Transporter Permit permits the holder to operate DOT cylinder filling station and cylinder delivery service. The annual fee for a Class III permit is One Hundred Dollars ($150.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or a person licensed by Oklahoma Construction Industries Board with a Mechanical License, and then shall be required to pass a written examination for each separate endorsement. The endorsements will be as follows:

(i) LP, Low Pressure systems covered by NFPA 54;

(ii) HP, High Pressure systems covered by NFPA 58;

(iii) RV, Recreational Vehicle systems covered by NFPA 1192;

(iv) MC, Meter Calibration systems covered by NIST Handbook 44;

(v) TI, Truck Inspections and Piping covered by NFPA 58 and CFR 49;

(vi) DO, Dispenser Operator for Class IV permit holders that also dispense propane.

(B) Exception from two (2) week training period would be anyone already licensed by Oklahoma Construction Industries Board with a Mechanical License. If the supervising person determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. Upon renewal, endorsements will be based on services provided as authorized by the Administrator. The annual fee for a Class IV permit with one (1) endorsement is ~~Fifty Dollars ($50.00)~~Seventy Dollars ($70.00). Each additional endorsement is Ten Dollars ($10.00).

(C) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(D) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the LP Gas Administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is Fifty Dollars ($50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.**

(A) The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder charging station and/or a motor fuel dispenser for public resale. Applicant shall be required to pass an approved written examination for each separate endorsement depending upon the type of LP Gas motor fuel dispenser to be installed. The endorsements will be as follows:

(i) AAG, This Attended Autogas "AAG" endorsement permits the holder to operate LP Gas dispenser stations that fill DOT cylinders and/or Attended LP Gas motor fuel refueling dispensers for resale.

(ii) UAG, This Unattended Autogas "UAG" endorsement permits the holder to operate Unattended self-service LP Gas motor fuel dispenser stations; however, these installations require more stringent regulations than those that are attended. In addition to the requirements in this section, the permit holder shall be required to install equipment that meets or exceeds the minimum installation and performance standards described in OAC Section 420:10-1-14(28). For the purpose of defraying the cost and expenses of administering and enforcing this rule, persons, firms and corporations shall pay at the time of initial inspection a fee of Three Hundred Dollars ($300.00) for each unattended LP Gas motor fuel dispenser station. Thereafter, the annual inspection fee is One Hundred Fifty Dollars ($150.00) for each unattended LP Gas motor fuel dispenser station.

(B) Examination shall be administered by a Safety Code Enforcement Officer, or by a Class X Manager. In either case, the test fee for the Class VI permit is Ten Dollars ($10.00). Permit holder is responsible for the safety of the dispensing operation and training and safety of the employees dispensing LP Gas. Class VI locations may not become operational until a permit has been issued. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is One Hundred Dollars ($100.00).

(7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, Class VI, and Class X. Class VI-A applicants must be properly trained by a Class VI or Class X on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by a Safety Code Enforcement Officer, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars ($10.00). Holder must carry permit and attend the annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is Twenty-Five Dollars ($25.00).

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program. A permit is required for each cylinder exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is Fifty Dollars ($50.00).

~~(9) **Class VIII - Appliance Dealer Permit.** The Class VIII Appliance Dealer Permit permits the holder to sell LP Gas appliances. The annual fee for a Class VIII permit is Seventy Dollars ($70.00).~~

(~~10~~9) **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is Seventy Dollars ($70.00).

(~~11~~10) **Class IX-A - Mobile Homes and Recreation Sales Permit.**

(A) The Class IX-A Mobile Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in mobile homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufacture, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is Seventy Dollars ($70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a mobile home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

(~~12~~11) **Class X - Manager's Permit.**

(A) A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is One Hundred Fifty Dollars ($150.00).

(B) Before testing for a Class X permit, an applicant must meet the following requirements as approved by the Board:

(i) Hold an active Class IV or Class IV-D permit and employed under an active Class I Dealer for a minimum of three (3) years or equivalent; and

(ii) One (1) year of the minimum three (3) years required experience can be satisfied with forty (40) hours of specified training.

(C) Temporary exemptions for emergency conditions can be granted by the Administrator.

(~~13~~12) **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

(~~14~~13) **Truck, Trailer or Cargo Tank inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of One Hundred Fifty Dollars ($150.00) for each LP Gas truck, trailer or cargo tank belonging to a person who holds a permit authorizing the use of such truck, trailer or cargo tank and One Hundred Fifty Dollars ($150.00) for each such truck, trailer or cargo tank belonging to a person who does not hold a permit. All requirements imposed subsequent to these inspections must be met within thirty (30) days of the initial inspection. Failure to comply will necessitate a re-inspection at a charge of One Hundred Fifty Dollars ($150.00) for each inspection. The inspection fee shall increase to Three Hundred Dollars ($300.00) per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at the discretion of the Administrator.

(~~15~~14) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon all first sales, purchases, rentals or uses in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars ($3.00) each, and on all other containers, a fee of Ten Dollars ($10.00) each.

420:10-1-18. Insurance requirements

Insurance pursuant to the provisions of this section shall be maintained in full force and effect during the operation of the business for which the coverage was issued. Except as otherwise provided for in this section, no registration permit shall be issued until said certificate is filed with the Administrator. No insurance coverage shall be canceled or terminated without thirty (30) days prior written notice of cancellation or termination to the Administrator. The following are the minimum insurance requirements for LP Gas permit holders licensed by the State of Oklahoma.

(1) **Class I - Dealer Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: ~~$500,000~~$1,000,000 per occurrence; ~~$500,000~~$1,000,000 aggregate.

(B) Motor vehicle insurance must meet State and Federal requirements.

(C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(2) **Class II - Truck Transporter Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: ~~$500,000~~$1,000,000 per occurrence; ~~$500,000~~$1,000,000 aggregate.

(B) Motor vehicle insurance must meet State and Federal requirements.

(C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(3) **Class III - DOT Cylinder Transporter Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: ~~$500,000~~$1,000,000 per occurrence; ~~$500,000~~$1,000,000 aggregate.

(B) Motor vehicle insurance must meet State and Federal requirements.

(C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(4) Class IV - Installer Permit.

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: ~~$25,000~~$50,000 per occurrence; ~~$25,000~~$50,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(5) **Class IV-D - Driver/Installer Permit.** The Class IV-D permit is only issued in conjunction with the Class I permit; therefore, the insurance coverage of the Class I permit holder will cover the Class IV-D permit holder.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operation Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: ~~$50,000~~$100,000 per occurrence; ~~$50,000~~$100,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(7) **Class VI-A - LP Gas Dispensing Permit.** The Class VI-A permit is only issued in conjunction with the Class I, II, III, VI and/or VII permit; therefore, the insurance coverage of the Class I, II, III, VI and/or VII permit holder will cover the Class VI-A permit holder.

(8) **Class VII - Cylinder Exchange Program Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: $25,000 per occurrence; $25,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

~~(9) **Class VIII - Appliance Dealer Permit.**~~

~~(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: $25,000 per occurrence; $25,000 aggregate. This insurance coverage is only necessary when the permit holder engages in the installation of appliances.~~

~~(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.~~

(~~10~~9) Class IX - LP Gas Container Sales Permit.

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: $25,000 per occurrence; $25,000 aggregate. This insurance coverage is only necessary when the permit holder engages in manufacturing and/or installing LP Gas containers.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(~~11~~10) Class IX-A - Mobile Homes and Recreation Sales Permit.

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: $25,000 per occurrence; $25,000 aggregate. This insurance coverage is only necessary when the permit holder engages in manufacturing, fabrication or installation of LP Gas systems.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(~~12~~11) Class X - Manager's Permit. The Class X permit is only issued in conjunction with the Class I permit; therefore, the insurance coverage of the Class I permit holder will cover the Class X permit holder.

420:10-1-20. Suspension or revocation of registration permits and fines; appeals

(a) The Administrator is authorized to suspend or revoke any registration permit issued by the Board, if it is found at a hearing on the matter, that the registrant has violated or is violating or has failed or is failing to comply with any provisions of Title 52, O.S., Section 420.1 and following, or these rules or specifications, or has delivered a lesser quantity of gas than the registrant bills the customer for with intent to defraud.

(b) Upon his or her own motion, or upon the receipt of written complaint from any member of the Board, or from any Deputy Administrator or Inspector, that a registrant has violated or is violating or has failed or is failing to comply with any of the provisions of Section 420.1 and following, or these safety rules, regulations and/or specifications, the Administrator is authorized and it shall be his or her duty to hold a public hearing to consider such complaint. The Administrator shall have the power to conduct investigations; to summon and compel the attendance at such hearing of Witnesses; to require the production of any records or documents pertinent to the subject matter of any investigation or hearing; and to provide for the taking of depositions of witnesses in accordance with the rules of the district courts of this state. Notice of the date, time and place of any such hearing shall be given by registered mail not less than ten (10) days, exclusive of the date of mailing, before the date thereof, addressed to the registrant complained against and to any other parties involved, each of whom shall have the right to file answer, to appear and be heard in person and by counsel, and to present evidence at such hearing. The registrant complained against and any other parties involved may appear in person or present their case, including any evidence supporting their case, in writing to the Administrator in lieu of their making a physical appearance, and the Administrator will consider any such written evidence at the hearing.

(c) If the Administrator finds at a hearing that the registrant has violated or is violating or has failed or is failing to comply with any provision of Section 420.1 and following, or these rules or specifications, the Administrator, if the findings justify such action, shall issue an order suspending the registrant's registration permit for a period not to exceed ninety (90) days, revoking the registration permit, or imposing a fine of not more than Five Hundred Dollars ($500.00) for each separate offense. Any fine imposed pursuant to this section shall be deposited into the Liquefied Petroleum Gas Fund. The amount of the fine and the type of penalty imposed for an offense or violation shall be within the Administrator's discretion, provided that the following fines shall be imposed for the following offenses or violations, in addition to additional fines and penalties the Administrator may impose for repeated or aggravated offenses or violations:

(1) Container Law (filling container owned conspicuously by another person) - [Title 52, O.S.SS420.9(F)]: $500.00 maximum fine.

(2) Unauthorized removal of red tag - [OAC 420:10-1-14(b)(9)]: $500.00 maximum fine

(3) Failing to carry or use chock blocks - [NFPA 58, Ch.6-3.8]: ~~$50.00~~$500.00 maximum fine.

(4) Failing to complete or late filing of LPG Form 4 - [OAC 420:10-1-15]: $ 500.00 maximum fine per occurrence.

(5) Inaccurate meters or meter calibration - [OAC 420:10 - 1 14 (b) (7)]: $500.00 maximum fine.

(6) Meter gears do not match calibration report; Failing to report unsealed meter; Failing to give printed ticket - [OAC 420:10-1-14(b)(7)]: $500.00 maximum fine.

(7) ~~Selling gas without proper permit~~Failing to obtain a proper permit to operate in LP Gas Industry- [OAC ~~420:10-1-15~~420:10-1-5]: $500.00 maximum fine.

(8) Failing to renew existing permit before expiration - [OAC 420:10-1-16]: 25% of permit cost maximum fine.

(9) Failing to attend safety school - [OAC 420:10-1-16]: ~~$100.00~~$500.00 maximum fine.

(10) Failing to comply with inspection requirements - [OAC 420:10-1-14]: $500.00 maximum fine.

(11) Leaving Internal Safety Valve (ISV) open or manual liquid outlet valve open during transportation - [NFPA 58,Ch.6-3.1.2]: $500.00 maximum fine.

(12) ESV's not operating - [NFPA 58, Ch.6-3.1.2]: ~~$100.00~~$500.00 maximum fine.

(13) Other violations of NFPA 58 & 54 -[OAC 420:10-1-14]: $500.00 maximum fine.

(14) Failing to list all storage sites - [various]: ~~$100.00~~$500.00 maximum fine.

(15) Failing to pay invoice from Administrator within 35 days from issued date - [various]: 25% of invoice maximum fine.

(16) No insurance - [OAC 420:10-1-18]: $500.00 maximum fine

(17) Failing to report accident - [OAC 420:10-1-14(b)(3)]: $500.00 maximum fine.

(18) Failing to attend management safety seminar - [OAC 420:10-1-16]: $500.00 maximum fine

(d) The Administrator's findings, judgment and order shall be reduced to writing and be recorded in a permanent public record to be retained in the office of the Administrator. Copies shall be furnished to the registrant complained against and to the board. Any registrant who has been fined, or whose registration permit is suspended or revoked by the Administrator may, within thirty (30) days after such fine, suspension or revocation, file an appeal with the Board, which shall review the order of the Administrator de novo at the next scheduled meeting of the Board, and shall affirm the Administrator's order if supported by substantial evidence. In the event the Board affirms in whole or in part the action of the Administrator, the registrant may, within thirty (30) days after the Board's action, file an appeal with the district court of Oklahoma County or in the county wherein the registrant resides or has its principal place of business in this state, pursuant to Article II of the Administrative Procedures Act. Upon filing of an appeal, enforcement of the Administrator's order shall be stayed pending final disposition of such appeal. Upon affirmance, the order shall become final and conclusive and the stay of enforcement shall be vacated.

[OAR Docket #16-477; filed 6-14-16]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 15. PHYSICIAN ASSISTANTS

[OAR Docket #16-441]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
435:15-1-1.1. Definitions [AMENDED]
Subchapter 3. Licensure of Physician Assistants
435:15-3-1. ~~Application for licensure~~ Qualification; application [AMENDED]
435:15-3-12. Review; Temporary authorization to practice [AMENDED]
435:15-3-13. ~~Application to practice~~Supervising physician; alternatives [AMENDED]
435:15-3-14. Temporary approval of an application to practice by a Licensed Physician Assistant [REVOKED]
435:15-3-15. Approval to supervise more than two PA's [REVOKED]
435:15-3-16. Alternate supervising physician [REVOKED]
435:15-3-18. License renewal period; reinstatement [REVOKED]
Subchapter 5. Regulation of Practice
435:15-5-1. Supervision; physician responsibility; independent care prohibited [REVOKED]
435:15-5-1.1. Health care services performed and prohibited [REVOKED]
435:15-5-2. Patient care setting [REVOKED]
435:15-5-5. Approval of educational and/or experimental programs [AMENDED]
435:15-5-10. Prescriptions [AMENDED]
435:15-5-11. ~~Grounds for disciplinary action~~ Discipline [AMENDED]
Subchapter 7. Advisory Committee [REVOKED]
435:15-7-1. Physician Assistant Advisory Committee [REVOKED]
Subchapter 9. Guidelines for the Utilization of Physician Assistants [REVOKED]
435:15-9-1. General responsibilities and obligations [REVOKED]
435:15-9-2. Supervision [REVOKED]
435:15-9-3. New patients [REVOKED]
435:15-9-4. Setting [REVOKED]
435:15-9-5. Understanding and variance from guidelines [REVOKED]
Subchapter 11. Prescriptive and Dispensing Authority [AMENDED]
435:15-11-1. Prescriptive and dispensing authority [AMENDED]
435:15-11-2. Drug formulary [AMENDED]
Appendix A. Physician Assistant Protocol [REVOKED]

AUTHORITY:
59 O.S. § 519.3(D); Oklahoma Board of Medical Licensure and Supervision

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November 2, 2015

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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016

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EFFECTIVE:
August 26, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rules make significant amended changes and repeal in the level of supervision of PAs. Oklahoma physicians who supervise Physician Assistants (PA) would no longer be required to be on-site at least one-half day per week. Supervising physicians would have more autonomy in determining the scope of services offered by PAs. The rules would allow a physician to supervise up to four (4) physician assistants instead of the previous two (2). The rules also repeal numerous provisions on supervise by site location and PA protocols and leave those decisions up to the supervising physician, the PA and the PA Advisory Committee. The rules redefine the section on licensure qualifications, prescriptive authority, and issuance of a temporary license to practice. The rules update and expand the language and grounds for discipline.
CONTACT PERSON:
Barbara J. Smith, Executive Secretary, Oklahoma State Board of Medical Licensure and Supervision, 101 NE 51st Street, Oklahoma City, Oklahoma 73105, bsmith@okmedicalboard.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 26, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

435:15-1-1.1. Definitions

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

(1) **"Alternate supervising physician"** means a physician who has been delegated the duties of a supervising physician pursuant to 435:15-3-13(e).

(2) **"Board"** means the State Board of Medical Licensure and Supervision.

(3) **"Clinically inactive"** means a person that was issued a physician assistant license by any jurisdiction or was employed as a physician assistant by a federal employer and within the past twenty-four (24) months has not:

(A) practiced as a physician assistant; or

(B) been employed by an accredited physician assistant educational program.

(4) **"Committee"** means the Physician Assistant Committee.

(5) **"On-site"** means the following as it relates to the usage of Schedule II drugs:

(A) Hospital in-patients;

(B) Emergency room;

(C) Surgicenters licensed by the State Health Department; or

(D) Medical clinics or offices in cases of emergency as defined by the supervising physician

(E) State-owned Veterans Administration long-term care facilities with an in-house pharmacy.

(6) **"Primary supervising physician"** means a physician meeting the requirements of 435:15-3-13(a) who is not an alternate supervising physician with respect to the same physician assistant.

(b) The terms defined under 59 O.S. § 519.2 shall apply to this chapter.

SUBCHAPTER 3. LICENSURE OF PHYSICIAN ASSISTANTS

435:15-3-1. ~~Application for licensure~~Qualification; application

~~(a) A Physician Assistant license shall only be issued by the Board upon application filed by the physician assistant.~~

~~(b) All applicants for Physician Assistant licenses shall meet the following qualifications:~~

~~(1) Graduate from an accredited Physician Assistant Program consisting of at least one year of classroom instruction and one year of clinical experience that includes a minimum of one month each in family medicine, emergency medicine and surgery.~~

~~(2) A passing score on the Physician Assistant National Certifying Examination administered by the National Commission on the Certification of Physician Assistants, or its successor. The Board may recognize another national examination to determine the qualifications of the applicant to practice as a physician assistant when such examination has documented its ability to measure such skills and abilities. The applicant must bear the cost of the examination.~~

~~(3) The applicant shall take and complete the jurisprudence examination prepared by the staff. Seventy-five percent (75%) or above shall be a passing grade. The examination shall cover the Act and any other significant statute, rule or material related to practice as a Physician Assistant in this state. The applicant shall be provided a copy of all statutes, rules or other material from which the examination was created and may review such material while taking the jurisprudence examination. An applicant who fails the jurisprudence examination three (3) times shall be required to meet with the Secretary in order to devise a study plan prior to taking the jurisprudence examination again. The Board has determined that the jurisprudence examination is an integral part of the application process. A passing score on the jurisprudence examination is a requirement for licensure.~~

~~(4) Applicants must be of good moral character.~~

~~(5) Applicants must meet other requirements as determined by the Board.~~

(a) **Qualifications.** No license shall be issued unless an applicant:

(1) Submits an application and other information pursuant to subsections (b) and (c) and remits the required fee;

(2) Has successfully completed an educational program for physician assistants accredited by the Accreditation Review Commission on Education for the Physician Assistant, or prior to 2001, either by the Committee on Allied Health Education and Accreditation, or

the Commission on Accreditation of Allied Health Education Programs. The board may also issue a license to an applicant who does not meet the educational requirement specified in this section, but who passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants prior to 1986;

(3) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(4) Jurisprudence examination.

(A) Has responded correctly to seventy-five (75) percent or greater questions on a jurisprudence examination prepared by the board staff. The examination shall include:

(i) The Physician Assistant Act; and

(ii) Significant state statutes or rule impacting physician assistant practice.

(B) The board shall supply the applicant with a copy of the statues, rules, or other material from which the examination is based while the applicant is completing the examination.

(C) An applicant that does not meet the requirement under subsection (4)(i) after three attempts shall meet with the secretary of the board to create a study plan prior to reexamination;

(5) Does not hold a license or registration as a physician assistant that is currently under discipline, revocation, suspension, or probation relating to practice as a physician assistant. The board may waive this paragraph (6);

(6) Pursuant to 59 O. S. § 519.4, be of good moral character; and

(7) For a renewal application, has met the continuing medical education requirements pursuant to 435:15-3-17.

(b) **Application.**

(1) The applicant shall complete an application form approved by the board and such additional forms necessary for the board to consider the application and the qualifications of the applicant.

(2) Pursuant to 59 O.S. § 519.6, the application shall include:

(A) A description of the physician's practice,

(B) Methods of supervising and utilizing the physician assistant, and

(C) Names of alternate supervising physicians who will supervise the physician assistant in the absence of the primary supervising physician.

(3) Renewal.

(A) An application for renewal shall include any changes from the most recent application submitted to the board not previously submitted.

(B) An applicant for renewal shall submit the examination under subsection (a)(4).

(C) An application for renewal shall be submitted not later than March 31 of each calendar year.

(D) A license shall expire if a renewal application is not submitted by March 31.

(E) A renewal application submitted between April 1 and May 31 must be accompanied by the late fee pursuant to 435:1-1-7(a)(2)(E).

(F) An application after May 31 shall be considered an initial application.

(4) Return to practice.

(A) Application.This subsection (a)(4) shall apply to an applicant that is clinically inactive.

(B) In addition to complying with the provision of this section 435:15-3-1, an applicant under this subsection (a)(4) shall:

(i) Complete a reentry plan approved by the board or a board designee; and

(ii) Comply with any practice conditions approved by the board.

(c) **Other information.** An applicant shall submit or make available any other information the board deems necessary to evaluate the applicant.

435:15-3-12. Review; Temporary authorization to practice

~~(a) The Secretary of the Board, after review of the initial application by the Physician Assistant Committee chairperson or designee, is authorized to grant temporary authorization for an individual who has passed the examination for physician assistants to practice as a physician assistant for a period not to exceed one (1) year from the date of initial application. Initial applications shall be reviewed at the next regularly scheduled meeting of the Board and may be approved, extended or rejected by the Board. If rejected, the temporary approval shall expire immediately and notification of such action shall be sent to the supervising physician by certified mail. Such temporary authorization shall assure that the physician assistant meets the requirements for licensure as specified in 435:15-3-1.~~

~~(b) A temporary authorization to practice as a physician assistant may not be renewed.~~

~~(c) Physician assistants practicing under a temporary authorization shall not be permitted to practice in remote patient care settings except when the application has been reviewed and approved by the Secretary of the Board and Physician Assistant Committee chairperson.~~

~~(d) The supervising physician shall review the care given to every patient seen by a physician assistant practicing under a temporary authorization and countersign every patient chart within 72 hours of the care being rendered except in remote patient care setting when the application has been reviewed and approved by the Secretary of the Board and Physician Assistant Committee chairperson.~~

(a) The chair or designee of the physician assistant committee shall review each application and information submitted in support of the application and shall promptly transmit a recommendation to the secretary of the board if the application should be temporarily approved.

(b) Based on the recommendation under subsection (a), the secretary of the board may temporarily approve a license for an applicant meeting the requirements of this chapter 15 pursuant to 59 O.S. § 519.7. A temporarily approved license shall

be reviewed at the next regular meeting of the board. A temporary approval of a license shall expire if the board rejects the application.

(c) The board shall issue a license to an applicant meeting the requirements of this chapter 15.

435:15-3-13. ~~Application to practice~~Supervising physician; alternatives

~~(a) The physician assistant must hold valid licensure or temporary authorization to practice as a physician assistant.~~

~~(b) The supervising physician should hold an unrestricted license to practice medicine or osteopathic medicine. If the physician's license is restricted, the Committee shall individually review the application to practice to determine the nature of the restriction and whether it will prevent the physician's ability to properly supervise the physician assistant.~~

~~(c) No health care service can be performed by a physician assistant until a completed application to practice has been filed with the Board and signed by both the physician assistant and the primary supervising physician and, if applicable, the alternating supervising physician(s).~~

~~(d) The application shall specify the specialty and scope of practice of the primary supervising physician and documentation of both the physician assistant's and physician's agreement to abide by the regulation of practice as set out in Subchapter 5 of this Chapter.~~

~~(e) The supervising physician and physician assistant shall certify to the Board that the physician assistant has prior training in and is knowledgeable of the indications, contraindications, side effects and interactions of all medications which he/she shall prescribe, order, or administer on behalf of the supervising physician.~~

~~(f) The primary supervising physician shall be responsible for the performance of the physician assistant.~~

~~(g) A physician assistant may be approved to practice under more than one application to practice.~~

~~(h) An application to practice that includes the use of remote patient care setting(s), must meet the following additional requirements:~~

~~(1) The physician assistant must document:~~

~~(A) experience in providing a comprehensive range of primary care services, under responsible physician supervision for at least one year (12 months);~~

~~(B) education in advanced cardiac life support; and~~

~~(C) such other requirements as the Committee may recommend and the Board may require.~~

~~(2) The Board may waive the requirements in (1) of this subsection for those applicants possessing equivalent experience and training as recommended by the Committee.~~

~~(i) All applications to practice shall be subject to Board review and approval.~~

(a) **Qualifications.**

(1) Pursuant to 59 O.S. § 519.2, a supervising physician must be licensed as a physician by either the:

(A) State Board of Medical Licensure and Supervision, or

(B) State Board of Osteopathic Examiners.

(2) A license under subsection (a)(1) must be unrestricted.

(3) The board may waive the requirement under (a)(2) if the board determines the restriction will not impede the ability of the supervising physician to supervise a physician assistant.

(b) **Review.** A supervising physician shall review the care provided to each patient receiving health care services by a physician assistant with a temporarily approved license.

(c) **Physician assistants supervised.**

(1) A supervising physician shall not serve as the supervising physician for more than four (4) physician assistants practicing at any one time.

(2) Subsection (c)(1) shall not apply to a supervising physician who is a medical director or supervising physician of a state institution, correctional facility, or hospital.

(3) On the request of an applicant or supervising physician, the board may waive the requirement under subsection (c)(1).

(d) A physician assistant may have more than one (1) supervising physician.

(e) **Alternate supervising physician.** The duties of a primary supervising physician may be delegated to an alternate supervising physician that:

(1) Meets the requirements of this section 435:15-3-13; and

(2) Has a practice that is reasonably similar to the primary supervising physician.

435:15-3-14. Temporary approval of an application to practice by a Licensed Physician Assistant [REVOKED]

~~(a) The Secretary of the Board is authorized to grant temporary approval for an application to practice once a licensed physician assistant and physician have submitted a complete application.~~

~~(b) The temporary approval shall be reviewed at the next regularly scheduled meeting of the Board and may be approved, extended or rejected by the Board. If rejected, the temporary approval shall expire immediately and notification of such action shall be sent to the supervising physician by certified mail.~~

435:15-3-15. Approval to supervise more than two PA's [REVOKED]

~~The Board shall not approve an application for any one physician to supervise more than two (2) physician assistants at any one time, except that a medical director or supervising physician of a state institution may supervise more than two physician assistants provided that appropriate alternate supervising physician(s) are available and approved by the Board to supervise the physician assistant(s) in the absence of the primary, supervising physician.~~]

435:15-3-16. Alternate supervising physician [REVOKED]

~~(a) An application to practice may designate one or more alternate supervising physician(s) to supervise the physician assistant.~~

~~(b) The alternate supervising physician(s) shall agree to the regulation of practice as set out in Subchapter 5 of this Chapter.~~

~~(c) The application shall specify the specialty and scope of practice of the alternating supervising physician.~~

~~(d) The primary supervising physician may temporarily delegate supervision of the physician assistant to another alternate supervising physician upon execution of an agreement signed by the primary supervising physician, the physician assistant, and the alternate supervising physician(s) provided that:~~

~~(1) The scope of practice of the alternate supervising physician(s) is the same or in reasonable similarity to that of the primary supervising physician.~~

~~(2) An agreement to the temporary delegation of supervision shall be signed by the primary supervising physician, the physician assistant, the alternate supervising physician(s) and approved by the Board.~~

~~(e) In remote patient care settings, no more than two (2) alternate supervising physicians shall be approved by the Board.~~

435:15-3-18. License renewal period; reinstatement [REVOKED]

~~(a) Renewal of a Physician Assistant license is due on or before March 31 of each calendar year.~~

~~(b) Failure to renew by March 31 renders the license inactive and no health care services may be performed by a physician assistant.~~

~~(c) Between April 1 and May 31 of each year, renewal of a Physician Assistant license shall require the applicant to pay a late renewal fee as set by the Board in the Fee Schedule at OAC 435:1-1-7(a)(2)(E).~~

~~(d) After May 31 of each year, an appropriate application for reinstatement must be filed with and approved by the Board along with payment of an initial application processing fee.~~

~~(e) The renewal application shall require notification to the Board of any changes that have occurred in the application to practice during the previous calendar year.~~

~~(f) At the time of renewal, the applicant shall take and complete the jurisprudence examination prepared by the staff. Seventy five percent (75%) or above shall be a passing grade. The examination shall cover the Act and any other significant statute, rule or material related to practice as a Physician Assistant in this state. The applicant shall be provided a copy of all statutes, rules or other material from which the examination was created and may review such material while taking the jurisprudence examination. The license will not be renewed until a successful score is received on the jurisprudence examination.~~

SUBCHAPTER 5. REGULATION OF PRACTICE

435:15-5-1. Supervision; physician responsibility; independent care prohibited [REVOKED]

~~(a) The health care services performed by a physician assistant shall be done under the supervision of a physician who retains responsibility for patient care, although the physician need not be physically present at each activity of the physician assistant nor be specifically consulted before each delegated task is performed.~~

~~(b) A physician assistant must function only under the supervision of a licensed physician. Nothing in the Physician Assistant Act shall be construed to permit physician assistants to provide health care services independent of physician supervision. Physician supervision shall be conducted in accordance with the following standards:~~

~~(1) The supervising physician is responsible for the formulation or approval of all orders and protocols (whether standing orders, direct orders, or any other orders or protocols) that directs the delivery of health care services, and the supervising physician shall periodically review such orders and protocols.~~

~~(2) The supervising physician regularly reviews the health care services provided by the physician assistant and any problems or complications encountered.~~

~~(3) The supervising physician or alternate supervising physician is available physically or through direct telecommunications for consultation, assistance with medical emergencies or patient referral.~~

~~(4) The supervising physician or alternate supervising physician routinely is present in the facility to provide medical care to patients.~~

~~(5) In remote patient care settings, the supervising physician shall be present in the facility at least one half day each week the facility is in operation. The Committee may recommend that the physician be present more than one half day each week the facility is in operation based upon the training and experience of the physician assistant and other factors the Committee shall review. This shall be subject to Board review and approval.~~

~~(6) The physician assistant is an agent of the supervising physician and shall not be the employer of the supervising physician.~~

~~(c) Any waivers of this section may require personal appearance before the Committee, and the Board if so required by the Committee, by the physician assistant and the primary supervising physician to justify the request.~~

435:15-5-1.1. Health care services performed and prohibited [REVOKED]

~~(a) **Health care services allowed.** A physician assistant may perform the following health care services under the supervision and at the direction of the supervising physician. Such services include, but are not limited to:~~

~~(1) Initially approach a patient of any age group in a patient care setting to elicit a detailed history, perform a physical examination, delineate problems, and record the data.~~

~~(2) Assist the physician in conducting rounds in acute and long-term inpatient care settings, develop and implement patient management plans, record progress notes, and assist in the provision of continuity of care in other patient care settings.~~

~~(3) Order, perform, and/or interpret, at least to the point of recognizing deviations from the norm, common laboratory, radiological, cardiographic, and other routine diagnostic pro- cedures used to identify pathophysiologic processes.~~

~~(4) Order or perform routine procedures such as injections, immunizations, suturing and wound care, and manage simple conditions produced by infection or trauma.~~

~~(5) Issue written and oral prescriptions and orders for medical supplies, services and drugs, including controlled medications in Schedules III, IV, and V under 63 O.S. ss 2-312 as approved in the Physician Drug Formulary and Board rules.~~

~~(6) A physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site under 63 O.S. ss 2-312 as approved in the Physician Assistant Drug Formulary and Board rules.~~

~~(7) Assist in the management of more complex illness and injuries, which may include assisting surgeons in the conduct of operations and taking initiative in performing evaluation and therapeutic procedures in response to life-threatening situations. In patients with newly diagnosed chronic or complex illness, the physician assistant shall contact the supervising physician within forty-eight (48) hours of the physician assistant's initial examination or treatment, and schedule the patient for appropriate evaluation by the supervising physician as directed by the physician.~~

~~(8) Instruct and counsel patients regarding compliance with prescribed therapeutic regimens, normal growth and development, family planning, emotional problems of daily living and health maintenance.~~

~~(9) Facilitate the referral of patients to the community's health and social service agencies when appropriate.~~

~~(10) Provide health care services which are delegated by the supervising physician when the service:~~

~~(A) is within the physician assistant's skill,~~

~~(B) forms a component of the physician's scope of practice, and~~

~~(C) is provided with supervision, including authenticating with the signature any form that may be authenticated by the supervising physician's signature with prior delegation by the physician.~~

~~(b)~~ ~~**Heath care services prohibited.**~~

~~(1) No health care services may be performed in any of the following areas:~~

~~(A) The measurement of the powers of human vision, or the determination of the accommodation and refractive states of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.~~

~~(B) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.~~

~~(C) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.~~

~~(2) Nothing in this section shall preclude the performance of routine visual screening.~~

435:15-5-2. Patient care setting [REVOKED]

~~A physician assistant may perform health care services in patient care settings as authorized by the supervising physician.~~

435:15-5-5. Approval of educational and/or experimental programs

~~(a) All institutions of higher education offering educational programs for physician assistants in the state shall obtain approval of the Board before initiating such programs.~~

~~(b) Applications for approval shall:~~

~~(1) Identify all personnel (student, instructor, physician, etc.).~~

~~(2) Specify the location, facilities, content, and purpose of such program.~~

~~(3) Furnish job descriptions and duration of program.~~

~~(4) Furnish other information as the Board may require.~~

~~(c) Programs accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor, shall be determined as meeting this requirement.~~

~~(d) Students from accredited physician assistant programs based in institutions of higher education outside the state of Oklahoma may conduct clinical experiences with physicians practicing in the state provided that:~~

~~(1) The program officially notifies the Board of such activities at least 30 days prior to the initiation of such clinical experiences; and~~

~~(2) The notification shall include the name and address of the student, the name and address of the physician, the dates and lengths of such experiences, and any other information the Board or Committee may require.~~

A physician assistant education program accredited by the Accreditation Review Commission on Education for the Physician Assistant, or prior to 2001, either by the Committee on Allied Health Education and Accreditation, or the Commission on Accreditation of Allied Health Education Programs shall be considered approved for the purposes of the Physician Assistant Act.

435:15-5-10. Prescriptions

~~(a) A physician assistant may issue written and oral prescriptions and other orders for drugs and medical supplies, including controlled medications in Schedules III, IV, and V under 63 Okla. Stat. ss 2-312 as delegated by and within the established scope of practice of the supervising physician and as approved by the Board.~~

~~(b) A physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site. Prescriptions and orders for Schedule II drugs written by a physician assistant must be included on a written protocol determined by the supervising physician and approved by the medical staff committee of the facility or by direct verbal order of the supervising physician.~~

~~(c) Written prescriptions shall be issued in the format and in accordance with the Physician Assistant Drug Formulary, listed in Subchapter 11 of this Chapter, as established by the Board in consultation with the Oklahoma State Board of Pharmacy.~~

~~(d) All written prescriptions and orders for drugs shall be written on the prescription blank of the supervising physician and must bear the name and phone number of the physician, the printed name and license number of the physician assistant, the original signature of the physician assistant, and any other information the Board may require. If more than one physician name appears on the prescription blank, the physician assistant shall indicate which is the supervising physician.~~

~~(e) A physician assistant may not issue prescriptions or orders for drugs and medical supplies that the physician is not permitted to prescribe.~~

~~(f) A physician assistant may not dispense drugs but may request, receive and sign for professional samples and may distribute professional samples to patients.~~

The following apply to a physician assistant who has been delegated prescriptive authority that has been approved by the board:

(1) A prescription or order for medical supplies and ancillary services issued by a physician assistant may be written, electronic, or oral.

(2) Prescriptions for Schedules III, IV and V drugs may be issued for up to a 30-day supply with no refills. In order for a physician assistant to prescribe a controlled substance, the physician assistant must be currently registered with the federal Drug Enforcement Administration and the Oklahoma Bureau of Narcotics and Dangerous Drugs.

(3) A physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site. For the purposes of this provision, as well as 59 O.S. § 519.6(D), "on-site" shall mean a:

(A) hospital,

(B) emergency room,

(C) surgicenter licensed by the department of health, or

(D) medical clinics or offices.

(E) state-owned Veterans Administration long-term care facilities with an in-house pharmacy.

(4) A physician assistant may not dispense drugs but may request, receive, and sign for professional samples and may distribute professional samples to patients.

435:15-5-11. ~~Grounds for disciplinary action~~ Discipline

~~(a) The Board may reprimand or place on probation any holder of a physician assistant license, or may limit, suspend or revoke prescription privileges, or may revoke or suspend any license issued to a physician assistant for unprofessional conduct. Acts that constitute unprofessional conduct include, but are not limited to:~~

~~(1) Habitually uses intoxicating liquors or habit forming drugs.~~

~~(2) Conviction of a felony or of a crime involving moral turpitude.~~

~~(3) Obtaining or attempting to obtain a certificate as a physician assistant by fraud or deception.~~

~~(4) Negligent while in practice as a physician assistant or violating the Code of Professional Ethics adopted by the American Academy of Physician Assistants, Inc.~~

~~(5) Being adjudged mentally incompetent by a court of competent jurisdiction.~~

~~(6) Failing to timely make an application for renewal.~~

~~(7) Violating any provision of the Medical Practice Act or the rules promulgated by the Board.~~

~~(b) A physician who knowingly allows or participates with a physician assistant who is in violation of the above will be prohibited from supervising physician assistants for so long as the Board deems appropriate.~~

(a) **Prohibited acts.** No person shall:

(1) fraudulently or deceptively obtain or attempt to obtain a license;

(2) fraudulently or deceptively use a license;

(3) act contrary to this chapter 15, the Physician Assistant Act, or other laws or regulations governing licensed health professionals or any stipulation or agreement of the board;

(4) violate any provision of the Medical Practice Act or the rules promulgated by the Board.

(b) **Grounds for action.** The board may take an action under subsection (c) when a person:

(1) acts contrary to subsection (a);

(2) is convicted of a felony;

(3) is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely practice as a physician assistant;

(4) has been adjudicated as mentally incompetent;

(5) is physically or mentally unable to engage safely in practice as a physician assistant;

(6) is negligent in practice as a physician assistant or demonstrates professional incompetence;

(7) violates patient confidentiality, except as required by law;

(8) engages in conduct likely to deceive, defraud or harm the public;

(9) engages in unprofessional or immoral conduct;

(10) prescribes, sells, administers, distributes, orders or gives away any drug classified as a controlled substance for other than medically accepted therapeutic purposes;

(11) has committed an act of moral turpitude;

(12) is disciplined or has been disciplined by another state or jurisdiction based upon acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as defined in this section;

(13) fails to cooperate with an investigation conducted by the board; or

(14) represents himself or herself as a physician.

(c) **Actions.** The board, on finding grounds exist under subsection (b) and pursuant to the Administrative Procedures Act, 75 O.S. § 250 *et seq.*, may:

(1) refuse to grant a license;

(2) administer a public or private reprimand;

(3) revoke, suspend, limit or otherwise restrict a license;

(4) require a physician assistant to submit to the care or counseling or treatment of a health professional designated by the board;

(5) impose corrective measures;

(6) impose a civil penalty or fine;

(7) suspend enforcement of its finding thereof and place the physician assistant on probation with the right to vacate the probationary order for noncompliance; or

(8) restore or reissue, at its discretion, a license, and remove any disciplinary or corrective measure that it may have imposed.

(d) The board may prohibit a physician who willfully and knowingly allows or participates with a physician assistant who acted contrary to this chapter 15 from supervising a physician assistant.

SUBCHAPTER 7. ADVISORY COMMITTEE [REVOKED]

435:15-7-1. Physician Assistant Advisory Committee [REVOKED]

~~(a) The Physician Assistant Committee shall be composed of those members defined by law to serve a term of five (5) years, except for the initial Committee appointed pursuant to law for staggered terms of less than five (5) years.~~

~~(b) The Committee will carry out the activities defined by law and submit recommendations to the Board for action.~~

~~(c) The Committee shall advise the Board on all matters pertaining to physician assistants including, but not limited to:~~

~~(1) Educational standards required to practice as a physician assistant.~~

~~(2) Licensure requirements required to practice as a physician assistant.~~

~~(3) Methods and requirements to assure the continued competence of physician assistants after licensure.~~

~~(4) The drugs and other medical supplies that physician assistants are permitted to issue prescriptions under the direction of their supervising physician as defined on the Physician Assistant Drug Formulary.~~

~~(5) The grounds for revocation or suspension of a license for a physician assistant.~~

~~(6) Assist and advise in all hearings involving physician assistants who are deemed to be in violation of Title 59 O.S., Sections 519 through 524 or the rules of the Board.~~

~~(7) Education and experience requirements to practice in remote patient care settings.~~

~~(8) All other matters which may pertain to the practice of physician assistants.~~

~~(d) The Committee shall meet at least quarterly prior to each regularly scheduled meeting of the Board, and at such other times as the Board or Committee shall require.~~

SUBCHAPTER 9. GUIDELINES FOR THE UTILIZATION OF PHYSICIAN ASSISTANTS [REVOKED]

435:15-9-1. General responsibilities and obligations [REVOKED]

~~(a) The physician assistant is an agent of a specific licensed physician or group of physicians. The physician assistant is licensed only to perform health care services as authorized by law under the supervision and at the direction of the responsible physician or group of physicians.~~

~~(b) While licensure as a physician assistant under 59 O.S. 519 is the responsibility of the individual applicant, the approval to practice as a physician assistant is a joint act of the physician assistant and the responsible physician(s). This implies that each party agrees to the terms and provisions specified in the approval process.~~

~~(c) It is recognized that there are an infinite variety of acts, tasks and functions that might be delegated to a physician assistant, and an infinite variety of settings and circumstances under which these services might be performed. The sections which follow represent an attempt by the Board to clarify its understanding of the obligations of the licensed physician and his/her physician assistant in several of the more common settings. This list is not intended to be all inclusive but merely representative of the current thoughts and policies of the Board. These understandings are considered as having been accepted by the physician assistant and supervising physician unless otherwise described in the approval to practice.~~

435:15-9-2. Supervision [REVOKED]

~~(a) Proper physician supervision of the physician assistant is essential. Supervision implies that the physician regularly and routinely reviews, and is involved in the health care services delivered by the physician assistant. Supervision also implies that the physician is directing the care delivered by the physician assistant. This may be done by establishing standards and protocols in advance of the care to be given, which the physician assistant will follow in delivering care; directly observing at the time the act or function is performed; or reviewing the care given through chart reviews and audits. While each type of supervision is important, the most essential aspect is that supervision is provided frequently and on an on-going basis. At the same time, it is important for the physician assistant to recognize his/her own limitations and to seek appropriate physician supervision and consultation whenever the physician assistant is unsure about a particular patient problem or treatment.~~

~~(b) Physician supervision shall be conducted in accordance with the following standards:~~

~~(1) The supervising physician is responsible for the formulation or approval of all orders and protocols, whether standing orders, direct orders, or any other orders or protocols, which direct the delivery of health care services provided by a physician assistant, and periodically reviews such orders and protocols.~~

~~(2) The supervising physician regularly reviews the health care services provided by the physician assistant and any problems or complications encountered.~~

~~(3) The supervising physician is available physically or through direct telecommunications for consultation, assistance with medical emergencies or patient referral.~~

~~(4) The supervising physician is on site to provide medical care to patients a minimum of one half day per week. Additional on site supervision may be required at the recommendation of the Committee and approved by the Board.~~

435:15-9-3. New patients [REVOKED]

~~(a) One particular area of concern regarding physician supervision involves how to handle new patients who have not previously been seen by the supervising physician(s). In these cases, the patients are unfamiliar with and do not have an established relationship with the physician. This may lead to misunderstandings regarding the physician/physician assistant relationship and to the potential for legal problems if this relationship is not clarified.~~

~~(b) It is assumed by the Board that the physician will be actively involved in the initial care of any new patient seen in the practice. This means that, wherever possible, the physician will personally see the new patient at some point during the initial clinic visit. Where this is not possible, such as in remote patient care settings, the physician assistant shall make clear to the patient that he/she is a physician assistant and not a physician, and under whose supervision he/she is providing care. The physician assistant shall display identification on his or her person identifying him/herself as a "Physician Assistant" and shall keep his/her license available for inspection at the primary place of business. In addition, the patient shall be scheduled to see the physician at their next scheduled clinic appointment which shall conform to the following provision in law: "In patients with newly diagnosed chronic or complex illness, the physician assistant shall contact the supervising physician within forty-eight (48) hours of the physician assistant's initial examination or treatment, and schedule the patient for appropriate evaluation by the supervising physician as directed by the physician." [Title 59 O.S., Section 519.6(C)]~~

435:15-9-4. Setting [REVOKED]

~~(a) **Office setting.**~~

~~(1) In office settings, it is assumed that the physician and the physician assistant function in the same clinical setting and that the physician is available to supervise and consult with the physician assistant about any matter in question, a point in the patient's history, an abnormal physical finding, etc. It is further assumed that the physician assistant immediately notifies the supervising physician of any medical emergency, patient complication or other patient problem encountered.~~

~~(2) It is assumed that the physician regularly and systematically checks the charts and notes of the patients seen by the physician assistant, checking for accuracy and completeness of such records, and in particular, the suitability of the plan of management. It is assumed that this type of review is conducted within 48 hours of the care being delivered. It is further assumed that the supervising physician reviews, at least on an annual basis, all existing protocols and orders governing the care given by the physician assistant. This review should be conducted on all protocols and orders for both the outpatient and inpatient settings.~~

~~(3) It is assumed that if the primary supervising physician is not available to supervise the physician assistant, another licensed physician, approved by the Board, will be available to provide such supervision. It is also assumed that there are established criteria covering those situations in which the physician must be consulted immediately, such as the patient with substernal chest pain, a child with a temperature over 104 degrees, a patient with severe abdominal pain and guarding, etc.~~

~~(b) **Hospital setting.**~~

~~(1) The physician assistant's functions in a hospital setting are regulated by the medical staff bylaws and regulations.~~

~~(2) The usual process is that the application for such privileges is filed by both the physician assistant and the supervising physician, reviewed for personal and professional qualifications by the credentials committee, and presented for approval to the medical staff. This process serves two purposes:~~

~~(A) Assuring the medical staff that the physician assistant meets professional and ethical standards.~~

~~(B) Publicizing the presence of the physician assistant to the medical staff and hospital administration.~~

~~(3) Initial workup of patients upon admission is often delegated to the physician assistant. This is an appropriate function if checked and countersigned by the supervising physician on his/her next visit to the hospital, which should usually occur within 24 hours. These workups should meet the standards set for workups performed by the physician staff of the hospital. It is assumed that any abnormalities or other findings are validated by the physician, and that his/her countersignature indicates his/her agreement with the findings recorded by the physician assistant.~~

~~(4) Initial orders may be delegated to a physician assistant. These activities are very important in that they involve the function of others, such as the R.N. and L.P.N. assigned to the ward. Copies of all standing orders that the physician has delegated to the physician assistant to order on his/her behalf should be on file in the hospital and available to the nurse accepting such orders as a means of assurance that these orders are emanating from the responsible physician and that they are within the authority~~

~~which the physician has delegated to the physician assistant. All orders should be checked and countersigned by the responsible physician at his/ her next visit to the hospital, which should usually occur within 24 hours.~~

~~(5) Examples of orders that a physician assistant can be authorized to issue for a patient include, but are not limited to:~~

~~(A) Status orders - indicating the condition of the patient and usually used by the hospital staff to regulate visitors, to transmit to callers, etc. (i.e. "condition fair").~~

~~(B) Activity orders - indicating the degree of restriction of position or activity of the patient (i.e. "complete bedrest").~~

~~(C) Diet and fluid orders - indicating the amount and type of food and/or oral fluids (i.e. "low salt diet", "1200 calorie ADA diet", "force fluids", etc.).~~

~~(D) Test and procedure orders - indicating those tests and procedures necessary for care of the patient (i.e. "urinalysis in am", "schedule for IV urogram", etc.).~~

~~(E) Ward Observation and Measurement Orders - indicating those procedures to be carried out by hospital staff personnel (i.e. "BP twice daily", "record I & O").~~

~~(F) Medication Orders - indicating those drugs that are to be given to the patient usually by the nursing staff assigned to administer medications (i.e. "ampicillin 250 mg capsules by mouth four times daily").~~

~~(6) A glance at (b)(5) of this section reveals the enormous range of orders that may be necessary for the diagnosis and treatment of the patient in the hospital setting. Some are "routine" and could be delegated with very little supervision. Others might need very close supervision. The Board believes that a responsible physician might consider protocols of a "blanket type" covering those types of orders which would require less supervision. These might include orders of type (A), (B), (C), and (D) of (b)(5) of this section. Orders of type (E) of (b)(5) of this section might require more specification, but still may be of the blanket type. Medication orders from the list of drugs on the Oklahoma Physician Assistant Drug Formulary, Subchapter 11 of this Chapter, should also be included under the protocol.~~

~~(7) The protocol described in (6) of this subsection might take the form described in Appendix A of this Chapter.~~

~~(8) The protocol as listed in 435:15-9-4(b)(7) should cover the majority of those orders of routine or "housekeeping" variety which are necessary for the efficient operation of a unit and for patient comfort, yet carrying little risk in case of error. Still other protocols could be written for specific clinical conditions that are frequently handled by the individual physician/physician assistant team. These protocols could be in the form of standard "sets" of orders for a given clinical diagnosis, such as a patient with an acute appendicitis, uncomplicated myocardial infarction, etc.~~

~~(9) There are also orders that must be written in an emergency to cover those rare but urgent situations arising in any hospital environment. These can never be adequately covered in a protocol, and the only advice which can be given is that the patient's interests must take precedence, and the physician assistant and other hospital personnel involved must work out each solution ad hoc. In all such cases, the physician must be contacted immediately and must personally take over the care of the patient as soon as possible.~~

~~(10) The physician assistant working in the hospital setting might be delegated any of a wide variety of procedures to be performed on patients under the care of the responsible physician. The delegation of these procedures implies that the physician is satisfied that the physician assistant has the requisite skill, and that the physician agrees with the technique and the safeguards under which the procedure is performed. The physician must not delegate tasks in which he/she is not capable of judging the quality of the skill and technique employed by the physician assistant.~~

~~(11) The physician assistant is often delegated the task of writing/dictating the discharge summary on patients under the care of the responsible physician. All such summaries should be carefully read and countersigned by the physician. The physician is reminded that this function is not only an excellent opportunity to review the case, but can also serve as an important review of the physician assistant's role in the hospital setting.~~

~~(c)~~ **~~Emergency room setting.~~**

~~(1) The physician assistant may utilize the emergency room in the course of assisting the physician in the care of patients. For example, a patient may call when the office is closed and, for convenience, the emergency room may be the place of meeting. Such occasional or incidental use is not considered as different from settings listed in (a) and (b) of this section. It is assumed that the activities will be supervised by the responsible physician and that the physician assistant has associate staff privileges to utilize the emergency room for such activities.~~

~~(2) The physician assistant may also be employed to work in an emergency room as a primary responsibility. There is ample documentation that a physician assistant can be very effectively and responsibly employed in this setting, but this should be carefully regulated by the facility.~~

~~(3) There are special problems in working as a physician assistant in the emergency room setting. The first is the fact that emergencies of a wide variety of severity may enter at any time, including multiple person disasters. Second, the patients are usually transient, with no previous relationship with the physician. They also usually come because of an unscheduled or unexpected illness or injury, and are more prone to be upset and/or hostile. These factors make the emergency room a frequent source of misunderstanding and litigation.~~

~~(4) The physician assistant in the emergency room setting must be clearly identified. When the physician assistant is working along side his/her supervising physician,~~

~~the same understandings are assumed to exist as in the office setting. See 435:15-9-4(a).~~

~~(5) The Board is not opposed to the proper and responsible "semiautonomous" utilization of a physician assistant in emergency rooms. There are many small hospitals with such small medical staffs that full-time physician coverage in the emergency room is not possible. In these locations, the utilization of a well-trained physician assistant for such coverage is justified toward the provision of good emergency services, just as the provision of well-trained emergency medical technicians has been an improvement over non-trained ambulance drivers.~~

~~(6) If this is the case, then the physician assistant should be the best trained person possible, preferably with advanced training in emergency medicine (i.e. ACLS certification). The community should be well prepared by a public notice stressing the nature of the physician assistant's training and his/her relationship to area physicians. The physician coverage should be clearly specified and the responsibility clearly accepted by area physicians.~~

~~(d) **Nursing home and/or extended care facility.**~~

~~(1) The nursing home or similar long-term care facility shares some of the problems of the hospital, but has the advantage that there is less turnover of patients and the problems Such facilities are suitable for the utilization of a physician assistant, either on a full-time or part-time basis, under proper physician supervision.~~

~~(2) As in the hospital setting, (b) of this section, the initial workup of newly admitted patients is often delegated to a physician assistant. If this is the case, these workups should meet the standards set for workups performed by a physician. It is assumed that all abnormalities are validated by the responsible physician at his/her next visit indicating agreement with the findings as recorded by the physician assistant.~~

~~(3) The writing of orders and the performance of procedures should be subject to the same rules and restrictions described for the hospital setting in (b) of this section.~~

~~(e) **Remote patient care settings.**~~

~~(1) In an effort to address the shortage of available health care services in rural and inner city areas, the Legislature has authorized the use of physician assistants in practice settings remote from their supervising physicians. These settings, if supervised properly, will assist in expanding health care to areas of Oklahoma previously underserved by existing resources. However, they do require special consideration and constant interaction by both the physician assistant and the physician to assure that good quality medical care is delivered.~~

~~(2) It is recognized in remote patient care settings that the physician and the physician assistant are geographically separated during a majority of the time that the physician assistant is delivering patient care. However, the Board assumes that the physician and physician assistant are in frequent contact by telephone or other means of telecommunication whenever the remote site is delivering care to patients, and not just at times when a problem or question arises. The Board further assumes that the physician and physician assistant have practiced together a sufficient period of time to establish a close working relationship in order for the physician assistant to fully understand the physician's standards of care and requirements for consultation on any patient problem seen in the facility.~~

~~(3) Remote patient care settings also require an advanced level of knowledge and skills on the part of the physician assistant. This additional knowledge and skill must be documented to the Board in the approval to practice and should include experience in delivering a comprehensive range of care in a non-remote practice setting as well as additional training in emergency medicine procedures.~~

~~(4) The supervising physician must also recognize his/her additional role and responsibilities in utilizing a physician assistant in a remote patient care setting. The physician must always be immediately and easily available for consultation on patient problems and willing to personally see any patient upon request from the physician assistant. Further, the physician must exercise close and careful review of the care being delivered in such sites with frequent review of patient protocols, orders and chart entries.~~

~~(5) Finally, the Board requires that all remote patient care settings shall have, in writing and signed by the physician, policies which govern the delivery of care of most common illness/injuries likely to be seen in these settings. These policies shall include the historical and physical exam findings, laboratory and other diagnostic test findings, and the plan of treatment and follow-up necessary for each of the conditions defined. The Board further assumes that any patient problem seen in these facilities which is not covered by an existing written policy will be discussed with and the treatment plan decided by the physician at the time of the patient's visit to the facility.~~

~~(f) **Anesthesia setting.**~~

~~(1) The physician assistant may perform pre- and post-procedural assessment of patients in accordance with guidelines established by the supervising physician.~~

~~(2) Physician assistants may administer topical anesthetics, local infiltration, or digital blocks. Physician assistants may administer wrist and ankle nerve blocks under the direct supervision of the supervising physician and following approval by the credentialing committee of the facility.~~

~~(3) Physician assistants may not administer general anesthesia.~~

~~(4) Physician assistants may administer intravenous sedation analgesia as defined in the current *Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologists* of the American Society of Anesthesiologists. Administration of intravenous sedation analgesia by physician assistants must be performed under the direct supervision of the supervising physician. Specific education and training is required and must be documented and approved by the credentialing committee of the facility.~~

~~(g) **Veterans Administration Long-term Care Facilities.** Physician assistants may prescribe Schedule II drugs in state-owned Veterans Administration long-term care facilities with an in-house pharmacy.~~

435:15-9-5. Understanding and variance from guidelines [REVOKED]

~~(a) The Board assumes that the physician and physician assistant are in agreement with the principles contained in this subchapter, and are completely familiar with the law and rules governing the use of physician assistants. The Board also assumes that any differences from the guidelines in this subchapter are fully explained in the approval to practice on file with the Board that describes the individual practice profile requested for the physician assistant. This profile also contains specific data that will enable the Board to evaluate the degree to which the practice conforms to these assumptions.~~

~~(b) The Board also invites inquiry, if needed, for clarification of specific details. The Board reminds both the physician and physician assistant that the approval to practice is under the aegis of the licensed physician, and that the Board's ultimate recourse in case of violation of any agreements under such ap-proval lies in the restriction or removal, after due process, of the physician's license to practice medicine and the physician assistant's license to practice as a physician assistant in Oklahoma.~~

SUBCHAPTER 11. PRESCRIPTIVE AND DISPENSING AUTHORITY

435:15-11-1. Prescriptive and dispensing authority

(a) A physician assistant who is recognized by the Board to prescribe under the direction of a supervising physician and is in compliance with the registration requirements of the Uniform Controlled Dangerous Substances Act, in good faith and in the course of professional practice only, may issue written and oral prescriptions and orders for medical supplies, services and drugs, including controlled medications in Schedules III, IV, and V pursuant to 63 O.S. §2-312 as delegated by the supervising physician and as approved in the Physician Assistant Drug Formulary (OAC 435:15-11-2).

(b) Any prescription for a pure form or combination of the following generic classes of drugs, listed in 435:15-11-2, may be prescribed, unless the drug or class of drugs is listed as excluded. Written prescriptions for drugs or classes of drugs that are excluded may be transmitted, only with the direct order of the supervising physician.

(c) Prescriptions for non-controlled medications may be written for up to a 30-day supply with two (2) refills of an agent prescribed for a new diagnosis. For patients with an established diagnosis, up to a 90 day supply with refills up to one year can be written and signed, or called into a pharmacy by a physician assistant.

(d) Prescriptions for Schedules III, IV and V controlled medications may be written for up to a 30-day supply. No refills of the original prescription are allowed. In order for a physician assistant to prescribe a controlled substance in an out-patient setting, the physician assistant must be currently registered with the Drug Enforcement Administration and Oklahoma Bureau of Narcotics and Dangerous Drugs.

(e) A physician assistant may write an order for a Schedule II drug for immediate or ongoing administration on site. Prescriptions and orders for Schedule II drugs written by a physician assistant must be included on a written protocol determined by the supervising physician and approved by the medical staff committee of the facility or by direct verbal order of the supervising physician. In order for a physician assistant to prescribe and order a Schedule II controlled substance for immediate or ongoing administration on site, the physician assistant must be currently registered with the Drug Enforcement Administration and Oklahoma Bureau of Narcotics and Dangerous Drugs.

(f) A prescription issued by a physician assistant, whether written or oral, shall be the joint responsibility of the physician assistant and supervising physician. The supervising physician shall be responsible for the formulation and/or approval of all orders and protocols which allow the physician assistant to issue prescriptions. Questions concerning a prescription may be directed either to the supervising physician whose name shall appear on the prescription blank or to the physician assistant.

(g) All new drug entities will be restricted from the Drug Formulary, listed in 435:15-11-2, and added, if at all, only after review and approval by the Oklahoma State Board of Pharmacy and the Committee, and subsequent approval by the Board. This restriction shall not apply to modifications of current generic drugs included on the Drug Formulary.

(h) Physician Assistants may not dispense drugs, but may request, receive and sign for professional samples and may distribute professional samples directly to patients in accordance with written policies established by the supervising physician.

~~(i) Physician assistants practicing in patient care settings that are part of the State Department of Health, State Department of Mental Health, or other special patient care settings designated by the Board are permitted to dispense medications directly to patients as directed by the supervising physician in written protocol, standing or direct order. Except for samples, Physician assistants may not dispense drugs in any other practice care setting.~~

435:15-11-2. Drug formulary

(a) Physician Assistants in accordance with the Physician Assistant Act may prescribe medications that are within the scope of physician assistant practice, under the supervision of a licensed supervising physician and the Physician Assistant Drug Formulary. The Drug Formulary shall list drugs or categories of drugs that shall or shall not be prescribed by the physician assistant or prescribed only under certain criteria.

(b) The Committee will, at least on an annual basis and in a timely manner, review the structure and content of the Physician Assistant Drug Formulary and make such revisions as it deems necessary. Any proposed changes must be reviewed and approved by the State Board of Medical Licensure and Supervision after consultation with the State Board of Pharmacy before becoming effective. Copies of the formulary shall be

made available to any licensed pharmacy in the State of Oklahoma upon request. The Board assumes that all supervising physicians and physician assistants are completely familiar with the law and rules governing prescriptive authority of physician assistants.

(c) All drugs in categories listed in 435:15-11-2(d) as defined by the American Hospital Formulary Service Information Book (current) may be prescribed by physician assistants, except as noted in section 435:15-11-2(e).

(d) Inclusionary formulary

(1) Antihistamine agents
(2) Anti-infectives
(3) Autonomic agents
(4) Blood formation and coagulation agents
(5) Cardiovascular agents
(6) Central nervous system agents
(7) Diagnostic agents
(8) Electrolyte, caloric and water balance agents
(9) Enzymes
(10) Expectorants, antitussives and mucolytic agents
(11) Eye, ear, nose and throat preparations
(12) Gastrointestinal agents
(13) Hormone and synthetic substitutes
(14) Local anesthetics
(15) Skin and mucous membrane agents
(16) Smooth muscle relaxants
(17) Vitamins
(18) Miscellaneous therapeutic agents

~~(e) Exclusions to the Drug Formulary~~

~~(1) Anti-infective agent - Chloramphenicol~~

~~(2) Anti-neoplastic agents - Anti-neoplastic agents used in the treatment of cancer are excluded except that a physician assistant whose supervising physician specializes in hematology/oncology may not originate a prescription for therapy but may be allowed to modify and continue previously established anti-neoplastic therapy.~~

~~(3) Eye agents~~

~~(A) Steroid-containing ophthalmic preparations~~
~~(B) Carbonic anhydrase inhibitors~~
~~(C) Miotics~~
~~(D) Mydriatics~~
~~(E) Physician assistants whose supervising physician's scope of practice includes eye care may prescribe the above eye agents.~~

~~(4) Hormone and synthetic substitutes~~

~~(A) Antithyroid agents~~
~~(B) Pituitary hormones and synthetics~~

~~(5) Oxytocics - All agents are excluded under the oxytocics category~~

~~(6) Skin and mucous membrane agents~~

~~(A) Cell stimulants and proliferants~~
~~(B) Keratolytic agents~~
~~(C) Keratoplastic agents~~
~~(D) Depigmenting and pigmenting agents~~
~~(E) Physician assistants whose supervising physician's scope of practice includes skin care may prescribe the above agents.~~

~~(7) Miscellaneous therapeutic agents - Physician assistants whose supervising physician's scope of practice includes disorders of connective tissues may prescribe disease-modifying anti-rheumatic drugs (DMARDs).~~

~~(8) All Schedule I controlled drugs are excluded.~~

APPENDIX A. PHYSICIAN ASSISTANT PROTOCOL [REVOKED]

This is an example of a protocol the physician may develop for use in the hospital setting.

John A. Doe, PA is hereby authorized to issue the following type orders on patients admitted under my responsibility:

1. Status orders.
2. Activity orders.
3. Diet and fluid orders.
4. Test and procedure orders for the following procedures:
   a. routine blood and urine tests;
   b. stool cultures and tests;
   c. cultures on blood, urine and bodily fluids;
   d. radiological examinations including contrast studies;
   e. electrocardiograms.
5. Ward observation and measurement orders with the stipulation that if these are to be carried out for over 24 hours, they must be countersigned by me.
6. Medication orders.

Signed:_____MD/DO

[OAR Docket #16-441; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #16-430]

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PERMANENT final adoption
RULES:
Subchapter 9. Certification and Designation of Facility Services
450:1-9-6.1 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. §85.9G.
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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. The proposed rules clarify existing and are intended to comply with statutory changes. The proposed rules are intended to remove existing geographical barriers for expanding satellite operations for facilities certified by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

450:1-9-6.1. Expanding certification of facilities and programs to additional geographical areas; Adding new programs or levels of care

(a) ~~A~~Except for a Community Mental Health Center, a facility or program, after being certified, may request to add ~~a service location within the geographic area in which the facility currently provides certified services~~additional service locations within the State.

(b) ~~For purposes of 1-9-6.1, the facility's or program's geographic area is limited to the county in which the currently certified program's or facility's main office is located or an immediately contiguous county. Except for a Certified Community Mental Health Center, the geographic area will be defined as the service area~~A Community Mental Health Center, after being certified, may request to add a service location within its service area established by ODMHSAS in accordance with ~~43A O.2 § 3-302 (1)~~43A O.S. § 3-302 (3).

(c) Approval may be granted by the Commissioner upon submission of the required documentation to the Provider Certification Division provided the organization is not certified under a Permit for Temporary Operations.

(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by the Commissioner of ODMHSAS.

(2) The required written documentation or supporting evidence includes, but is not limited to:

(A) fire & safety inspection;
(B) facility policies and procedures;
(C) zoning compliance; and
(D) evidence of compliance with Title 43A O.S. §3-417.1, if applicable.

(d) At the time of the next review of the facility's main office certification, any location which extended service provision to a different ~~geographic area~~location will require a separate certification application and may be reviewed on a schedule separate and apart from the certification schedule of the main office.

(e) If after being certified, a facility desires to offer a new type of service or new level of care, for which certification is required, the facility must submit an application for certification, the required documentation and fee to the ODMHSAS Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

[OAR Docket #16-430; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 16. STANDARDS AND CRITERIA FOR COMMUNITY RESIDENTIAL MENTAL HEALTH FACILITIES

[OAR Docket #16-431]

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RULES:
Subchapter 1. General Provisions
450:16-1-2. Definitions [AMENDED]
Subchapter 21. Personnel, Staffing, and Training
450:16-21-4. Residential care staff licensure and training requirements, administrator [AMENDED]
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 16 are part of the Department's review of Title 450. The proposed rules clarify existing rules. The proposed rules update definitions as well as clarify continuing education requirements for residential care facility administrators.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:16-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a caretaker responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a caretaker responsible for providing these services to a resident.

"ADL" means activities of daily living.

"Administrator" means the person who is in charge of a community residential mental health facility and who devotes at least one-third (1/3) of his or her full working time to on-the-job supervision of the community residential mental health facility.

"Adults who have a serious mental illness"~~are persons eighteen (18) years of age or older who meet the following criteria:~~

~~(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, substance abuse disorders, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; AND~~

~~(B) Based on a client assessment scale, has at least moderate to severe impairment in the following areas:~~

~~(i) Feeling, mood and affect,~~

~~(ii) Thinking,~~

~~(iii) Family relationships,~~

~~(iv) Interpersonal skills,~~

~~(v) Role performance,~~

~~(vi) Socio-legal, or~~

~~(vii) Self-care/basic needs.~~means persons eighteen (18) years of age or older who show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious mental illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious mental illness.

(C) The adult must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in

potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations.

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"CMHC" means community mental health center.

"Continuity of care agreements" means an agreement between the community residential mental health facility and providers of critical and comprehensive community based behavioral health services, including but not limited to a provider of inpatient behavioral health care and a local provider of community-based behavioral health services. Continuity of care agreements shall specify the responsibility of each entity related to assuring continuous and coordinated care on behalf the residents.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnosis in a resident.

"Corporal punishment" means any physical punishment including, but not limited to punching, slapping, kicking, spanking, or whipping.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the community residential mental health facility or the routine care of a resident. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to residents, staff and visitors; medication errors; residents that are absent without leave (AWOL); neglect or abuse of a resident; fire; unauthorized disclosure of information; damage to or theft of property belonging to a resident or the community residential mental health facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Direct care staff" means any staff member who, in the performance of his or her routine duties has contact with residents and is required to meet the training requirements for community residential mental health staff as listed in the "Standards and Criteria for Community Mental Health Residential Facilities".

"Enhanced residential care facility" means a community residential mental health facility meeting all statutory and regulatory requirements of the ODMHSAS and OSDH and which specifically serves only "Adults who have a serious mental illness" who cannot be accommodated in a non-enhanced community residential mental health facility.

"General psychiatric rehabilitation program" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Health care services" means services provided by health care professionals and includes, but is not limited to dentists, optometrists, and podiatrists.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community.

~~**"Integrated Client Information System"** or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, client profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and clients that provide the ability to monitor the course of client services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.~~

"Medication administration technician course" is an educational program from an institute of higher learning which has been reviewed and approved by the OSDH pursuant to 310:680-11-1 and affords the student a certificate of training in the administration of medication and measuring and documenting vital signs.

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"OSDH" means Oklahoma State Department of Health.

"Personal care" means assistance with meals, dressing, movement, bathing, or other personal needs, or general supervision of the physical and mental well-being of a person who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his

or her person, whether or not a guardian has been appointed for such person.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, client profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and clients that provide the ability to monitor the course of client services throughout the statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Recovery" means a journey of healing and transformation enabling a person with a mental health and/or substance abuse diagnosis to live a meaningful life in the community of his or her choice while striving to achieve his or her full potential. The process of recovery leads individuals toward the highest level of autonomy of which they are capable. Key characteristics of recovery include:

(A) Recovery is self directed, personal and individualized (not defined by treatment providers or agencies);

(B) Recovery is holistic. Recovery is a process through which one gradually achieves greater balance of mind, body and spirit in relation to other aspects of one's life that can include family, work and community;

(C) Recovery moves beyond symptom reduction and relief (i.e. meaningful connections in the community, overcoming specific skill deficits, establishing a sense of quality and well-being);

(D) Recovery is both a process of healing (regaining) and a process of discovery (moving beyond);

(E) Recovery encompasses the possibility for individuals to test, make mistakes and try again; and

(F) Recovery can occur within or outside the context of professionally directed treatment.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or **"Resident government"** means any established group within the facility comprised of residents, led by residents and meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or **"RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§ 1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, is certified pursuant to 43 O.S. § 3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Socialization activities" means all activities which encourage interaction and the development of communication, interpersonal, social and recreational skills, and can include client education.

"Special need (persons with)" means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf or hard of hearing, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Supportive assistance" means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. The term "supportive assistance" shall not be interpreted or applied so as to prohibit the participation of residents in housekeeping or meal preparation tasks as a part of the written treatment plan for the training, habilitation or rehabilitation of the resident prepared with the participation of the resident, the mental health or drug or alcohol services case manager assigned to the resident and the administrator of facility, or his or her designee. Supportive assistance shall not include medical service.

"Volunteer" means any individual providing direct services to residents, and who is not on the facility's payroll, but fulfills a defined role within the facility. This definition does not include special entertainment/visiting groups.

SUBCHAPTER 21. PERSONNEL, STAFFING, AND TRAINING

450:16-21-4. Residential care staff licensure and training requirements, administrator

(a) The administrator of the RCF shall maintain current licensure as a Residential Care (RC) Administrator, or a Residential Care (RC) / Assisted Living (AL) Administrator, through the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA).

(b) The administrator of the RCF annually complete eight (8) hours of training on mental health and substance use disorder-related subjects. These eight (8) hours of training ~~are in addition to~~can be included in the hours of training required to maintain licensure through OSBELTCA, and must include at least one (1) hour of training regarding substance use disorders and intervention strategies; and three (3) hours of training must be in techniques and philosophies within a curriculum that has been pre-approved by the Director of ODMHSAS Provider Certification which addresses appropriate non-violent intervention and potentially aggressive interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention.

(c) The administrator of the RCF shall receive CPR (cardiopulmonary resuscitation), and first aid provided by certified instructors.

(d) Compliance with 450:16-21-4 shall be determined by a review of the administrator's personnel file.

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TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

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Subchapter 1. General Provisions
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Subchapter 3. Required Services
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450:17-3-41. [AMENDED]
Part 9. Medication Clinic Services
450:17-3-81. [AMENDED]
450:17-3-82. [AMENDED]
Subchapter 5. Optional Services
Part 21. Gambling Disorder Treatment Services
450:17-5-128. through 450:17-5-132. [REVOKED]
Part 23. Behavioral Health Home
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450:17-5-157. [REVOKED]
Part 25. Certified Community Behavioral Health Clinics [NEW]
450:17-5-170. [NEW]
450:17-5-171. [NEW]
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450:17-5-174. [NEW]
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450:17-5-176. [NEW]
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450:17-5-189. [NEW]
450:17-5-190. [NEW]
450:17-5-191. [NEW]
450:17-5-192. [NEW]
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450:17-7-3. [AMENDED]
450:17-7-5. [AMENDED]
450:17-7-8. [AMENDED]
Subchapter 21. Staff Development and Training
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Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 17 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

Proposed revisions to Chapter 17 are made to add standards and criteria for Certified Community Behavioral Health Clinics (CCBHCs). CCBHCs are federally recognized entities designed to serve individuals with serious mental illnesses and substance use disorders that provide intensive, person-centered, multidisciplinary, evidence-based screening, assessment, diagnostic, treatment, prevention, and wellness services. Rules are also revised to update Health Home certification standards in order to clarify inconsistencies. Optional standards and criteria to provide gambling disorder treatment services are removed, since these services will be allowed to be provided by facilities under standard outpatient services utilizing qualified providers without having to obtain the additional optional certification.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:17-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Adults who have a serious mental illness" means persons eighteen (18) years of age or older who show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious mental illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious mental illness.

(C) The adult must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations.

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"Advance Practice Registered Nurse" means a registered nurse in good standing with the Oklahoma Board of Nursing, and has acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and has obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advance Practice Registered Nurse services are limited to the scope of their practice as defined in 59 Okla. Stat. § 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9.

"AOA" means American Osteopathic ~~Accreditation~~Association

"ASAM" means the American Society of Addiction Medicine.

"ASAM criteria" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Behavioral Health Home or BHH" means a specifically organized entity that functions within a currently ODMHSAS certified mental health treatment program organization to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. BHHs ensure comprehensive team-based health care, meeting physical, mental health, and substance use disorder care needs. Health care is delivered utilizing a whole-person, patient-centered, coordinated care model for adults with serious mental illness (SMI) and children with serious emotional disturbance (SED). Care coordination is provided for all aspects of the individual's life and for transitions of care the individual may experience.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"CARF" means Commission on Accreditation of Rehabilitation Facilities

"Child with Serious Emotional Disturbance" or **"SED"** means a child under the age of 18 who shows evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious emotional disturbance as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance use disorders, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.

(C) The child must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of age appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the juvenile justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy, expulsion, property damage or violence toward others).

"Children's Health Home Specialist" means an individual within the children's Behavioral Health Home interdisciplinary team that will provide support, coaching and activities that promote good physical and mental health to individuals, families and groups. The focus of the Children's Health Home Specialist will include nutrition, healthy living habits, exercise, and preventing and/or managing chronic health conditions. Children's Health Home Specialists must be ~~certified~~credentialed by ODMHSAS as a Behavioral Health ~~Case Manager I or II~~Aide or higher and complete ~~trainings as required by ODMHSAS including but not limited to Behavioral Health Aide and~~training in Well Power or credentialed as a Wellness Coach through ODMHSAS.

"Chronic Homelessness" refers to an individual with a disabling condition who has either: (a) been continuously homeless for a year or more, or (b) has had at least 4 episodes of homelessness in the past 3 years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"Community living programs" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified

by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Consumer committee" or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family therapy;
(D) Case management;
(E) Psychosocial rehabilitation; and
(E) Discharge planning.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Gambling disorder treatment professional" means~~:~~

~~(A)~~ an individual holding a valid NCGC I or II certification~~;~~ or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and

is either a Licensed Behavioral Health Professional or Licensure Candidate.

~~(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve; or~~

~~(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.~~

"General psychiatric rehabilitation" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Historical timeline" means a method by which a specialized form is used to gather, organize and evaluate information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Home-based services to children and adolescents" means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

"Homeless" refers to a person who is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

"Hospital liaison" means an individual within the Behavioral Health Home interdisciplinary team that works closely with hospital staff to assess the suitability of transition plans for consumers enrolled in a Behavioral Health Home. Hospital Liaisons will also work with other long term, residential facilities to plan for coordination of care during and after the consumer's residential stay. Hospital liaisons must be certified by ODMHSAS as a Behavioral Health Case Manager I or II and complete trainings as required by ODMHSAS.

"ICCD" means the International Center for Clubhouse Development.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology;
(B) Social Work (clinical specialty only);
(C) Professional Counselor;
(D) Marriage and Family Therapist;
(E) Behavioral Practitioner; or
(F) Alcohol and Drug Counselor.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medical resident" means ~~a~~an allopathic physician or osteopathic physician who is a graduate of a school of medicine or ~~osteopathy~~college of osteopathic medicine and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

"Medically necessary" means health care services or supplies needed to prevent, diagnose or treat an illness, injury,

condition, disease or its symptoms and that meet accepted standards of medicine.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Nurse Care manager" means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Peer Recovery Support Specialist" or **"PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Permanent supported housing" means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

"PICIS System" means a management information system based on national standards for mental health and substance abuse databases. Information gathered through PICIS is used for prior authorizations, service utilization management and continuous quality improvement processes. PICIS data is reported throughout the treatment episode to ensure service recipients receive appropriate types and levels of care and are making satisfactory progress. Numerous reports are developed using PICIS data and are provided to clinicians, administrators and the general public.

"Primary Care Practitioner (PCP)" means a licensed allopathic physician, osteopathic physician, Advance Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Risk Assessment" means a clinical function that aims to determine the nature and severity of the mental health problem, determine which service response would best meet the needs of the consumer, and how urgently the response is required.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S.§3-302(1)].

"Service Intensity" means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and

rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"SoonerCare" means Oklahoma's Medicaid program.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Systems of Care values" means a philosophy, which embraces a family-driven, child-centered model of care that integrates and coordinates the efforts of different agencies and providers to individualize care in the least restrictive setting that is clinically appropriate.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Transitional housing program" means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches, including but not limited to supervised transitional living programs and supervised transitional housing programs.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Wraparound approach" means a team-based planning and implementation process to improve the lives of children with complex needs and their families by developing individualized plans of care. The key characteristics of the process are that the plan is developed by a family centered team, is individualized based on the strengths and culture of the child and their family, and is driven by needs rather than services.

"Young Adults in Transition" are persons between sixteen to twenty-five (16-25) years of age who have a Serious Mental Illness (ages 18 - 25), or Serious Emotional Disturbance (ages 16 - 18).

SUBCHAPTER 3. REQUIRED SERVICES

PART 5. EMERGENCY SERVICES

450:17-3-41. Emergency services

(a) CMHCs shall provide, on a twenty-four (24) hour basis, accessible co-occurring disorder capable services for substance use disorder and/or psychiatric emergencies.

(b) This service shall include the following:

(1) 24-hour assessment and evaluation, including emergency examinations, characterized by welcoming engagement of all individuals and families;

(2) Availability of 24-hour inpatient referral;

(A) CMHC staff shall be actively involved in the emergency services and referral process to state-operated psychiatric inpatient units.

(B) Referral to state-operated psychiatric inpatient units by the CMHC shall occur only after all other community resources are explored with the individual and family if family is available and the consumer gives written consent for release.

(C) Prior notification to the state-operated psychiatric inpatient unit of all referrals from CMHCs is required.

(3) Availability of assessment and evaluation in external settings unless immediate safety is a concern. This shall include but not be limited to schools, jails, and hospitals;

(4) Referral services, which shall include actively working with local sheriffs and courts regarding the appropriate referral process and appropriate court orders (43A O.S. §§ 5-201 through 5-407);

(5) CMHCs serving multiple counties shall provide or arrange for on-site assessment of persons taken into protective custody [43A O.S. § 5-206 et seq.] in each county;

(6) The CMHC's emergency telephone response time shall be less than fifteen (15) minutes from initial contact, unless there are extenuating circumstances;

(7) Face-to-face strength based assessment, unless there are extenuating circumstances, addressing both mental health and substance use disorder issues which, if practicable, include a description of the client's strengths in managing mental health and/or substance use issues and disorders during a recent period of stability prior to the crisis;

(8) Intervention and resolution; and

(9) No arbitrary barriers to access an evaluation based on active substance use or designated substance levels.

(c) Compliance with 450:17-3-41 shall be determined by a review of policy and procedures, and clinical records.

PART 9. MEDICATION CLINIC SERVICES

450:17-3-81. Medication clinic services

(a) Medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.

(b) Medication clinic services shall be co-occurring capable and shall utilize accepted practice guidelines for psychopharmacologic management of co-occurring disorders.

(c) CMHCs shall offer comprehensive medication clinic services to consumers in need of this service, including, but not limited to:

(1) Prescribing or administering medication, including evaluation and assessment of the medication services provided.

(2) Medication orders and administration:

(A) ~~Only licensed~~Licensed staff allopathic physicians, osteopathic physicians, medical residents or consultant physicians shall write medication orders and prescriptions. Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.

(B) A list of those allopathic physicians and osteopathic physicians authorized to prescribe medications shall be maintained and regularly updated.

(C) Only authorized licensed staff shall administer medications

(~~C~~D) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.

~~(3) Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.~~

(d) Compliance with 450:17-3-81 shall be determined by on-site observation and a review of the following: clinical records, written policy and procedures, and roster of licensed, credentialed staff.

450:17-3-82. Medication clinic, medication monitoring

(a) Medication administration, storage and control, and consumer reactions shall be regularly monitored.

(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.

(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.

(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.

(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, or administered, or stored.

(4) A qualified allopathic physician or osteopathic physician shall supervise the preparation and stock of an emergency kit which is readily available, but accessible only to physician, nursing and pharmacy staff. Documentation by the qualified allopathic physician or osteopathic physician shall clearly indicate that the supervision has been performed.

(c) Compliance with 450:17-3-82 shall be determined by on-site observation and a review of the following: written policy and procedures, clinical records, and PI records.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 21. GAMBLING DISORDER TREATMENT SERVICES [REVOKED]

450:17-5-128. Gambling Disorder Treatment Services [REVOKED]

~~The purpose of this Part is to set forth, in addition to all other applicable rules, rules regulating program requirements, activities, and services for CMHCs who opt to provide gambling disorder treatment services. These rules implement 43A O.S. §§ 3-322 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.~~

450:17-5-129. Level of Care [REVOKED]

~~Any CMHC providing gambling disorder treatment services shall do so at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the requirements of this Part.~~

450:17-5-130. Admission criteria [REVOKED]

~~(a) Receipt of gambling disorder treatment services shall be conditioned upon a determination by the gambling disorder treatment professional in partnership with the consumer, and based on the problem gambling issues of the consumer utilizing ASAM criteria.~~

~~(b) Compliance with this Section may be determined by a review of the following:~~

~~(1) Policy and procedures;~~

~~(2) Admission protocols;~~

~~(3) Admission assessment instruments;~~

~~(4) Consumer records;~~

~~(5) Interviews with staff and consumers; and~~

~~(6) Other facility documentation.~~

450:17-5-131. Discharge criteria [REVOKED]

~~(a) Discharge from gambling disorder treatment services shall be determined by the following:~~

~~(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services, utilizing ASAM criteria;~~

~~(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and~~

~~(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.~~

~~(b) Compliance may be determined by a review of the following:~~

~~(1) Policy and procedures;~~

~~(2) Continuing Care Plans;~~

~~(3) Discharge assessments;~~

~~(4) Discharge summaries;~~

~~(5) Progress notes;~~

~~(6) Consumer records;~~

~~(7) Interviews with staff and consumers; and~~

~~(8) Other facility documentation.~~

450:17-5-132. Treatment services [REVOKED]

~~(a) Any CMHC choosing to provide gambling disorder treatment services shall provide, at a minimum, the following:~~

~~(1) Screening and Assessment. See Sections 17-3-21 and 17-3-22 for requirements.~~

~~(2) Service planning and revision.~~

~~(3) Individual therapy. Individual therapy is a face-to-face therapeutic session conducted by a Gambling Treatment Professional (GTP) with one-on-one interaction between the GTP and a consumer to promote emotional or psychological change to alleviate disorders. Therapy must be goal-directed and use a generally accepted approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment, in accordance with an individualized service plan.~~

~~(4) Group therapy. Group therapy is a face-to-face therapeutic session with a group of individuals and a GTP using the interaction of the GTP and two or more consumers to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives of the individual customer service plan and use a generally accepted framework for this modality of treatment. This service does not include social skill development or daily living skill activities. Group psychotherapy for adults is limited to eight total consumers. Group size is limited to a total of six consumers for all children. A group may not consist solely of related individuals.~~

~~(5) Family therapy. Family therapy is a face-to-face therapeutic session conducted by a GTP with family members/couples conducted in accordance with a documented service plan focusing on treatment family/marital problems and goals. The service must be provided to specifically benefit the consumer as identified in a service plan and use generally accepted treatment methods for this modality of treatment.~~

~~(6) Case management.~~

~~(7) Education and/or educational groups.~~

~~(8) Discharge planning.~~

~~(b) Compliance with this Section may be determined by a review of the following:~~

~~(1) Consumer records;~~

~~(2) Progress notes;~~

~~(3) Interviews with staff; and~~

~~(4) Other facility documentation.~~

PART 23. BEHAVIORAL HEALTH HOME

450:17-5-144. Treatment team; general requirements

(a) The BHH must designate an interdisciplinary treatment team that is responsible, with each consumer's input and guidance, to direct, coordinate, and manage the care and services to be provided or arranged for by the BHH.

(b) The interdisciplinary team must~~, based on the comprehensive assessment,~~ identify for each consumer a specific licensed behavioral health professional (LBHP) or licensure candidate ~~on the interdisciplinary treatment team~~ to lead the process of the initial ~~comprehensive~~ assessment and plan and to provide therapy services if indicated on the integrated plan. This will ensure that each consumer's needs are assessed, and that the active treatment plan is implemented as indicated.

(c) Compliance with this Section will be determined by on-site observation, review of organizational documents, signed agreements, activity reports, and clinical records.

450:17-5-145. Treatment team; adult team

(a) Each BHH team serving adults shall include the following positions, unless otherwise arranged as permitted in (b) below:

(1) Health Home Director;

(2) Nurse Care Manager;

(3) Consulting Primary Care Physician, Advance Practice Registered Nurse, or Physician Assistant;

(4) Licensed Psychiatric Consultant;

(5) Licensed Behavioral Health Professional or Licensure Candidate;

(6) Certified Behavioral Health Case Manager I or II;

(7) Hospital Liaison/Health Home Specialist; and

(8) Wellness Coach/~~Certified Peer Support Specialist~~ credentialed through ODMHSAS.

(b) Variations from the above staff pattern on a continuous basis, must be approved in advanced by the ODMHSAS Commissioner or a designee.
(c) If the health team experiences difficulty in recruiting staff to fill any of the above positions, a recruitment and contingency plan to maintain essential services, will be submitted to the ODMHSAS Director of Provider Certification for approval.
(d) The facility must have written policies and procedures defining the program's plan for staff-to-consumer ratio for each adult BHH team and a plan for how exceptions will be handled.
(e) Staffing ratios must be regularly monitored and evaluated within the certified facility's performance improvement activities.
(f) Compliance with this Section will be determined by on-site observation, review of organizational documents, personnel records, staffing schedules, and clinical records.

450:17-5-146. Treatment team; children and adolescent team

(a) Each BHH team serving children and adolescents shall include the following positions, unless otherwise arranged as permitted in (b) below:
(1) Care Coordinator;
(2) ~~Project~~Health Home Director;
(3) Licensed Psychiatric Consultant;
(4) Licensed Nurse Care Manager (RN or LPN);
(5) Peer to Peer Family /Youth Support Provider;
(6) Children's Health Home Specialist; and
(7) Consulting Primary Care Practitioner.
(b) Variations from the above staff pattern on a continuous basis, must be approved in advanced by the ODMHSAS Commissioner or a designee.
(c) If the health team experiences difficulty in recruiting staff to fill any of the above positions, a recruitment and contingency plan to maintain essential services, will be submitted to the ODMHSAS Director of Provider Certification for approval.
(d) The facility must have written policies and procedures defining the program's plan for staff-to-consumer ratio for each child and/or adolescent BHH team and a plan for how exceptions will be handled.
(e) Staffing ratios must be regularly monitored and evaluated within the facilities performance improvement activities.
(f) Compliance with this Section will be determined by on-site observation, review of organizational documents, personnel records, staffing schedules, and clinical records.

450:17-5-150. Initial assessment

(a) A Licensed Behavioral Health Professional (LBHP) or Licensure Candidate, acting within his or her state scope of practice requirements, must complete the initial assessment for health home services in accordance with the standard in OAC 450:17-3-21 for consumers who have not been assessed by the facility within the past 6 months.
(b) ~~The~~In addition to the items required in 17-3-21, the initial assessment for health home services must include at a minimum, the following:
(1) The admitting diagnosis as well as other diagnoses;
(2) The source of referral;
(3) The reason for admission as well as stated by the client or other individuals who are significantly involved; and
(4) A list of current prescriptions and over-the counter medications as well as other substances the client may be taking.
(c) The BHH should provide access to an appropriate healthcare professional and a health screening within 72 hours of placement for children entering foster care.
(d) Compliance with this Section will be determined by on-site observation, review of organizational documents, program descriptions, outcome monitoring and other performance improvement activity reports, and clinical records.

450:17-5-156. Behavioral Health Home medication monitoring

(a) When medication services are provided as a component of the BHH services, medication administration, storage and control, and consumer reactions shall be regularly monitored.
(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.
(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.
(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.
(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, administered and stored.
(c) The facility shall make available access to pharmacy services to meet consumers' pharmacological needs that are addressed by the BHH physicians and other BHH licensed prescribers. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.
(~~c~~d) Compliance with this Section will be determined by on-site observation and a review of the following: Written policy and procedures, clinical records, written agreements for pharmacy services, State of Oklahoma pharmacy license and PI records.

450:17-5-157. Behavioral Health Home pharmacy services [REVOKED]

~~(a) When medication services are provided as a component of the BHH services, the facility shall make available access to pharmacy services to meet consumers' pharmacological needs~~

~~that are addressed by the BHH physicians and other BHH licensed prescribers. Provision of services may be made through agreement with another program through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.~~

~~(b) Compliance with this Section may be determined by a review of the following: Clinical records; written agreements for pharmacy services; on site observation of in house pharmacy; and State of Oklahoma pharmacy license.~~

PART 25. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

450:17-5-170. Certified Community Behavioral Health Clinic

The purpose of this Part is to set forth, in addition to all other applicable rules, rules regulating program requirements, activities and services for CMHCs who opt to provide Certified Community Behavioral Health Clinic (CCBHC) services.

450:17-5-171. Organizational authority, governance and accreditation

(a) In addition to the board composition requirements found in 450:17-25-2, facilities certified under this Part will incorporate meaningful participation by adult consumers with mental illness, adults recovering from substance use disorders, and family members of facility consumers, either through 51 percent of the board being families, consumers or people in recovery from behavioral health conditions, or through a substantial portion of the governing board members meeting this criteria and other specifically described methods for consumers, people in recovery and family members to provide meaningful input to the board about the facility's policies, processes and services. Any alternative to the 51 percent standard must be approved by the Director of Provider Certification.

(b) To the extent a facility is comprised of a governmental or tribal entity or a subsidiary or part of a larger corporate organization that cannot meet these requirements for board membership, the facility shall develop an advisory structure and other specifically described methods for consumers, persons in recovery, and family members to provide meaningful input to the board about the facility's policies, processes and services.

(c) An independent financial audit shall be performed annually in accordance with federal audit requirements, and, where indicated, a corrective action plan is submitted addressing all findings, questioned costs, reportable conditions, and material weaknesses cited in the Audit Report.

(d) Compliance with this Section shall be determined by a review of facility policy and procedures regarding governing authority; governing body bylaws, rules and regulations; governing body minutes; membership rolls; and other documentation as needed.

450:17-5-172. General Staffing

(a) In order to ensure adequate staffing, the facility must complete an assessment of the needs of the target consumer population and a staffing plan. The needs assessment will include cultural, linguistic, and treatment needs. The needs assessment will include both consumer and family/caregiver input and will be updated regularly, but no less frequently than every three (3) years.

(b) The facility operating the CCBHC will have policies and program descriptions to define how the CCBHC will operate a team dedicated to provide the range of specific services articulated elsewhere in this Subchapter.

(c) The facility shall have a fully staffed management team as appropriate for the size and needs of the clinic as determined by the current needs assessment and staffing plan. The management team will include, at a minimum a CEO or Executive Director/Project Director and a psychiatrist as Medical Director. The Medical Director need not be a full-time employee. Depending on the size of the facility, both positions may be held by the same person. The Medical Director will ensure the medical component of care and the integration of behavioral health and primary care are facilitated.

(d) The facility must maintain liability/malpractice insurance adequate for the staffing and scope of services provided.

(e) Compliance with this Section shall be determined by a review of policies, facility needs assessment, organizational chart, clinic liability and malpractice insurance documentation.

450:17-5-173. Staffing; Treatment team

(a) The treatment team includes the consumer, the family/caregiver of child consumers, the adult consumer's family to the extent the consumer does not object, and any other person the consumer chooses. Each facility shall maintain a core staff comprised of employed and, as needed, contracted staff, as appropriate to the needs of consumers as stated in the consumer's individual service plan and shall, at a minimum, include the following positions:

(1) Licensed Psychiatric Consultant;
(2) Licensed Nurse Care Manager (RN or LPN);
(3) Consulting Primary Care Physician, Advance Practice Registered Nurse, or Physician Assistant;
(4) Licensed Behavioral Health Professional or Licensure Candidate;
(5) Certified Behavioral Health Case Manager I or II;
(6) Certified Peer Support Specialist; and
(7) Family Support Provider.

(b) Compliance with this Section shall be determined by a review of personnel files and privileging documents.

450:17-5-174. Staff Training

(a) In addition to the requirements found in 450:17-21-3, in-service presentations shall be conducted upon hire/contracting and each calendar year thereafter for all CCBHC employees on the following topics:

(1) Person/Family-centered, recovery oriented, evidence-based and trauma-informed care;
(2) Primary care/behavioral health integration;
(3) Risk assessment, suicide prevention and suicide response; and
(4) Roles of families and peers.

(b) The facility shall assess the skills and competence of each individual furnishing services and, as necessary, provide in-service training and education programs. The facility will have written policies and procedures describing its method(s) of assessing competency and maintains a written accounting of the in-service training provided during the previous 12 months.
(c) Individuals providing staff training must be qualified as evidenced by their education, training and experience.
(d) Compliance with this Section shall be determined by a review of policies and procedures and personnel records.

450:17-5-175. Linguistic Competence
(a) If the facility services individuals with Limited English Proficiency (LEP) or with language-based disabilities, the facility will take reasonable steps to provide meaningful access to their services. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP."
(b) Interpretation/transitional service(s) are provided that are appropriate and timely for the size/needs of the LEP consumer population (e.g., bilingual providers, onsite interpreters, language telephone line). To the extent interpreters are used, such translation service providers are trained to function in a medical and/or behavioral health setting (e.g., confidentiality and plain language).
(c) Documents or messages vital to a consumer's ability to access services are available for consumers in languages common in the community served, taking account of literacy levels and the need for alternative formats. The requisite language will be informed by the needs assessment.
(d) The facility will use culturally and linguistically appropriate screening tools, and tools/approaches that accommodate disabilities (i.e. hearing disability, cognitive limitations), when appropriate.
(e) Compliance with this Section shall be determined by a review of policies, procedures, personnel files and the facility needs assessment.

450:17-5-176. Availability and accessibility of services
(a) The BHH must have policies and procedures to describe how outreach and engagement activities will occur to assist consumers and families to access benefits and formal or informal services to address behavioral health conditions and needs.
(b) Facility records will identify which staff members are responsible for specific elements of outreach and engagement.
(c) To the extent possible, the facility should make reasonable efforts to provide transportation or transportation vouchers for consumers to access services provided or arranged for by the facility.
(d) To the extent allowed by state law, facility will make services available via telemedicine in order to ensure consumers have access to all required services.
(e) The facility will ensure that no individuals are denied services, including but not limited to crisis management services, because of an individual's inability to pay and that any fees or payments required by the clinic for such services will be reduced or waived to enable the facility to fulfill this assurance. The Facility will have a published sliding fee discount schedule(s) that includes all services offered.
(f) The facility will ensure no individual is denied behavioral healthcare services because of place of residence or homelessness or lack of a permanent address. Facility will have protocols addressing the needs of consumers who do not live within the facility's service area. At a minimum, facility is responsible for providing crisis response, evaluation, and stabilization services regardless of the consumer's place of residence and shall have policies and procedures for addressing the management of the consumer's ongoing treatment needs.
(g) Compliance with this Section shall be determined by a review of policies, consumer records and facility fee schedule.

450:17-5-177. General service provisions
(a) Facility is responsible for the provision of the following services:
(1) Screening, assessment and treatment planning;
(2) Crisis Services;
(3) Outpatient behavioral health services;
(4) Outpatient primary care screening and monitoring;
(5) Case management;
(6) Psychiatric rehabilitation;
(7) Peer and family supports;
(8) Intensive community-based outpatient behavioral health care for members of the US Armed Forces and veterans.
(b) Many of the services may be provided either directly by the facility or through formal relationships with other providers. Whether directly supplied by the facility or by a Designated Collaborating Organization (DCO) through a formal arrangement, the facility is ultimately clinically responsible for all care provided. The facility must have policies and procedures that ensure DCO-provided services for facility's consumers must meet the same quality standards as those provided by the facility.
(c) Compliance with this Section shall be determined by a review of policies, procedures and consumer records.

450:17-5-178. Initial screening, assessment and comprehensive evaluation
(a) The facility will directly provide screening, assessment and diagnosis, including risk assessment, for behavioral health conditions. The facility must determine the extent to which each consumer's needs and preferences can be adequately addressed within the array of required services.
(b) For new consumers requesting or being referred for behavioral health services, an integrated screening approach in accordance with OAC 450:17-3-21 will be used to determine the consumer's acuity of needs. The facility shall use standardized and validated screening and assessment tools, and where appropriate, brief motivational interviewing techniques.
(1) If the screening identifies an emergency/crisis need, the facility will take appropriate action immediately, including any necessary subsequent outpatient follow-up.

(2) If the screening identifies an urgent need, clinical services are provided and the initial evaluation completed within one business day of the time the request is made. An urgent need is one that if not addressed immediately could result in the person becoming a danger to self or others, or could cause a health risk.

(3) If screening identifies unsafe substance use including problematic alcohol or other substance use, the facility will conduct a brief intervention and the consumer is provided or referred for and successfully linked with a full assessment and treatment, if applicable.

(4) If the screening identifies routine needs, services will be provided and the initial evaluation completed within 10 business days.

(c) A Licensed Behavioral Health Professional (LBHP) or Licensure Candidate, acting within his/her scope of practice requirements, must complete an initial assessment in accordance with the standard in OAC 450:17-3-21 for consumers who have not been assessed by the facility within the past 6 months.

(d) The initial assessment must include at a minimum, the following:

(1) The admitting diagnosis as well as other diagnoses;

(2) The source of referral;

(3) The reason for admission as well as stated by the client or other individuals who are significantly involved;

(4) Identification of the consumer's immediate clinical care needs related to the diagnosis for mental and substance use disorders;

(5) An assessment of whether the consumer is a risk to self or to others, including suicide risk factors;

(6) An assessment of whether the consumer has other concerns for their safety;

(7) A screening of need for medical care (with referral and follow up as required);

(8) A list of current prescriptions and over-the counter medications as well as other substances the client may be taking; and

(9) A determination of whether the person presently is or ever has been a member of the US Armed Services.

(e) For consumers presenting with emergency or urgent needs, the initial assessment may be conducted by telemedicine but an in-person assessment is preferred. If the initial assessment is con ducted via telemedicine, once the emergency is resolved, the consumer must be seen in person at the next subsequent encounter and the initial assessment reviewed.

(f) A comprehensive evaluation must be completed by the interdisciplinary team performing within each team member's scope of practice consistent with each consumer's immediate needs and include a written narrative in each of the following areas:

(1) Psychiatric and substance abuse history, mental status, and a current DSM diagnosis;

(2) Medical, dental, and other health needs;

(3) Education and/or employment;

(4) Social development and functioning;

(5) Activities of daily living; and

(6) Family structure and relationships.

(g) The facility must ensure access to the comprehensive evaluation within 60 calendar days of the initial request for services. This requirement does not preclude the provision of treatment during the 60 day period.

(h) The comprehensive assessment must be updated as needed but no less than every six (6) months.

(i) Compliance with this Section will be determined by on-site observation, review of organizational documents, program descriptions, outcome monitoring and other performance improvement activity reports, and clinical records.

450:17-5-179. Primary care screening and monitoring

(a) The facility is responsible for outpatient clinic primary care screening and monitoring of key health indicators and health risk. Facility shall have policies and procedures to ensure that these services are received in a timely fashion, whether provided directly by the facility or through a DCO.

(b) Required primary care screening and monitoring of key health indicators and health risk provided by the facility shall include but not be limited to the following, as applicable:

(1) Adult Body Mass Index (BMI) Screening and Follow-Up;

(2) Weight assessment and counseling for nutrition and physical activity for children/adolescents (WCC);

(3) Blood Pressure;

(4) Tobacco use: Screening and cessation intervention;

(5) Screening for clinical depression and follow-up plan;

(6) Unhealthy alcohol use;

(7) Diabetes screening for people with schizophrenia or bipolar disorder who are using antipsychotic medications;

(8) Diabetes care for people with serious mental illness;

(9) Metabolic monitoring for children and adolescents on antipsychotics;

(10) Cardiovascular health screening for people with schizophrenia;

(11) Adherence to mood stabilizers for individuals with Bipolar I Disorder;

(12) Adherence to antipsychotic medications for individuals with Schizophrenia; and

(13) Antidepressant medication management.

(c) The facility will ensure children receive age appropriate screening and preventive interventions including, where appropriate, assessment of learning disabilities, and older adults receive age appropriate screening and preventive interventions.

(d) Compliance with this Section will be determined by a review of facility policies and consumer records.

450:17-5-180. Person-centered and family-centered service planning

(a) The facility must directly develop a consumer directed and family-centered, integrated active care plan for each enrolled consumer that reflects input of the team in managing the medical component of the plan, and others the consumer chooses to involve.

(b) The plan shall clearly address consumers' needs, strengths, abilities, physical and behavioral health goals, consumer preferences, and the overall health and wellness needs of the consumer.
(c) The plan is comprehensive, addressing all services required, with provision for monitoring of progress toward goals.
(d) The plan must be documented and completed within thirty (30) working days of admission to the CCBHC.
(e) The CCBHC must provide for each consumer and primary caregiver(s), as applicable, education and training consistent with the consumer and caregiver responsibilities as identified in the active treatment plan and relative to their participation in implementing the plan of care.
(f) Compliance with this Section will be determined by on-site observation, review of organizational documents, personnel records, staffing schedules, and clinical records.

450:17-5-181. Service plan; content

(a) The service plan must address all services necessary to assist the client in meeting his or her physical and behavioral health goals, and include the following:

(1) Consumer diagnoses, relative to behavioral and physical health conditions assessed by and addressed by the facility in terms of direct services provided and/or conditions for which the individual is referred elsewhere for treatment.
(2) Treatment goals, including preventive/primary care services;
(3) Interventions, including care coordination, physical health services, peer and family support services, targeted case management, as well as any accommodations to ensure cultural and linguistically competent services as applicable;
(4) A detailed statement of the type, duration, and frequency of services, including primary medical and specialty care, social work, psychiatric nursing, counseling, and therapy services, necessary to meet the consumer's specific needs;
(5) Medications, treatments, and individual and/or group therapies;
(6) As applicable, family psychotherapy with the primary focus on treatment of the consumer's conditions; and
(7) The interdisciplinary treatment team's documentation of the consumer's or representative's and/or primary caregiver's (if any) understanding, involvement, and agreement with the care plan.
(8) The consumer's advance wishes related to treatment and crisis management and, if the consumer does not wish to share their preferences, that decision is documented.

(b) Compliance with this Section will be determined by on-site review of clinical records and supported documentation.

450:17-5-182. Review of plan

(a) The facility will review, revise, and document the individualized service plan as frequently as the consumer's conditions require, but no less frequently than every six (6) months.
(b) A revised active plan must include information from the consumer's initial assessment and comprehensive assessments and updates, the progress toward goals specified in the written care plan, and changes, as applicable, in goals.
(c) Compliance with this Section will be determined by outcome monitoring, performance improvement activity reports and consumer records.

450:17-5-183. Care coordination

(a) Based on a person and family-centered plan of care and as appropriate, the facility will coordinate care for the consumer across the spectrum of health services, including access to physical health (both acute and chronic) and behavioral health care, as well as social services, housing, educational systems, and employment opportunities as necessary to facilitate wellness and recovery of the whole person.
(b) The facility must have procedures and agreements in place to facilitate referral for services needed beyond the scope of the facility. At a minimum, the facility will have agreements establishing care coordination expectations with Federally Qualified Health Centers (FQHCs) and, as applicable, Rural Health Centers (RHCs) to provide healthcare services for consumers who are not already served by a primary healthcare provider.
(c) The facility must have procedures and agreements in place establishing care coordination expectations with community or regional services, supports and providers including but not limited to:

(1) Schools;
(2) OKDHS child welfare;
(3) Juvenile and criminal justice agencies;
(4) Department of Veterans Affairs' medical center, independent clinic, drop-in center, or other facility of the Department; and
(5) Indian Health Service regional treatment centers.

(d) The facility will develop contracts or memoranda of understandings (MOUs) with regional hospital(s), Emergency Departments, Psychiatric Residential Treatment Facilities (PRTF), ambulatory and medical detox facilities or other system(s) to ensure a formalized structure for transitional care planning, to include communication of inpatient admissions and discharges of BHH participants.

(1) Transitional care will be provided by the facility for consumers who have been hospitalized or placed in other non-community settings, such as psychiatric residential treatment facilities. The facility will make and document reasonable attempts to contact all consumers who are discharged from these settings within 24 hours of discharge.
(2) The facility will collaborate with all parties involved including the discharging/admitting facility, primary care physician, and community providers to ensure a smooth discharge and transition into the community and prevent subsequent re-admission(s).
(3) Transitional care is not limited to institutional transitions, but applies to all transitions that will occur throughout the development of the enrollee and includes transition from and to school-based services and pediatric services to adult services.

(4) The facility will document transitional care provided in the clinical records.

(e) Care coordination activities will be carried out in keeping with the consumer's preferences and needs for care, to the extent possible and in accordance with the consumer's expressed preferences, with the consumer's family/caregiver and other supports identified by the consumer. The facility will work with the consumer in developing a crisis plan with each consumer, such as a Psychiatric Advanced Directive or Wellness Recovery Action Plan.

(f) Referral documents and releases of information shall comply with applicable privacy and consumer consent requirements.

(g) Compliance with this Section will be determined by on-site observation, review of organizational documents, contracts, MOUs, and clinical records.

450:17-5-184. Crisis services

(a) The Facility shall make crisis management services available through clearly defined arrangements, for behavioral health emergencies during hours when the facility is closed. The Facility will also provide crisis management services that are available and accessible 24 hours a day and delivered within three hours from the time services are requested.

(b) Facility will make available, either directly or through a qualified DCO, the following co-occurring capable services:

(1) 24 hour mobile crisis teams;

(2) Emergency crisis intervention services; and

(3) Crisis stabilization.

(c) Crisis services must include suicide crisis response and services capable of addressing crises related to substance abuse and intoxication, including ambulatory and medical detoxification.

(d) Facility will have an established protocol specifying the role of law enforcement during the provision of crisis services.

(e) Compliance with this Section shall be determined by facility policies and clinical records.

450:17-5-185. Outpatient therapy services

(a) The facility will directly provide outpatient mental health and substance use disorder services that are evidence-based or best practices, consistent with the needs of the individual consumers as identified in their individual service plan. In the event specialized services outside the expertise of the facility are required for purposes of outpatient treatment, the facility will make them available through referral or other formal arrangement with other providers or, where necessary and appropriate, through the use of telemedicine services.

(b) Evidence-based or best practices could include, but not be limited to the following:

(1) Cognitive Behavior Therapy (CBT);

(2) Trauma Focused Cognitive Behavior Therapy (TF-CBT);

(3) Collaborative Assessment and Management of Suicidality (CAMS);

(4) Chronic Care Disease Management; and

(5) Motivational Interviewing.

(c) Outpatient therapy services shall include:

(1) Individual therapy;

(2) Group therapy;

(3) Family therapy;

(4) Psychological/psychometric evaluations or testing; and

(5) Psychiatric assessments.

(d) Compliance with this Section shall be determined by facility policies and clinical records.

450:17-5-186. Case management services

(a) The facility is responsible for high quality targeted case management (TCM) services that will assist individuals in sustaining recovery, and gaining access to needed medical, social, legal, educational, and other services and supports. TCM should include supports for persons deemed at high risk of suicide, particularly during times of transitions such as from an emergency department or psychiatric hospitalization.

(b) The provision of TCM shall meet the requirements set forth in OAC 450:17-3 Part 11 and will be made available to all consumers as appropriate and identified in the individual service plan.

(c) Compliance with this Section shall be determined by a review of facility policy and clinical records.

450:17-5-187. Behavioral health rehabilitation services

(a) The facility is responsible for providing evidence-based and other psychiatric rehabilitation services. Services to be considered include:

(1) Medication education;

(2) Self-management;

(3) Community integration services;

(4) Recovery support services including Illness Management & Recovery;

(5) Financial management; and

(6) Dietary and wellness education.

(b) The provision of behavioral health rehabilitation services shall meet the requirements set forth in OAC 450:17-3 Part 15 and will be made available to all consumers, as appropriate and identified in the individual service plan.

(c) Compliance with this Section shall be determined by a review of facility policy and clinical records.

450:17-5-188. Peer support services

(a) The facility is responsible for the availability of peer recovery support and family/caregiver support services.

(b) The provision of Peer Recovery Support services shall meet the requirements set forth in OAC 450:17-3 Part 21 and will be made available to all consumers, as appropriate and identified in the individual service plan.

(c) Family support and training shall be made available to all child consumers and their families/caretakers, as appropriate and identified in the individual service plan.

(d) Compliance with this Section shall be determined by a review of facility policy and clinical records.

450:17-5-189. Community-based mental health care for members of the Armed Forces and Veterans

(a) The facility is responsible for screening all individuals inquiring about services for current or past service in the US Armed Forces.

(b) The facility is responsible for intensive, community-based behavioral health care for certain members of the US Armed Forces and veterans, particularly those Armed Forces members located 50 miles or more from a Military Treatment Facility (MTF) and veterans living 40 miles or more from a VA medical facility.

(1) Active Duty Service Members (ADSM) must use their servicing MTF, and their MTF Primary Care Managers (PCMs) are contacted by the CCBHC regarding referrals outside the MTF.

(2) ADSMs and activated Reserve Component (Guard/Reserve) members who reside more than 50 miles (or one hour's drive time) from a military hospital or military clinic enroll in TRICARE PRIME Remote and use the network PCM, or select any other authorized TRICARE provider as the PCM. The PCM refers the member to specialists for care he or she cannot provide; and works with the regional managed care support contractor for referrals/authorizations;

(3) Members of the Selected Reserves, not on Active Duty (AD) orders, are eligible for TRICARE Reserve Select and can schedule an appointment with any TRICARE-authorized provider, network or non-network.

(4) Persons affirming former military service (veterans) are offered assistance to enroll in VHA for the delivery of health and behavioral health services. Veterans who decline or are ineligible for VHA services will be served by the CCBHC consistent with minimum clinical guidelines contained in the Uniform Mental Health Services Handbook.

(c) Care provided to veterans is required to be consistent with minimum clinical mental health guidelines promulgated by the Veterans Health Administration (VHA), including guidelines contained in the Uniform Mental Health Services Handbook of such Administration. Clinical care and services for veterans will adhere to SAMHSA's definition and guiding principles of recovery, VHA recovery, and other VHA guidelines.

(d) The facility will ensure that every veteran seen for behavioral health services is assigned a Principal Behavioral Health Provider which will be made clear to the veteran and identified in the medical record. The principal behavioral health provider will ensure the following requirements are fulfilled:

(1) Regular contact is maintained with the veteran as clinically indicated by the treatment plan as long as ongoing care is required;

(2) A psychiatrist, or such other independent prescriber as satisfies the current requirements of the VHA Uniform Mental Health Services Handbook, reviews and reconciles each veteran's psychiatric medications on a regular basis;

(3) Coordination and development of the veteran's treatment plan incorporates input from the veteran and veteran's family when allowed and appropriate;

(4) Implementation of the treatment plan is monitored and documented which includes tracking progress in the care delivered, outcomes achieved and the goals attained.

(5) The treatment plan is revised, as necessary, but no less than once every six (6) months;

(6) The principal therapist or Principal Behavioral Health Provider communicates with the veteran about the treatment plan, and for addressing any of the veteran's concerns about their care. For veterans who are at high risk of losing decision-making capacity, such as those with a diagnosis of schizophrenia or schizoaffective disorder, such communications need to include discussions regarding future behavioral health care treatment.

(7) The treatment plan reflects the veteran's goals and preferences for care and that the veteran verbally consents to the treatment plan in accordance with VHA Handbook requirements. For veterans who have been determined to lack capacity, the provider must identify the authorized surrogate and document the surrogate's verbal consent to the treatment plan.

(e) Compliance with this Section shall be determined by a review of facility policies and clinical records.

450:17-5-190. Electronic health records and data sharing

(a) The facility shall have a functioning electronic health record (EHR) system that meets Meaningful Use standards, as defined in the Medicare and Medicaid Incentive Programs, or have a facility approved written plan with timeframes to obtain one.

(b) The facility shall document a plan to work with health information organizations to share referrals, continuity of care documents, lab results, and other health information and develop partnerships that maximize the use of Health Information Technology (HIT) across all treating providers.

(c) It is the facility's responsibility to arrange for access to any consumer data from a participating DCO as legally permissible upon creation of the relationship with the DCO and to ensure adequate consent as appropriate and that releases of information are obtained for each affected consumer.

(d) Compliance with (a) will be determined by review of documentation that certifies the electronic health record meets Meaningful Use standards or documentation of a plan to obtain one with implementation timeline.

(e) Compliance with (b) will be determined by on-site observation, review of policy, MOUs, clinical records, information available through an approved information system documenting that facility's consumers' records have been accessed and shared through a Health Information Exchange (HIE), and consultation with the ODMHSAS Decision Support Services and ODMHSAS Information Services Division.

450:17-5-191. Consumer (Patient Care) Registries and Population Health Management

(a) The facility must implement clinical decision support mechanisms, including but not limited to point-of-care reminders, following nationally published evidence-based guidelines for:

(1) A mental health or substance use disorder;

(2) A chronic medical condition;

(3) An acute condition;

(4) A condition related to unhealthy behaviors; and

(5) Well child or adult care.

(b) Facility must have descriptions of programs in place to demonstrate how it encourages healthier lifestyles for consumers, including increased physical activity, better nutrition, avoidance of behavioral risks, and wider use of preventive care.

(c) The facility shall electronically submit data to a health home information management system, subject to prior approval by the Director of ODMHSAS Provider Certification, which will act as a consumer registry, care management device and outcomes measurement tool.

(d) The facility shall utilize information provided through the approved information system for the purpose of enrollment and discharge tracking, compliance, quality assurance, and outcome monitoring.

(e) Compliance will be determined by on-site observation, review of information available through an approved information system, and consultation with the ODMHSAS Decision Support Services and ODMHSAS Information Services Division.

450:17-5-192. Data reporting, performance measurement and quality improvement

(a) Facility shall annually submit a cost report containing data elements as specified by ODMHSAS with supporting data within six months after the end of each calendar year.

(b) There shall be an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care related to facility operations.

(c) The performance improvement activities must:

(1) Focus on high risk, high volume, or problem-prone areas.

(2) Consider incidence, prevalence, and severity of problems.

(3) Give priority to improvements that affect behavioral outcomes, client safety, and person-centered quality of care.

(d) Performance improvement activities must also track adverse client events, analyze their causes, and implement preventive actions and mechanisms.

(e) The program must use quality indicator data, including client care, and other relevant data in the design of its program.

(f) The facility must use the data collected to monitor the effectiveness and safety of services and quality of care and identify opportunities and priorities for improvement.

(g) The functions and processes outlined in (a) through (e) shall be evidenced in an annual written plan for performance improvement activities. The plan shall include but not be limited to:

(1) Outcomes management processes which include measures required by CMS and the State and may also include measures from the SAMHSA National Outcomes Measures, NCQA, and HEDIS as required to document improvement in population health.

(2) Quarterly record review to minimally assess:

(A) Quality of services delivered;

(B) Appropriateness of services;

(C) Patterns of service utilization;

(D) Treatment goals and objectives based on assessment findings and consumer input;

(E) Services provided which were related to the goals and objectives;

(F) Patterns of access to and utilization of specialty care; and

(G) The care plan is reviewed and updated as prescribed by policy.

(3) Review of critical incident reports and consumer grievances or complaints.

(h) Compliance with this Section will be determined by a review of the written program evaluation plan, program goals and objectives and other supporting documentation provided as well as policy, cost report and annual written plan.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:17-7-3. Basic requirements

(a) The CMHC's policies and procedures shall:

(1) Define the content of the consumer record in accordance with 450:17-7-4 through 17-7-9.

(2) Define storage, retention and destruction requirements for consumer records. ODMHSAS operated CMHCs shall comply with the Department's Records Disposition Schedule as approved by the Oklahoma Archives and Records Commission.

(3) Require consumer records be maintained in locked equipment which is kept within a locked room, vehicle, or premise.

(4) Require legible entries in consumer records, signed with first name or initial~~,~~ and last name~~, and dated by~~of the person making the entry.

(5) Require the consumer's name be typed or written on each page in the consumer record.

(6) Require a signed consent for treatment before a consumer is admitted on a voluntary basis.

(7) Require a signed consent for follow-up before any contact after discharge is made.

(b) Compliance with 450:17-7-3 shall be determined by a review of the following: facility policy, procedures or operational methods; clinical records; other facility provided documentation; and PI information and reports. A CMHC may propose administrative and clinical efficiencies through a streamlining of the requirements noted in this subchapter if client outcomes are maintained or improved and face-to-face

clinical time is able to be increased by proposed reduction in recordkeeping requirements. Such proposal shall be submitted for consideration and approval by the Department.

450:17-7-5. Clinical record content, screening, intake and assessment

(a) All facilities shall complete a face-to face screening with each individual to determine appropriateness of admission.

(b) The CMHC shall document the face-to-face screening between the potential consumer and the CMHC including ~~how the consumer was welcomed and engaged,~~ how the consumer was assisted to identify goals~~ and experience hope~~, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.

(c) Upon determination of appropriate admission, consumer demographic information shall be collected.

(d) All programs shall complete a psychological-social assessment which gathers sufficient information to assist the consumer in developing an individualized service plan.

(e) The CMHC shall have policy and procedures that stipulate content required for items (c) and (d)~~ above as well as dictate timeframes by when intake assessment must be completed for each program service to which a client is admitted~~.

(f) An intake assessment update, to include date, identifying information, source of information, present needs, present life situation, current level of functioning, and what consumer wants in terms of service, is acceptable only on re-admissions within one (1) year of previous admission.

(g) Compliance with 450:17-7-5 shall be determined by a review of the following: psychological-social assessment instruments; consumer records; case management assessments; interviews with staff and consumers; policies and procedures and other facility documentation.

450:17-7-8. Behavioral Health Service plan

(a) The service plan is performed with the active participation of the consumer and a support person or advocate if requested by the consumer. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges and problems.

(b) The service plan is developed after and based on information obtained in the mental health assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) ~~For adults, the service plan must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.~~ The service plan must have an overall general focus on recovery which, for adults, may include goals like employment, independent living, volunteer work, or training, and for children, may include areas like school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Comprehensive service plans must be completed within six (6) treatment sessions and adhere to the format and content requirements described in the facility policy and procedures.

(e) Service plan updates should occur at a minimum of every 6 months during which services are provided and adhere to the format and content requirements described in the facility policy and procedures.

(f) Service plans, both comprehensive and update, must include dated signatures for the consumer customer (if over age 14), the parent/guardian (if under age18 or otherwise applicable), and the primary service practitioner.

(g) Compliance with 450:17-7-8 shall be determined by a review of the clinical records, policies and procedures, and interviews with staff and consumers, and other agency documentation.

SUBCHAPTER 21. STAFF DEVELOPMENT AND TRAINING

450:17-21-3. Annually required in-service training for all employees

(a) In-service presentations shall be conducted each calendar year and are required for all employees upon hire and annually thereafter on the following topics:

(1) Fire and safety;

(2) AIDS and HIV precautions and infection control;

(3) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights;

(4) Confidentiality;

(5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115; and

(6) Facility policy and procedures;

(7) Cultural Competence (including military culture if active duty or veterans are being served);

(8) Co-occurring disorder competency and treatment principles;

(9) Trauma informed; and

(10) Age and developmentally appropriate trainings, where applicable.

(b) All clinical staff shall have non-physical intervention training in techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within three (3) months of being hired with annual updates thereafter.

(c) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. An employee shall not provide direct care services to consumers until completing this training.

(d) The training curriculum for 450:17-21-3 (b) and (c) must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.
(e) Compliance with 450:17-21-3 shall be determined by a review of in-service training records; personnel records; and other supporting written information provided.

[OAR Docket #16-432; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 18. STANDARDS AND CRITERIA FOR SUBSTANCE RELATED AND ADDICTIVE DISORDER TREATMENT SERVICES

[OAR Docket #16-433]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:18-1-2 [AMENDED]
Subchapter 7. Facility Clinical Records
Part 3. Screening, Intake, and Assessment
450:18-7-21 [AMENDED]
Part 13. Discharge Planning
450:18-7-123 [AMENDED]
Subchapter 13. Substance Use Disorder Treatment Services
Part 1. Levels of Care
450:18-13-1 [AMENDED]
Part 3. Outpatient Services
450:18-13-22 [AMENDED]
450:18-13-23 [AMENDED]
Subchapter 15. Gambling Disorder Treatment Services [REVOKED]
450:18-15-1 through 450:18-15-5 [REVOKED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315; 74 O.S. §85.9G.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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June 9, 2016
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September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

Proposed rules remove optional standards and criteria for providing gambling disorder treatment services, since these services will be allowed to be provided by facilities under standard outpatient services utilizing qualified providers without having to obtain the additional optional certification. Rules also revise provider qualifications for Gambling Treatment Professionals.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5)AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:18-1-2. Definitions

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

"Acute intoxication or withdrawal potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's withdrawal patterns and current level of intoxication and potential for withdrawal complications as it impacts level of care decision making.

"Admission" means the acceptance of a consumer by a treatment program to receive services at that program.

"Admission criteria" means those criteria which shall be met for admission of a consumer for services.

"Adult" means any individual eighteen (18) years of age or older.

"ASAM" means the American Society of Addiction Medicine.

"ASAM levels of care" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the intensity of the services offered. Each treatment option is a level of care.

"ASAM criteria" or means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Assessment" means those procedures by which a program provides an on-going evaluation process with the consumer as outlined in applicable rules throughout OAC 450 to collect pertinent information needed as prescribed in applicable rules and statutes to determine courses of actions or services to be provided on behalf of the consumer. Assessment may be synonymous with the term evaluation.

"Behavioral health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance use disorders, and co-occurring disorders.

"Biomedical condition and complications" means one dimension to be considered in placement, continued stay, and

discharge and is an evaluation of the consumer's current physical condition and history of medical and physical functioning as it impacts level of care decision making.

"Biopsychsocial assessment" means face-to-face interviews conducted by a qualified service provider designed to elicit historical and current information regarding the behaviors, experiences, and support systems of a consumer, and identify the consumer's strengths, needs, abilities, and preferences for the purpose of guiding the consumer's recovery plan.

"Case management services" means planned referral, linkage, monitoring, support, and advocacy provided in partnership with a consumer to assist that consumer with self-sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a gambling disorder.

"Child" or **"Children"** means any individuals under eighteen (18) years of age.

"Client" See "Consumer.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development, and increased self-awareness.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance use disorder crisis stabilization as authorized by 43A O.S. §3-317 including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary, for inpatient psychiatric or substance use disorder treatment services. This service is limited to CMHCs who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental of Substance Abuse Services.

"Community education, consultation, and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on substance-related and addictive disorders, domestic violence, sexual assault, and other related issues to the general public, the target population, or to other agencies serving the target population. These services include presentations to human services agencies, community organizations, and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and certain services at the option of the center including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consultation" means the act of providing information or technical assistance to a particular group or individual seeking resolution of specific problems. A documented process of interaction between staff members or between facility staff and unrelated individuals, groups, or agencies for the purpose of problem solving or enhancing their capacities to manage consumers or facilities.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate, and promote transition from a current level of services to support ongoing recovery.

"Contract" means a document adopted by the governing authority of a treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program, as well as the monies to be expended in exchange.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumer's with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody include juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial. Programs which are providing treatment services

within a correctional facility may be exempt from certain services described in this chapter which cannot be provided due to circumstance.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis intervention" means actions taken and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Critical incident" means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitor; medication errors; residential consumers that have absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs, and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Day school" means the provision of therapeutic and accredited academic services on a regularly scheduled basis.

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

"Detoxification" means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

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

"Diagnosis" means the determination of a disorder as defined by current DSM criteria and in accordance with commonly accepted professional practice standards.

"Dietitian" or **"Dietician"** means an individual trained and licensed in the development, monitoring, and maintenance of food and nutrition in accordance with the Oklahoma State Board of Medical Licensure and Supervision.

"Discharge criteria" means individualized measures by which a program and the consumer determine readiness for discharge or transition from services being provided by that facility. These may reference general guidelines as specified in facility policies or procedures and/or in published guidelines including, but not limited to, the current ASAM criteria for individuals with substance use disorders, but should be individualized for each consumer and articulated in terms of consumer behaviors, resolutions of specific problems, and attainment of goals developed in partnership with the participant and the provider.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs. Discharge planning may or may not include a document identified as a discharge plan.

"Discharge summary" means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

"DOC" or **"ODOC"** means the Oklahoma Department of Corrections.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, substance-related and addictive disorders, or other related problems and services related to the specific focus of treatment.

"Educational group" means groups in which information is provided to consumers or consumers in a teaching or instructional format and typically related to the current focus of treatment, designated to positively impact a consumer's recovery. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate education groups.

"Efficiency" means a program's measure of cost-benefit or cost effectiveness through a comparison to some alternative method.

"Emergency services" means a twenty-four (24) hour capability for assessment, intervention, and resolution of a consumer's crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, detoxification, individual and group consultation, and medical assessment.

"Emotional, behavioral or cognitive conditions and complications" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's historical and current emotional, behavioral, or cognitive status including the presence and severity of any diagnosed mental illnesses, as well as, the level of anxiety, depression, impulsivity, guilt, and behavior that

accompanies or follows these emotional states and historical information, as it impacts on level of care decision making.

"Evaluation" See "Assessment."

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

"Executive director" means the person hired by the governing authority to direct all the activities of the organization; may be used synonymously with administrative director, administrator, chief executive officer, and director.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities" or "facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling disorder treatment, and narcotic treatment programs.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family therapy;
(D) Case management;
(E) Psychosocial rehabilitation; and
(E) Discharge planning.

"Gambling treatment professional" means~~:~~

~~(A)~~ an individual holding a valid NCGC I or II certification~~;~~ or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

~~(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve; or~~

~~(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.~~

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Goals" means broad general statements of purpose or intent that indicates the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Halfway house" means low intensity substance use disorder treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Corresponding ASAM Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Halfway house for persons with children" means a halfway house that includes services for the recovering person's children who will reside with him or her in the house. Corresponding ASAM Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Infant" means any child from birth up to 3 years of age.

"Initial contact" means a person's first contact with the facility, e.g., a request for information or service by telephone or in person.

"Inpatient services" means the process of providing care to persons who require twenty-four (24) hour supervision in a hospital or other suitably equipped medical setting as a result of acute or chronic medical or psychiatric illnesses and professional staff providing medical care according to a treatment plan based on documentation of need.

"Intake" means the overall process by which information is collected to determine the needs of the consumer.

"Intervention" means a process or technique intended to facilitate behavior change.

"Length of stay" means the number of days or number of sessions attended by consumers in the course of treatment.

"Licensed Behavioral Health Professional" or "LBHP" means:

(A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;

(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the State of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Licensure" means the process by which an agency of government grants permission to persons or health facilities meeting qualifications to engage in a given occupation or business or use a particular title.

"Licensure Candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology;
(B) Social Work (clinical specialty only);
(C) Professional Counselor;
(D) Marriage and Family Therapist;
(E) Behavioral Practitioner; or
(F) Alcohol and Drug Counselor.

"Life skills" means abilities and techniques necessary to function independently in society.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the facility is located, can only be provided or supervised by a licensed physician.

"Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol or drug intoxication, delirium tremens, and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant medical personnel including nurses, interns, and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol or drugs. [43 A O.S. § 3-403(5)] It is an organized service delivered by medical and nursing professionals that provides for twenty-four (24)-hour medically directed evaluation and withdrawal management in an acute care inpatient setting. Services are delivered under a defined set of physician-approved policies and physician-managed procedures or medical protocols. Corresponding ASAM Treatment Level: Level IV-D, Medically Managed Intensive Inpatient Detoxification.

"Medical services" means the administration of medical procedures by a physician, registered nurse, nurse practitioner, physician's assistant, or dentist and in accordance with a documented treatment plan and medical supervision available to provide the consumer with the service necessitated by the prevalent problem identified and includes physical examinations, detoxification from alcohol or drugs, methadone maintenance, dental services, or pharmacy services, etc.

"Medically supervised detoxification" means detoxification outside of a medical setting, directed by a physician who has attendant medical personnel including nurses for intoxicated consumers, and consumer's withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances that would require hospitalization as determined by an examining physician. Corresponding ASAM Treatment Level: Level III, 7-D, Medically Monitored Inpatient Detoxification. Detoxification is intended to stabilize and prepare consumers in accessing treatment.

"Medication" means any prescription or over-the-counter drug that is taken orally, injected, inserted, applied topically, or otherwise administered by staff or self- administered by the consumer for the appropriate treatment or prevention of medical or psychiatric issues.

"Medication error" means an error in prescribing, dispensing, or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, or incorrectly transcribing medication orders.

"Medication-self administration" means the consumers administer their own medication to themselves, or their children, with staff observation.

"Minutes" means a record of business introduced, transactions and reports made, conclusions reached, and recommendations made during a meeting.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Neglect" means:

(A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;

(B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"Non-medical detoxification" means detoxification services for intoxicated consumers and consumers withdrawing from alcohol or other drugs presenting with no apparent medical or neurological symptoms as a result of their use of substances. Corresponding ASAM PPC Treatment Level: Level III, 2-D, Clinically managed Residential Detoxification. Detoxification is intended to stabilize and prepare consumers in accessing treatment.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. For substance use disorder treatment services, the corresponding ASAM Treatment Level is Level I, Outpatient Treatment.

"Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter into and accept the service delivery system.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided, but performs prescribed functions under the general supervision of that discipline.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms, include continuous quality improvement, continuous improvement, organization-wide quality improvement, and total quality management.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee or volunteer activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, etc.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators, and consumers. It includes unique identifiers for agencies, staff, and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Play therapy" means a form of action therapy that uses, but is not limited to, sand play, fairy tales, art and puppetry to encourage communication in children who have inadequate or immature verbalization skills or who verbalize excessively due to defensiveness.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"Prevention" means the assessment, development, and implementation of strategies designed to prevent the adverse effects of mental illness, substance use disorders, addiction, and trauma.

"Procedures" means the written methods by which policies are implemented.

"Process" means information about what a program is implementing and the extent to which the program is being implemented as planned.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the consumers or patients.

"Program effectiveness outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities, and consumer outcomes.

"Progress notes" means a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychiatrist" means a licensed physician who specializes in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology or has equivalent training or experience.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

"Readiness to change" means one dimension to be considered in consumer placement, continued stay, and transition and is an evaluation of the consumer's current emotional and cognitive awareness of the need to change, coupled with a commitment to change.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized,

and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Recovery/living environment" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's current recovery environment, current relationships, degree of support for recovery, current housing, employment situation, availability of alternatives, and historical information as it impacts on level of care decision making.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to practice as a registered nurse.

"Rehabilitation services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Relapse" means the process which may result in the return to the use of substances after a period of abstinence.

"Relapse potential, continued use, or continued problem potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's attitudes, knowledge, and coping skills, as well as the likelihood that the consumer will relapse from a previously achieved and maintained abstinence and/or stable and healthy mental health function. If an individual has not yet achieved abstinence and/or stable and healthy mental health function, this dimension assesses the likelihood that the individual will continue to use alcohol or other drugs and/or continue to have mental health problems.

"Residential treatment-substance abuse" means treatment for a consumer in a live-in setting which provides a regimen consisting of twenty-four (24) treatment hours per week. This level of care should correspond with the ASAM Treatment Level: Level III.5, Clinically managed High-Intensity Residential Services.

"Residential treatment for persons with children-substance abuse" means a residential treatment facility that includes services for the recovering person's children who will reside with him or her in the residential facility. Corresponding ASAM PPC Treatment Level (Parent Only): Level III.5 Clinically Managed High-Intensity Residential Services.

"Safety officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Service Provider" means a person who is allowed to provide treatment services within the regulation and scope of their certification level or license.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social, and recreational skills and can include consumer education.

"Staff privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substance-related and addictive disorders" means a substance-related disorder involving problems related to the use of ten distinct classes of drugs: alcohol; caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics and anxiolytics; stimulants; tobacco; and other (unknown) substances. Substance-related disorders fall into one of two categories, substance use disorders and substance induced disorders. A substance use disorder is a cluster of cognitive, behavioral and physiological symptoms indicating the consumer continues using the substance(s) despite significant substance-related problems. A substance-induced disorder is a reversible substance-specific syndrome due to the recent ingestion of a substance. Addictive disorders involve repetitive clusters of behaviors that activate reward systems similar to those activated by drugs and create behavioral symptoms comparable to those produced by substance use disorders such as compulsive gambling.

"Substance use disorder treatment services" means the coordination of treatment activities for consumers by service provider that includes, but is not limited to, the following:

(A) Intake including screening, diagnostic impression, and assessment.

(B) Treatment planning and revision, as necessary.

(C) Continuing care review to assure continuing stay and discharge criteria are met.

(D) Case management services.

(E) Reports and record keeping of consumer related data.

(F) Consultation that facilitates necessary communication in regard to consumers.

(G) Discharge planning that assists consumers in developing continuing care plans and facilitates transition into post-treatment recovery.

(H) Group and individual therapy.

(I) Education, as necessary.

"Substance-use disorders" means alcohol or drug dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria.

"Substance withdrawal" means a state of being in which a group of symptoms of variable clustering and degree of severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

"Supportive services" refers to assistance with the development of problem-solving and decision making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Therapeutic hour(s)" means the amount of time in which the consumer is engaged with a service provider identifying, addressing, and/or resolving issues that are related to the consumer's treatment plan.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation, and career counseling. [43A O.S. § 3-403(11)].

"Treatment hours - residential" means the structured hours in which a consumer is involved in receiving professional services to assist in achieving recovery.

"Treatment session-outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental, and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Withdrawal Management" means the process of eliminating the toxic effects of substances from the body. Withdrawal management methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

PART 3. SCREENING, INTAKE, AND ASSESSMENT

450:18-7-21. Clinical record content, screening, intake, and assessment

(a) All facilities shall complete a face-to-face screening with each individual to determine appropriateness of further assessment.

(b) The facility shall maintain written screening policies and procedures that, at a minimum include: (1) how the screening is to be conducted; (2) that the screening conducted is an integrated screening to identify both immediate and ongoing needs; and (3) ~~how the process is designed to help welcome and engage the consumer, identify what they would like to accomplish through participation in treatment, and offer hope that treatment can result in positive change; and (4)~~ how the consumer is assisted with admission for services, and/or with accessing other appropriate services.

(c) All facilities shall assess each consumer for appropriateness of admission to the treatment program. Each presenting consumer for substance use disorder treatment shall be assessed, according to ASAM criteria, which includes a list of symptoms for all six dimensions and each level of care, to determine a clinically appropriate placement in the least restrictive level of care. For facilities ~~with~~offering gambling disorder treatment ~~programs certified under Subchapter 15~~services, each presenting consumer for gambling disorder treatment shall be assessed using the Southern Oaks Gambling Screen (SOGS). Facilities must ensure that a consumer's refusal of a particular service does not preclude the consumer from accessing other needed mental health or substance-related or addictive disorder treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.

(d) Any consumer seeking admission to inpatient or residential services, including medically-supervised detoxification and non-medical detoxification while under the influence or undergoing withdrawal of alcohol or drugs, shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment of persons under the influence or undergoing withdrawal of alcohol or drugs, shall be approved by the facility's consulting physician.

(e) Upon determination of appropriate admission, consumer assessment demographic information shall contain, but not be limited to, the following:

(1) Date of initial contact requesting services;
(2) Date of the intake;
(3) Consumer's name;
(4) Gender;
(5) Birthdate;
(6) Home address;
(7) Telephone number;
(8) Referral source;
(9) Reason for referral;
(10) Significant other to be notified in case of emergency; and

(11) PICIS intake data core content, if the facility reports on PICIS.

(f) Compliance with 450:18-7-21 may be determined by a review of the following:

(1) Policies and procedures;
(2) Intake protocols;
(3) Intake assessment instruments;
(4) Treatment records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

PART 13. DISCHARGE PLANNING

450:18-7-123. Discharge Summary

(a) A completed discharge summary shall be entered in each consumer's record within fifteen (15) days of the consumer completing or discontinuing services.

(b) The discharge summary shall include, but not be limited to, the following:

(1) Identified needs at intake;
(2) Initial condition and condition of consumer at discharge;
(3) Summary of current medications, when appropriate;
(~~A~~4) Treatment and services provided and a summary of treatment outcomes ~~and results~~;
(~~B~~5) The signature of the staff member completing the summary and the date.

(c) Compliance with 450:18-7-123 may be determined by a review of the following:

(1) Policies and procedures;
(2) Continuing care plans;
(3) Discharge assessments;
(4) Discharge summaries;
(5) Progress notes;
(6) Consumer records;
(7) Interviews with staff and consumers; and
(8) Other facility documentation.

SUBCHAPTER 13. SUBSTANCE USE DISORDER TREATMENT SERVICES

PART 1. LEVELS OF CARE

450:18-13-1. Levels of Care and optional programs

Facilities shall document the provision of one or more of the following levels of care and/or optional programs in policies and procedures. All facilities shall include the requirements found in Subchapter 7, Facility Clinical Records.

(1) Outpatient services;
(2) Medically supervised detoxification;
(3) Non-medical detoxification;
(4) Residential treatment for adults;
(5) Residential treatment for persons with dependent children;
(6) Residential treatment for adults with co-occurring disorders;
(7) Residential treatment for adolescents;
(8) Halfway house services;
(9) Halfway house services for persons with dependent children;
(10) Halfway house services for adolescents~~; and~~.
~~(11) Gambling disorder treatment program~~.

PART 3. OUTPATIENT SERVICES

450:18-13-22. Outpatient services, admission criteria

(a) Admission to outpatient ~~substance use disorder~~ services shall be determined according to 450:18-7-21. ~~Admission to outpatient gambling disorder treatment services, if provided, shall be determined according to 450:18-15-3.~~ These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-13-22 may be determined by a review of the following:

(1) Policy and procedures;
(2) Admission protocols;
(3) Admission assessment instruments;
(4) Consumer records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:18-13-23. Outpatient services, discharge criteria

(a) Programmatic discharge from outpatient ~~substance use disorder~~ services shall be determined according to 450:18-7-121. ~~Programmatic discharge from outpatient gambling disorder treatment services shall be determined according to 450:18-15-4.~~ These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-3-23 may be determined by a review of the following:

(1) Policy and procedures;
(2) Discharge protocol;
(3) Discharge assessment instruments;
(4) Continuing care plans;
(5) Discharge summaries;
(6) Consumer records;
(7) Interviews with staff and consumers; and
(8) Other facility records.

SUBCHAPTER 15. GAMBLING DISORDER TREATMENT SERVICES [REVOKED]

450:18-15-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to set forth additional rules regulating program requirements, activities, and services for agencies certified under this Chapter who opt to also provide gambling disorder treatment services and implements 43A O.S. §§ 3-322 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner~~

~~upon delegation by the Board, to certify Gambling Treatment Programs.~~

450:18-15-2. Level of care [REVOKED]

~~Agencies providing gambling disorder treatment services shall do so at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the requirements of this Subchapter.~~

450:18-15-3. Admission criteria [REVOKED]

~~(a) Admission to the program shall be determined by the gambling disorder treatment professional in partnership with the consumer based on the problem gambling issues of the consumer utilizing ASAM placement criteria.~~

~~(b) Compliance with this Section may be determined by a review of the following:~~

~~(1) Policy and procedures;~~
~~(2) Admission protocols;~~
~~(3) Admission assessment instruments;~~
~~(4) Consumer records;~~
~~(5) Interviews with staff and consumers; and~~
~~(6) Other facility documentation.~~

450:18-15-4. Discharge criteria [REVOKED]

~~(a) Discharge from a the program shall be determined by the following:~~

~~(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services, utilizing ASAM placement criteria;~~
~~(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and~~
~~(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.~~

~~(b) Compliance may be determined by a review of the following:~~

~~(1) Policy and procedures;~~
~~(2) Continuing Care Plans;~~
~~(3) Discharge assessments;~~
~~(4) Discharge summaries;~~
~~(5) Progress notes;~~
~~(6) Consumer records;~~
~~(7) Interviews with staff and consumers; and~~
~~(8) Other facility documentation.~~

450:18-15-5. Treatment services [REVOKED]

~~(a) Facilities providing gambling treatment services shall have a group of services herein designated as core services. Facilities certified under this Chapter may have specific additional services herein designated as optional gambling disorder treatment services. Required services include, but are not necessarily limited to:~~

~~(1) **Screening and Assessment.** See Sections 18-7-21 through 18-7-27 for requirements.~~
~~(2) **Service planning and revision.** See Sections 18-7-81, 18-7-82 and 18-7-101 for requirements.~~
~~(3) **Individual therapy.** Individual therapy is a face-to-face therapeutic session conducted by a Gambling Treatment Professional (GTP) with one on one interaction between the GTP and a consumer to promote emotional or psychological change to alleviate disorders. Therapy must be goal directed and use a generally accepted approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment, in accordance with an individualized service plan.~~
~~(4) **Group therapy.** Group therapy is a face-to-face therapeutic session with a group of individuals and a GTP using the interaction of the GTP and two or more consumers to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives of the individual customer service plan and use a generally accepted framework for this modality of treatment. This service does not include social skill development or daily living skill activities. Group psychotherapy for adults is limited to eight total consumers. Group size is limited to a total of six consumers for all children. A group may not consist solely of related individuals.~~
~~(5) **Family therapy.** Family therapy is a face-to-face therapeutic session conducted by a GTP with family members/couples conducted in accordance with a documented service plan focusing on treatment family/marital problems and goals. The service must be provided to specifically benefit the consumer as identified in a service plan and use generally accepted treatment methods for this modality of treatment.~~
~~(6) **Case management.** See Sections 18-7-61 through 18-7-65 for requirements.~~
~~(7) **Education and/or educational groups.** Education and educational groups can be provided by any level of provider.~~
~~(8) **Discharge planning.** See Sections 18-7-121 through 18-7-123.~~

~~(b) Compliance with this Section may be determined by a review of the following:~~

~~(1) Consumer records;~~
~~(2) Progress notes;~~
~~(3) Interviews with staff; and~~
~~(4) Other facility documentation.~~

[OAR Docket #16-433; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC) ORGANIZATIONS AND FACILITATORS

[OAR Docket #16-434]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors
450:21-1-3 [AMENDED]
450:21-1-5 [AMENDED]
450:21-1-6 [AMENDED]
450:21-1-7.6 [AMENDED]
450:21-1-9 [AMENDED]
450:21-1-10 [AMENDED]
450:21-1-10.1 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-451 through 3-453.1; 47 O.S. §§ 6-212.2, 11-902 and 761(D); 22 O.S. §§ 991a and 991c.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2016
COMMENT PERIOD:
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Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 21 are part of the Department's review of Title 450. The proposed rules revise reporting requirements for individuals certified under this Chapter as well as revises timelines for steps within the application process in order to assist applicants with timely completion.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS

450:21-1-3. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a participant by staff responsible for the participant's health, safety, or welfare, including, but not limited to:

(A) non-accidental physical injury or mental anguish;
(B) sexual abuse;
(C) sexual exploitation;
(D) use of mechanical restraints without proper authority;
(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the participant; or
(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a participant.

"ADSAC" means Alcohol and Drug Substance Abuse Course.

"ADSAC Facilitator" means an individual certified to teach both the ten (10) or the twenty-four (24) hour ADSAC courses.

"Administrator" means the person responsible for administering ADSAC courses within a certified institution or organization.

"Action Code" means a numerical designation applied to ADSAC by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC.

"Audit" means a systematic inspection of accounting records involving analyses, tests, and confirmations or the hearing or investigation by an auditor.

"Certification" means an institution, organization, or individual approved by ODMHSAS to conduct ADSAC courses.

"Commissioner" means the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services.

"Conflict of interest" means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC Facilitator.

"Consumer" means an individual, adult or child, who is receiving services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Course" means multiple classes offering an approved ADSAC curriculum.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved institution or organization approved to do ADSAC, or the routine work with a participant in an ADSAC course. Critical incidents specifically include, but are not limited to: self-destructive behavior; deaths and injuries to the participant, participant's family, staff or visitors; abuse of a participant, fire, unauthorized disclosure of information; damage to or theft of property belonging to a participant or an approved institution or organization; other unexpected occurrences; or events subject to litigation. A critical incident may involve multiple individuals or results.

"Curricula" (plural of Curriculum) See Curriculum.

"Curriculum" means a specific course of study in alcohol and drug substance abuse designed for ADSAC.

"Denial" means a refusal to certify to conduct ADSAC courses.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards.

"DPS" means Department of Public Safety.

"Equipment" means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC course.

"Evidence based practice" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"Facilitator candidate" means an individual who has applied for and is in the process of being certified to conduct an ADSAC course as an ADSAC facilitator.

"Facility" means any ODMHSAS approved building in which ADSAC is conducted.

"Guest instructor" means non-certified individual invited to discuss a specific portion of ADSAC curriculum under the direct supervision of a certified ADSAC facilitator.

"Instructional material" means written or printed data distributed to the participant during an ADSAC course for informational or educational purposes.

"Intern facilitator" means a facilitator who has initial approval to conduct ADSAC courses under supervision, both ten (10) and twenty-four (24) hour, but who has not completed internship or training requirements, and is not certified.

"Lapse" means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

"Notes" means a complete, chronological written description of any intervention(s) provided to a participant requiring documentation. Notes may include the participant's response and are written by the ADSAC staff delivering the service.

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"OSBI" means the Oklahoma State Bureau of Investigation.

"Participant" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug-related revocation or suspension of driving privileges in Oklahoma and who is involved in the ADSAC process.

"Professional setting" means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and HIPAA, and without distraction or interruption from adjacent business or activities.

"Recertification" means the renewal of certification for an institution, or organization, or instructor to provide ADSAC courses.

"Revocation" means cancellation of an existing certification to conduct or instruct ADSAC courses.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a participant, or risk thereof. Serious injury specifically includes loss of limb or limb function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a participant. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Suspend" means to temporarily cancel certified ADSAC services or certification for a designated period of time.

"Transtheoretical Model of Change" or **"TMC"** means a model which identifies distinct stages of change existing for each individual involved in any educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

~~**"Unique identifier"** means a code developed by the institution or organization or individual providing ADSAC services that allow each participant to be identified. The same unique identifier should not be used for more than one participant.~~

450:21-1-5. Compliance with laws, rules

(a) All institutions, organizations and facilitators certified by ODMHSAS to conduct ADSAC courses shall do so in accordance with all applicable laws of the State of Oklahoma and all applicable rules of Title 450 OAC.

(b) Each applicant for ADSAC facilitator shall declare in writing, in a format and manner prescribed by the Commissioner of ODMHSAS, or designee, that he or she has read and understands §§ 3-451 through 3-461 of Title 43A of the Oklahoma Statutes and this Chapter and agrees to abide by the terms thereof, along with future amendments thereto, as a condition for obtaining and retaining such approval or certification.

(c) ODMHSAS shall process all applications for certification and recertification and enforce these standards and criteria (rules) in this Chapter, and related laws.

(d) Approved institutions, organizations and facilitators shall not make reference to ODMHSAS or DPS in any advertisement regarding ADSAC. Advertising shall be truthful in all communication with prospective participants. Implication of exclusive services by any one organization is prohibited.

(e) All institutions, organizations and facilitators certified to conduct ADSAC courses must promptly notify ODMHSAS of a change of mailing or physical address within fourteen (14) days of said change.

(f) The fees for those attending a ten (10) hour ADSAC course shall be one hundred and fifty dollars ($150.00) per participant; and for persons attending the twenty-four (24) hour courses the fee shall be three hundred and sixty dollars ($360.00).

(g) The ADSAC institution or organization shall pay ODMHSAS ten percent (10%) of each ADSAC fee collected, which ODMHSAS shall remit to the Oklahoma State Treasurer to be credited to the ODMHSAS Revolving Fund.

(h) The payment from the fee collected for each ADSAC course participant shall be made to ODMHSAS within thirty (30) days of course completion.

(i) A check for the appropriate fee shall accompany the completion roster, unless otherwise stipulated in writing by ODMHSAS.

~~(j) Each institution, organization and facilitator shall annually submit to ODMHSAS a written and signed statement documenting the records of the number of courses conducted, number of participants, and fees paid for the ADSAC courses submitted within the previous twelve (12) months are accurate.~~

(~~k~~j) Compliance with this Chapter may be determined by a review of all ADSAC-related records; documents and reports; facilitator, staff and participant interviews; and any other relevant documentation of the institution, organization or facilitator.

450:21-1-6. Applications

(a) Applications for certification of institutions, organizations or facilitators to conduct ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.

(b) ODMHSAS shall give each institution, organization and facilitator candidate requesting certification to conduct ADSAC courses the following:

(1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;

(2) A copy of these standards and criteria; and

(3) The appropriate application(s).

(c) An institution or organization applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:

(1) Completed application;

(2) Film approval form(s) for the ten (10) and twenty-four (24) hour ADSAC;

(3) Instructional materials for the ten (10) and twenty-four (24) hour ADSAC;

(4) Written verification the applicant is a nonprofit educational institution of higher learning appropriately accredited pursuant to state law, a governmental entity or a nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;

(5) Completed certification applications and resumes of proposed facilitators;

(6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC course(s) will be conducted; and

(7) Letters of support from at least two (2) of the following individuals who serve in the community in which each proposed site, including satellites, is located:

(A) District or Associate District Judge;

(B) County Sheriff;

(C) Municipal Judge;

(D) District or Assistant District Attorney; or

(E) Chief of Police.

(d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.

(e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications, except the institution or organization need not submit items previously submitted that are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).

(f) Renewal of certification of ADSAC institutions or organizations shall be contingent upon submission of renewal application and programmatic history of compliance with Oklahoma Administrative Code, Title 450. The application for renewal shall include all items required for initial certification.

(g) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:

(1) A letter of recommendation from an administrator of a certified institution or organization;

(2) A current resume, which shall include:

(A) Educational background including an official college transcript from an accredited college or university; and

(B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).

(3) A completed application.

(4) A one hundred dollar ($100.00) application fee for initial certification; and

(5) Upon initial application, a completed Oklahoma State Bureau of Investigation background check or a similar background check from any other state(s) of residence for the past five (5) years;

(6) Provide a current, recognizable, color, photographic image, in good condition, no smaller than two (2) inch by two (2) inches of the applicant every six (6) years, upon the anniversary of every second recertification

beginning with any qualifying recertifications occurring on or after July 1, 2008; and

(7) A new OSBI background check must be submitted every six (6) years, upon the anniversary of every second recertification beginning with any qualifying recertifications occurring on or after July 1, 2008. The results of the OSBI background check must be submitted with the recertification application and any conviction may result in denial of certification. This will be required of all individuals who have been certified as ADSAC facilitators for six (6) years or more, recertifying after July, 1, 2008.

(h) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years commencing with the date of issue.

(i) Faxes will not be accepted as permanent copies for an applicant's record.

(j) Applications are good for one (1) year from acceptance. Training requirements must be completed within nine (9) months of application. All other requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

(k) Completed applications must be received by ODMHSAS twenty (20) days prior to the new facilitator training event.

(l) A facilitator whose certification has been expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, with the exception of attending the initial ADSAC facilitator training, and successful completion of the training exam.

(m) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-1-10, including attending the initial ADSAC facilitator training, and successful completion of the training exam.

(n) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

450:21-1-7.6. Participant records, basic requirements

(a) Participant records shall be developed and maintained to ensure that all appropriate individuals have access to relevant course and other information regarding the participant. The record shall communicate information in a manner that is organized, clear, complete, current and legible.

(b) Entries in participant records shall be legible, signed with first name or initial, last name, and dated by the person making the entry.

(c) The participant shall be identified by name ~~and an organization or institution generated unique identifier~~ on each sheet in the participant record~~, on both sides of each page if both sides are used~~.

(d) A signed consent in a form designated by the Commissioner or designee shall be part of the case record for any person admitted to an ADSAC course.

450:21-1-9. Facilities, equipment and instructional material

(a) Each site where an ADSAC course is held must meet local and state fire, health and safety standards. ODMHSAS may request state or local fire inspectors or other state health or safety officials to conduct an inspection of any facility suspected of being hazardous.

(b) Each institution or organization must provide a safe, confidential, professional and comfortable environment for participants and facilitators, appropriate for conducting an ADSAC course with minimum distractions.

(c) All equipment must be in good working condition.

(d) Instructional material issued to participants such as handouts, pamphlets, workbooks, etc., must have been submitted to ODMHSAS upon application by the organization or institution for certification or recertification. Each participant shall be given a new, unused journal of the Level I or Level II ADSAC journal as his or her property.

~~(e) Each ODMHSAS approved site shall be a professional setting as appropriate for the purposes of conducting an ADSAC course.~~

(~~f~~e) Sites shall not be designed or used for the primary purpose of eating or sleeping (hotel/motel sleeping rooms, restaurant dining rooms, etc.).

~~(g) No new ADSAC course shall be located within one thousand (1000) feet of an establishment with the primary purpose of serving alcoholic beverages.~~

450:21-1-10. ADSAC facilitator certification, qualification and disqualification

(a) Minimum qualifications for certification of ADSAC facilitators are as follows:

(1) Possess a bachelor's degree in behavioral or healthcare sciences education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the substance abuse treatment field. This work experience can be in the areas of clinical, prevention or direct care. Proof of current licensure as LADC or certification as CADC will fulfill the experience requirement;

(2) A valid driver's license or state identification card;

(3) Completion of the following in the order listed below:

(A) Observe one (1) complete twenty-four (24) hour ADSAC course conducted by a certified facilitator. This observation must be completed and verified to ODMHSAS prior to attending facilitator training;

(B) Attend the new facilitator training and pass the ODMHSAS Certification Examination for ADSAC Facilitator; and

(i) a minimal score to pass the exam shall be eighty (80) percent;

(ii) the exam shall require the participant to correctly identify the major components of the transtheoretical model of change;

(iii) the exam shall require the participant to correctly identify the major components of the interactive journaling process; and

(iv) the exam shall require the participant to correctly identify rules from this chapter.

(C) Conduct one complete twenty-four (24) hour ADSAC under the supervision of a certified ADSAC facilitator or an ODMHSAS representative.

(4) The facilitator candidate shall be allowed ~~one (1) year~~nine (9) months to complete ~~all~~ training requirements and one (1) year from application to complete all other requirements. Failure to meet all requirements within ~~one (1) year~~the specified timeframes will result in denial of certification. To be reconsidered, the candidate will be required to re-apply to ODMHSAS.

(5) Renewal of certification as an ADSAC facilitator shall be dependent upon acceptance of a completed renewal application submitted to ODMHSAS, remission of a fifty dollar ($50.00) application fee for renewal of certification, and the accomplishment of minimum standards. These standards are:

(A) Each facilitator shall conduct at least ~~two (2)~~six (6) complete ten (10) or twenty-four (24) hour courses during each ~~twelve (12) month~~certification period beginning with the date of initial certification:

(i) To be eligible for recertification as an ADSAC facilitator capable of conducting both ten (10) and twenty-four (24) hour ADSAC courses, verification of having conducted at least two (2) twenty- four hour (24) ADSAC courses in the last three years prior to the request for recertification; and

(ii) Submission of proof of having conducted less than two (2) twenty-four (24) hour ADSAC courses in the three (3) years prior to the request for recertification, shall result in the facilitator being required to attend a one (1) day training event addressing skills consistent with twenty-four (24) hour course facilitation.

(B) Documentation of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas with four (4) hours coming from area (i), four (4) hours coming from area (ii) and four (4) hours coming from area (iii):

(i) adult education,

(ii) facilitation skills,

(iii) general substance abuse training, and

(iv) Hours for any mandatory trainings required by ODMHSAS may come from area (iii) above.

(6) All renewals of certification are due on the third anniversary of certification. After July 1, 2008 all certification renewals may come due on January 1 of the renewal year. If a universal certification date is adopted, then, requirements for certification renewals will be accepted on a prorated basis during the transition period.

(b) An applicant may not be certified nor certification as an ADSAC facilitator renewed under any of the following conditions:

(1) A non-pardoned felony conviction within the last five (5) years;

(2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,

(3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

450:21-1-10.1. Inactive status/closure

(a) An active ADSAC course, institution or organization certification may be placed on inactive status by written request:

(1) An inactive certification forfeits all rights and privileges granted by the certification;

(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;

(3) When certification is placed on inactive status, it remains inactive for at least one (1) year from the date of inactivation;

(4) Active status may be re-established upon ~~payment of a prorated renewal fee and submission of prorated continuing education hours required during the renewal year if there are no other impediments to certification~~written request;

(5) When an ADSAC institution or organization satellite must cease operation for less than twelve (12) months, all participant records shall be transported to the main site unless they can be secured on site under rules defined in 450:21-1-7.5;

(6) During such a temporary closure due to being placed on inactive status of the main ADSAC site or location, effort should be made to ensure participant records remain accessible as defined in 450:21-1-7.5;

(7) Participants attending an ADSAC course shall be given written notification of a temporary closure with contact information in the event all course sessions have not been completed;

(8) ODMHSAS shall be notified in writing of the temporary closure of any ADSAC site (DUI school). The written notification shall contain:

(A) The reason for closing;

(B) Contact information for participant course records; and

(C) A projected date for resumption of business.

(9) Upon receipt of written notification of closure, ODMHSAS shall remove the institution or organization(s) telephone number from the monthly State Certified DUI Schools referral list; and

(10) Upon written notification of intent to resume business, ODMHSAS shall add the institution or organization(s) telephone number to the monthly State Certified DUI Schools referral list.

(b) Institutions and organizations operating for the purpose of conducting ADSAC having to close permanently shall comply with the following:

(1) When a satellite closes permanently, all participant records shall be transported to the main location under rules defined in 450:21-1-7.5;

(2) When the main location of an institution or organization closes permanently, all participant records shall be secured as defined in 450:21-1-7.5;

(3) Participant records shall remain accessible as defined in 450:21-1-7.5;

(4) Participants shall be given written notification of the closure with contact information, including ODMHSAS, in the event all coursework is not completed;

(5) ODMHSAS shall be notified in writing of any closure of an institution or organization operating for the purpose of conducting ADSAC courses. The written notification shall contain:

(A) the reason for closing; and

(B) contact information for participant records.

(6) Upon receipt of written notification of closure, ODMHSAS shall remove the site(s) telephone number from the monthly State Certified DUI Schools referral list.

(c) An active ADSAC facilitator certification may be placed on inactive status by written request:

(1) An inactive certification forfeits all rights and privileges granted by the certification;

(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;

(3) When certification is placed on inactive status, the certification remains inactive for at least twelve (12) months from the date of inactivation or until the end of the certification period, whichever is first;

(4) Inactive status shall not be allowed to continue ~~for more than thirty-six (36) months~~longer than the certification period; and

(5) Active status may be re-established upon ~~payment of a prorated renewal fee and submission of prorated continuing education hours required during the renewal year if there are no impediments to certification~~written request.

[OAR Docket #16-434; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 22. CERTIFICATION OF ALCOHOL AND DRUG ASSESSMENT AND EVALUATIONS RELATED TO DRIVER'S LICENSE REVOCATION

[OAR Docket #16-435]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
450:22-1-3 [AMENDED]
450:22-1-6 [AMENDED]
450:22-1-9 [AMENDED]
450:22-1-10 [AMENDED]
450:22-1-11 [AMENDED]
450:22-1-11.3 [AMENDED]
450:22-1-11.4 [AMENDED]
450:22-1-11.7 [AMENDED]
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450:22-1-15.1 [AMENDED]
450:22-1-20 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-453 and 3-460; 47 O.S. §§ 6-212.2 and 11-902; 22 O.S. §§ 991a and 991c.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 22 are part of the Department's review of Title 450. The proposed rules revise reporting requirements for individuals certified under this Chapter. Changes are also made regarding acceptable locations of ADSAC assessment sites based on legislative changes made during the 2015 Legislative Session. Revisions are also made to make processes and terminology more consistent across Chapters within Title 450.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

450:22-1-3. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the

health, safety, or welfare of a participant by staff responsible for the participant's health, safety, or welfare including, but not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the participant; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a participant.

"ADSAC" means Alcohol and Drug Substance Abuse Course.

~~**"Addiction Severity Index"** or **"ASI"** is a multidimensional clinical and research instrument that rates the severity of a substance use or abuse problems for diagnostic evaluation and assesses change(s) in treatment status and outcome.~~

"American Society of Addiction Medicine Patient Placement Criteria" or **"ASAM PPC"** means the most recent clinical guide published by the American Society of Addiction Medicine to be used in matching patients to appropriate levels of care.

"Assessor" means an individual certified to conduct alcohol and other drug assessments related to driver's license revocations.

"Assessment" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

"Assessment agency" means an agency certified by ODMHSAS to provide substance abuse treatment services authorized through Title 43A, 3-415, A. 1, with an additional certification to provide ADSAC assessments using certified assessors.

"Audit" means a systematic inspection of accounting records involving analyses, tests, and confirmations or the hearing or investigation by an auditor.

"Biopsychsocial Assessment" means a face-to-face clinical interview conducted by an ADSAC assessor designed to elicit historical and current information regarding the behavior and experiences of a participant, and is designed to provide sufficient information for problem formulation, intervention planning, and formulation of appropriate substance abuse-related clinical and/or educational interventions to reduce or eliminate recidivism.

"Certification" means ODMHSAS approval for an individual or agency to conduct alcohol and other drug assessments related to driver's license revocations.

"Certified Alcohol and Drug Counselor" or **"CADC"** means any person who is certified through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Conflict of Interest" means a conflict between the private interests and public obligations of a certified institution, organization or assessor.

"Consumer" means an individual, adult or child, who has applied for, is receiving, or has received services, evaluation or treatment, from an entity operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19 and 23 as client(s) or patient(s) or resident(s) or a combination thereof.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved ADSAC assessor or assessment agency, or the routine work with a participant during the course of an ADSAC assessment. Critical incidents specifically include, but are not limited to, the following: adverse drug events; self destructive behavior; deaths and injuries to the participant, participant's family, staff and visitors; medication errors; neglect or abuse of a participant; fire; unauthorized disclosure of information; damage to or theft of property belonging to a participant or an approved assessment agency; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Defendant Questionnaire" or **"DQ"** is an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of alcohol or other drug abuse and classifies an individual as being either a substance abuser or substance dependent using the American Society of Addiction Medicine, patient placement criteria.

"DOC" means the Oklahoma Department of Corrections.

"DPS" means the Oklahoma Department of Public Safety.

"Driver Risk Inventory-II" or **"DRI-II"** is an assessment or screening instrument, which contains six scales measuring truthfulness, driver risk, stress coping ability, and severity of alcohol or other drug abuse and classifies a participant as being either a substance abuser or substance dependent in compliance with current Diagnostic and Statistical Manual criteria.

"Evidenced based practice" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more participants that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the participant's treatment goals and objectives, and does not include social or daily living skill development as described in educational group counseling.

"Independent practitioner" means any professional, appropriately licensed or certified as an alcohol and drug counselor through the State of Oklahoma, pursuant to state law, and certified by ODMHSAS to conduct ADSAC assessments who does so through the format of a private practice.

"Individual counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with one participant to promote positive emotional or behavioral change.

"Intensive outpatient services" or "IOP" means an organized, non-residential outpatient treatment service with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the individual participates in daytime treatment services but goes home at night. Intensive Outpatient

shall correspond to ASAM Patient Placement Criteria Treatment Level: Level II.1, Intensive outpatient.

~~**"Juvenile Automated Substance Abuse Evaluation" or "JASAE"** is a survey based on adolescent norms to assess alcohol and other drug problem severity using current DSM and ASAM guidelines. The JASAE includes attitude, age and life situation in the evaluation process.~~

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Licensed Behavioral Health Professional" or "LBHP" means:

(A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) Practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

(i) Psychology;

(ii) Social Work (clinical specialty only);

(iii) Professional Counselor;

(iv) Marriage and Family Therapist;

(v) Behavioral Practitioner; or

(vi) Alcohol and Drug Counselor.

"Licensure Candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinical if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology;

(B) Social Work (clinical specialty only);

(C) Professional Counselor;

(D) Marriage and Family Therapist;

(E) Behavioral Practitioner;

(F) Alcohol and Drug Counselor.

~~**"Multidimensional Addictions and Personality Profile" or "MAPP"** is an instrument designed to identify substance use disorders and other personal adjustment problems related to recidivism risk. The MAPP will assist with the determination of appropriate types and levels of care.~~

"Mutual support group" means a non-professional, widely available, peer directed, system of support meetings, available at little or no charge to the participant, in a group format, dedicated to the support and teaching of the skills related to an alcohol and other drug free lifestyle.

"Needs assessment" or **"NEEDS"** is a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs.

"Note" ~~mean~~means a complete chronological written description of any intervention(s) provided to a participant requiring documentation. Notes may include the participant's response and are written by the ADSAC staff delivering the service.

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

"OSBI" means Oklahoma State Bureau of Investigation.

"Participant" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug related revocation or suspension of driving privileges in Oklahoma and is who involved in the ADSAC process.

"Professional setting" means a building or site that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and 45 C.F.R. Parts 160 & 164 (HIPAA), and without distraction or interruption from adjacent business or activities.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of individuals served by the facility and certified or recognized by ODMHSAS.

~~**"Psychsocial History"** means an individual and family history of alcohol and drug abuse, an individual and family psychiatric history and a medical history of the individual and an educational history, personal and employment history identifying the unique aspects of the individual.~~

"Residential treatment" means treatment for a participant in a live-in setting which provides a twenty-four (24) hour therapeutic regimen. Corresponding ASAM Patient Placement Criteria Treatment Level: Level III. 5, Clinically managed High-Intensity Residential Services.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a participant, or risk thereof. Serious injury specifically includes loss of limb or limb function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a participant. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"TAAD" or "Triage Assessment for Addictive Disorders" is a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

~~**"Unique identifier"** means a code developed by the institution or organization or individual providing ADSAC services that allow each participant to be identified. The same unique identifier should not be used for more than one participant.~~

"Victims Impact Panel" or "VIP" means the two (2) hour presentation, identified statutorily, intended to enhance awareness of the participant regarding possible impact on others by the individual driving while impaired.

450:22-1-6. ADSAC assessors and assessment agencies

(a) Alcohol and other drug assessments shall be provided by individuals or agencies certified by ODMHSAS to provide alcohol and drug assessment and evaluation programs related to driver's license revocation. ODMHSAS certified community mental health centers, ODMHSAS certified alcohol and drug treatment programs, and probation offices shall be considered for such certification.

(b) Certified assessors and assessment agencies shall:

(1) Recommend and monitor certified assessors for compliance to applicable rules within Title 450; and

(2) Provide assessment services only at sites approved by ODMHSAS.

(c) Certified assessors and assessment agencies are responsible for:

(1) Reporting assessment data to ODMHSAS in the time frames set forth in this Chapter;

(2) Make recommendations based upon ODMHSAS-required assessment instruments;

(3) Ensure exception findings meet current American Society of Addiction Medicine's (ASAM) over-ride criteria; and

(4) Providing liaison with ODMHSAS, the courts and other agencies.

(d) Each agency certified to conduct assessments for the evaluation related to driver's license revocation shall be responsible for the conduct of assessors they employ, and shall have written policies outlining the agency's oversight procedures to include, but not limited to, financial arrangements with the participant.

~~(e) Each assessor and assessment agency shall annually submit to ODMHSAS a written and signed statement verifying that the previously submitted information on the number of ADSAC assessments conducted, participants assessed and fees paid for assessments conducted for the previous twelve (12) months is accurate. This statement shall be submitted within thirty (30) days of the end of the calendar year.~~

450:22-1-9. Certified approved sites

~~(a)~~ Alcohol and other drug assessment and evaluation shall be provided at sites approved by ODMHSAS. Sites shall meet the following standards for consideration of approval:

(1) Sites shall be in professional settings appropriate for the assessment and for safeguarding the confidentiality of the participant;

(2) Hours and days of operation shall be during regularly scheduled periods which make assessment services accessible to participants, including those employed between 8:00 a.m. and 5:00 p.m., and to the general public;

(3) The site's days and hours of operation shall be professionally and conspicuously displayed on the outside of the building along with a business phone number used for scheduling of appointments;

(4) For sites in multi-office buildings, the days and hours of operation shall be posted in the building directory or on the door of the site office;

(5) Sites for the primary purpose of eating or sleeping, i.e., hotel/motel sleeping rooms, restaurant dining areas, etc., will not be considered for approval; and

(6) Sites shall be handicapped-accessible and meet all other requirements of the Americans with Disabilities Act of 1990.

~~(b) No new ADSAC assessment site shall be located within one thousand (1000) feet of an establishment with the primary purpose of serving alcoholic beverages.~~

450:22-1-10. Participant evaluation

(a) The assessment and evaluation of the participant shall be as comprehensive as possible~~ and shall include, but not be limited to:~~. ADSAC assessors shall not conduct any portion of the assessment process or provide any evaluation services on more than one participant at a time. The assessment shall include, but not be limited to:

(1) A formal face-to-face ~~clinical interview consisting of, at a minimum:~~

~~(A) Socio-demographic and background information;~~

~~(B) Personal history; and~~

~~(C) A completed and scored current version of the Addiction Severity Index (ASI)~~biopsychsocial assessment (see OAC 450:22-1-11.7 for requirements).

(2) The assessor shall obtain and document the participants driving history information from public record(s), when made available. This information shall, at a minimum, include the following:

(A) Arrest date;

(B) All charges relating to alcohol and drug offenses; and

(C) Driving record.

(3) Alcohol and other drug information as supplied by the participant or referring party:

(A) Blood alcohol concentration at time of arrest;

(B) Prior alcohol/drug treatment;

(C) Polydrug use;

(D) Prior alcohol-related arrest(s); and

(E) Prior drug related arrest(s).

(4) Pursuant to 450:22-1-11, the use of completed and scored standardized evaluation instruments; and

(5) All information shall be in a format prescribed by the Commissioner of ODMHSAS or designee.

(b) Recommendations, known as Intervention Categories, shall be based on scores derived from and verified by, a battery of required and appropriate assessment/evaluation instruments, and adhered to by all assessors unless otherwise indicated by ODMHSAS:

(1) All those identified as being at low risk to recidivate as indicated by scores derived from the assessment process shall be referred to educational interventions only:

(A) Intervention Category One shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and recommendations shall consist of:

(i) ten (10) hour ADSAC course, and

(ii) Victims Impact Panel.

(iii) the ten (10) hour ADSAC course and Victims Impact Panel may be attended concurrently.

(B) Intervention Category Two shall be identified by alcohol or drug scale scores from the DRI II or DQ of zero (0) to thirty-nine (39) and a previous alcohol or drug related offense resulting in license revocation pursuant to Title 47, § 6-212.2, A and recommendations shall consist of:

(i) twenty-four (24) hour ADSAC course, and

(ii) Victims Impact Panel.

(iii) the twenty-four (24) hour ADSAC course and the Victims Impact Panel may be attended concurrently.

(2) All those identified as being at moderate risk to recidivate shall be referred to a combination of educational and clinical interventions:

(A) Intervention Category Three, shall be identified by alcohol or drug scale scores from the DRI I or DQ of forty (40) to sixty nine (69) and recommendations shall consist of:

(i) twenty-four (24) hour ADSAC course, and

(ii) Victims Impact Panel, and

(iii) substance abuse related group involvement for six (6) weeks, meeting one (1) time per week.

(iv) The twenty-four (24) hour ADSAC should be attended prior to the initiation of the six (6) week substance abuse group;

(B) Those with scoring appropriate for an Intervention Category Four or Five and placed at this level due to clinical override shall be required to attend:

(i) twelve (12) weeks of substance abuse related group meeting a minimum of one (1) time per week and a maximum of two (2) times per week, and

(ii) twelve (12) weeks of mutual support group attendance, once per week~~;~~, and

~~(iii) VIP or mutual support participation may be attended any time during the process; and~~

(~~iv~~iii) It must be possible to complete the combination of interventions within ninety (90) days.

(3) All those identified as being at problem risk to recidivate shall be referred to clinical interventions only:

(A) Intervention Category Four shall be identified by alcohol or drug scale scores from the DRI II or DQ of seventy (70) to eighty nine (89) and recommendations shall consist of:

(i) intensive outpatient treatment, and

(ii) aftercare, and

(iii) twelve (12) weeks of mutual support meetings.

(iv) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.

(v) The combination of interventions recommended must be able to be completed within ninety (90) days.

(4) All those identified as being at severe risk to recidivate shall be referred to clinical interventions only:

(A) Intervention Category Five will be identified by alcohol or drug scale scores from the DRI II/DQ of ninety (90) to one hundred (100) and recommendations shall consist of:

(i) residential or inpatient treatment, and

(ii) aftercare, and

(iii) mutual support meetings.

(iv) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.

(v) The combination of interventions recommended must be able to be completed within ninety (90) days.

(5) If no groups are available or if the participant has a significant, appropriately diagnosed co-occurring disorder, then individual counseling can be substituted for group counseling. This must be addressed with an override and cleared through ODMHSAS.

(6) Interventions completed prior to the assessment may be accepted if:

(A) the intervention is completed after the offense resulting in license revocation, and

(B) the intervention meets or exceeds all the requirements listed in the recommendation, and

(C) the provider of the intervention is appropriately accredited.

(7) Assessments will remain valid for six (6) months from the date of completion:

(A) If after six (6) months, action toward completing assessment recommendations has not been initiated, then the assessment shall be considered invalid and a new assessment will be required, and

(B) The participant must be notified of this fact in writing upon assessment.

(8) ~~Any~~A recommendation can be lowered one intervention category through the appropriate use of one of the available overrides. However, an intervention level for clinical services only or combination of educational and clinical services cannot be lowered to an intervention level for educational services only. ODMHSAS approval must be granted for overrides of more than one intervention category.

(9) Any significant discrepancy between the scores obtained on either the DRI II or the DQ and an appropriately chosen additional supportive instrument should be cause for reevaluation of participant's answers to the assessment instruments. If the discrepancy cannot be resolved, then an override should be considered.

(10) ~~Any~~A recommendation can be lowered with the appropriate use of one of the following overrides;

~~(A) "services not available",~~

(~~B~~A) "geographic accessibility",

(~~C~~B) "on waiting list for appropriate level of care",

(~~D~~C) "language barriers", or

(~~E~~D) "sustained abstinence".

(11) In each instance, the most appropriate and applicable override category shall be used.

(12) All overrides must be supported in writing and with information or evidence that clearly justifies the decision made. Verifying and/or validating documentation must be included in the record.

~~(13) "Services not available" should be used when one or more of the services required for a specific intervention category are temporarily not available within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:~~

~~(A) The recommendation should be reduced to the first intervention category with all services available, and~~

~~(B) Before using this override, the participant's address shall be verified;~~

(~~14~~13) "Geographic accessibility" should be used when one or more of the services required for a specific intervention category does not exist within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:

(A) The recommendation should be reduced to the first intervention category with all services available, and

(B) Before using this override, the participant's address shall be verified;

(~~15~~14) "On waiting list for appropriate level of care" should be used when one or more of the services required for a specific intervention category is not available within seventy (70) miles from the town the participant identifies as a home town as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:

(A) The service recommended must also not be available within thirty (30) days of the initial date of assessment,

(B) The recommendation should be reduced to the first intervention category with all services available, and

(C) Before using this override, the participant's address shall be verified.

(~~16~~15) "Language barriers" should be used when one or more of the services required for a specific intervention category is not offered in the language of a non-English speaking participant within seventy (70) miles from the town the participant identifies as the home town:

(A) The recommendation should be altered to include the most appropriate combination of interventions available in the participant's language,

(B) Due to problems with service availability caused by language barriers, this is the only override in which interventions from multiple categories can be commingled, and

(C) Before using this override, the participant's address shall be verified.

(~~17~~16) "Sustained abstinence" should be used when an override may be appropriate when recognizing that a significant period of verifiable abstinence or recovery exists between the time of the offense and the assessment:

(A) The abstinence/recovery must be at least six (6) months' duration,

(B) The abstinence/recovery must be continuous,

(C) The abstinence/recovery must be verifiable,

(D) Three notarized statements from individuals who know, but are not related to, the participant, and

(E) The notarized statement verifying abstinence/recovery will be in a form prescribed by the commissioner of ODMHSAS or designee.

450:22-1-11. Standardized evaluation instruments

(a) Standardized evaluation instruments shall be administered in the manner intended and findings shall be a component of the overall assessment and recommendations.

(b) The approved standardized evaluation instruments shall be limited to:

(1) For all alcohol and drug related driving offenses resulting in license revocation, a completed and scored, current computerized version of the Driver Risk Inventory-II (DRI-II) in a face-to-face structured interview. For all non-driving alcohol and drug related convictions resulting in license revocation, a completed and scored, current computerized version of the Defendant Questionnaire (DQ) shall be used and;

(2) A completed ~~and scored current version of the Addiction Severity Index (ASI) serving as the~~ biopsychsocial;

(3) A completed and scored additional, supportive clinical instrument to support initial findings shall be chosen by the assessor from the menu of approved supportive instruments listed below:

~~(A) Juvenile Automated Substance Abuse Evaluation (JASAE); or~~

~~(B) Multidimensional Addictions and Personality Profile (MAPP); or~~

(~~C~~A) Needs Assessment (NEEDS); or

(~~D~~B) Triage Assessment for Addictive Disorders (TAAD); and

(4) A thorough face-to-face interview.

(5) All additional, supportive clinical assessment instruments shall be used only in a manner consistent with the instrument design, intended purpose and to support the identified level of severity of the participant;

~~(6) No clinical decision shall be based on scores derived from the ASI;~~

(~~7~~6) All assessment instruments approved for use in the ADSAC process shall be used according to directions from the manual of each instrument; and

(~~8~~7) Assessment instruments appropriate for use with those with a primary language other than English shall be identified as the instruments are approved for use by ODMHSAS.

450:22-1-11.3. Participant records, basic requirement assessors, assessment agencies

All participant records shall be developed and maintained to ensure that all appropriate individuals have access to relevant clinical and other information regarding the participant. The participant record shall communicate information in a manner that is organized, clear, complete, current, and legible. All participant records shall contain the following:

(1) Entries in participant records shall be legible, signed with first name or initial, last name, and dated by the person making the entry;

(2) The participant shall be identified by name ~~and unique identifier~~ on each sheet in the participant record, on both sides of each page if both sides are used; and

(3) A signed consent for assessment shall be obtained before any person can receive an ADSAC assessment and, placed in the participants record.

450:22-1-11.4. Participant record storage, retention and disposition

(a) Each assessment agency and ADSAC assessor shall:

(1) Limit access to participant records to persons on a need to know basis;

(2) Require participant records be stored under lock and key; and

(3) With regard to closed participant records, require:

(A) Confidential storage under lock and key;

(B) Record disposition and destruction under confidential conditions; and

(C) Maintain written assessment documentation to be available for participants for a minimum of ~~six (6)~~five (5) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) notes; and

(iii) referrals and recommendations made as a result of the assessment~~.~~; and

(iv) verification of each requirement of the recommended intervention level prior to affixing the red stamp.

(b) EXCEPTION: With regard to 450:18-7-4(a) (3) (B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].

450:22-1-11.7. Biopsychsocial assessment

~~(a) Biopsychsocial assessments are face-to-face interviews conducted by an ADSAC assessor designed to elicit historical and current information regarding the behavior and experiences of a participant, and are designed to provide sufficient information for problem formulation, intervention planning, and formulation of appropriate substance abuse-related clinical interventions to reduce or eliminate recidivism.~~

~~(b)~~ All assessors shall complete a biopsychsocial assessment which gathers sufficient information that could assist the participant~~.~~, and includes the following items:

~~(1) Identification of the participant's strengths, needs, abilities and preferences;~~

~~(2) Previous mental health and substance abuse treatment history.~~

~~(3) Health history and current biomedical conditions and complications;~~

~~(4) Alcohol and drug use history;~~

~~(5) Family and social history, including family history of alcohol and drug use;~~

~~(6) Educational attainment, difficulties, and history;~~

~~(7) Cultural and religious orientation;~~

~~(8) Vocational, occupational and military history;~~

~~(9) Marital or significant other relationship history;~~

~~(10) Recreational and leisure history;~~

~~(11) Legal history;~~

~~(12) Present living arrangement;~~

~~(13) Economic resources;~~

~~(14) Current support system;~~

~~(15) Assessment summary or diagnosis, and signature of the assessor and date of the assessment; and~~

~~(16) A completed current version of the ASI, that addresses all the above requirements.~~

(1) Behavioral, including substance use, abuse, and dependence;

(2) Emotional, including issues related to past or current trauma;

(3) Physical;

(4) Social and recreational; and

(5) Vocational.

450:22-1-12. Assessor applicants

(a) An initial applicant for certification as an assessor shall submit ~~proof of~~ the following:

(1) ~~Possession of a bachelor's degree or above in the behavioral or health sciences. Those certified as ADSAC assessors prior to July 1, 2005 and without a break in ADSAC certification will be allowed to continue certification without a bachelor's degree. All applicants for initial certification after July 1, 2005 must possess a bachelor's degree or above in the behavioral or health sciences. This includes those attempting to renew lapsed certification; and~~ Proof of current licensure as an LBHP or certification as an alcohol and drug counselor acting within scope of licensure/certification or proof of current status as a Licensure Candidate under the onsite supervision of a certified ADSAC assessor; and

(2) ~~Having~~Proof of having at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and

(3) ~~Current licensure as an LADC or certified as an alcohol and other drug counselor and supervised by an LADC pursuant to Oklahoma state statutes; or~~

~~(4) Current status as an LADC candidate, under supervision of an LADC and work at a certified ADSAC assessment agency where one or more certified ADSAC assessors are employed: and~~

~~(A) Have at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and~~

~~(B) Be trained or have proven experience in the identification and management of alcohol and other drug abuse problems and clinical interviewing skills~~Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application; and

(5) A recognizable, current, photographic image of the applicant no smaller than two (2) inch by two (2) inch;

(6) ~~Completion of the eighteen (18) hour ODMHSAS new assessor training; and~~A current OSBI background check or a similar background check from another state of residence for the past five (5) years; and

(7) ~~Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application.~~A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and

(8) Fees.

(b) Applications for certification as an assessor shall be made in writing to ODMHSAS on a form in a manner prescribed by the Commissioner or designee.

(c) Completed applications must be received by ODMHSAS twenty (20) days prior to the training event. Before being certified, the applicant shall:

(1) Observe one (1) assessment with written permission of the participant prior to completing new assessor training;

(2) Complete the ODMHSAS new assessor training; and

(3) Complete and pass the ODMHSAS assessment skills competency examination. A minimum score to pass the exam shall be eighty (80) percent:

(A) the exam shall require the applicant to correctly identify the major aspects of the Driver Risk Inventory-revised (DRI-II), and the Defendant Questionnaire (DQ)~~ and the Addiction Severity Index (ASI)~~;

(B) the exam shall require the applicant to correctly identify the major components of motivational interviewing; and

(C) the exam shall require the applicant to correctly identify rules from this chapter.

~~(2) Observe one (1) assessment with written permission of the participant;~~

(~~3~~4) Conduct two (2) assessments, after completing the new assessor training under the supervision of a certified ADSAC assessor, with written permission of the participant; and

(A) Submit a copy of one written court report completed by the applicant on each assessment;

(B) The observing assessor shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the ODMHSAS Commissioner or designee.

~~(4) Provide ODMHSAS a copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers;~~

~~(5) Remit to ODMHSAS the one hundred dollar ($100) application fee for initial certification;~~

~~(6) Provide ODMHSAS an official transcript from an appropriately accredited college pursuant to state law;~~

~~(7) Provide ODMHSAS a current OSBI background check or a similar background check from another state of residence for the past five (5) years: and~~

~~(8) Prior to attending the training for new facilitators attend a two (2) day ASI training.~~

(d) ODMHSAS may require explanation of negative references prior to issuance of certification.

(e) ~~Upon completion of the above requirements, the certified assessor providing the supervision shall submit a copy of one (1) written court report completed by the applicant and an evaluation of the applicant's skill level on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.~~

~~(f)~~ Faxes will not be accepted as part of a permanent record.

(~~g~~f) Applications are good for one (1) year from acceptance. All requirements
must be completed within the initial ~~twelve (12)~~nine (9) month period or a new application must be submitted.

(~~h~~g) Any prior sanctions by ODMHSAS of an individual may be cause for denial of an assessor application.

(~~i~~h) An assessor applying for renewal shall submit the following for ODMHSAS review:

(1) Complete ODMHSAS renewal application form;

(2) Submit documentation of receiving ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include the following subject areas with four (4) hours coming from area (A), four (4) hours coming from area (B) and two (2) hours coming from area (C):

(A) the application and use of ~~approved assessment instruments,~~the following:

(i) ASAM;

(ii) DRI;

(iii) DQ;

(iv) NEEDS; and

(v) TAAD;

(B) evidence based interview techniques,

(C) general substance abuse, and

(D) if a mandatory training is required by ODMHSAS the hours may come from area (c) above.

(E) training hours shall not include ADSAC course facilitation; and

(3) A new recognizable, current, photographic image of the applicant every six years no smaller ~~then~~than two (2) inch by two (2) inch, with any qualifying recertifications occurring on or after July 1, 2008;

(4) Provide ODMHSAS a new OSBI background check for the applicant every six years, with any qualifying recertifications occurring on or after July 1, 2008; and

(5) The fifty dollar ($50) application renewal fee for certification.

(~~j~~i) Certification shall be valid for thirty six (36) months.

(~~k~~j) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification.

(1) A person whose certification has expired for less than twelve (12) months must make application for an initial certification as set forth in 450:22-1-12 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.

(2) A person whose certification has expired for twelve (12) months or more must make application for an initial certification as set forth in 450:22-1-12.

(~~l~~k) Each assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

(~~m~~l) All renewals of certification are due on the third anniversary of certification. ~~After July 1, 2008, all certification renewals may come due on January 1 of the renewal year. If a universal recertification date is adopted, the requirements for certification renewals will be accepted on a prorated for the transition period.~~

450:22-1-15. Assessor responsibilities

(a) ADSAC assessments shall be provided by individuals certified by ODMHSAS to provide such assessments.

(b) All fees due ODMHSAS shall be remitted within thirty (30) days. Any fees identified as being delinquent shall be paid within thirty (30) days of discovery of the omission.

(c) Certified assessors shall:

(1) Conduct assessments and based on assessment findings, recommend education or treatment or both;

(2) Report to the court within seventy-two (72) hours of completing an assessment if the court is anticipating such a report;

(3) Provide information in writing regarding state and local area education and treatment resources specific to the area in which the participant resides, to each individual assessed appropriate to the referral recommendations and, in a format prescribed by the Commissioner of ODMHSAS or designee;

(4) Manage and distribute all reports according to confidentiality laws under 42 CFR, Part 2, as well as all 45 C.F.R. Parts 160 & 164 (HIPAA) regulations
and inform all participants that all contacts, evaluation results and reports are protected through federal confidentiality regulations under 42 CFR, Part 2;

(5) Assure there is no conflict of interest by:

(A) referring participants to only those services in which the assessor has no vested interest;

(B) providing three (3) outside referral options in writing for each recommended service, or as many options as available within a 70-mile radius; and

(C) maintaining written assessment documentation to be available for consumers for a minimum of five (5) years after completion of all assessment requirements. Written documentation shall include, but not be limited to:

(i) completed assessment instrument(s) and associated raw data;

(ii) clinical interview notes; and

(iii) referrals and recommendations made as a result of the assessment~~.~~; and

(iv) verification of each requirement of the recommended intervention level prior to affixing the red stamp.

(6) Provide liaison with court officials and related other agencies;

(7) The fee for those undergoing an assessment and evaluation as a result of their driving privilege being suspended or revoked pursuant to an arrest on or after November 1, 2008 is one hundred sixty dollars ($160.00). The fee for those undergoing an assessment and evaluation as a result of their driving privilege being suspended or revoked pursuant to an arrest prior to November 1, 2008 is one hundred seventy five dollars ($175.00);

(A) Remit 10% of each fee collected for any assessment and evaluation completed as a result of a person's driving privilege being suspended or revoked pursuant to an arrest prior to November 1, 2008 to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund within thirty (30) days. No such 10% fee shall be remitted for any assessment and evaluation completed as a result of a person's driving privilege being suspended or revoked pursuant to an arrest on or after November 1, 2008. Completion of assessment includes payment in full by the participant for the assessment service; and

(B) No additional charges, extra fees or interest shall be attached to the assessment process.

(8) Explain possible liability and ability to pay for ODMHSAS affiliated, private and other education and treatment facilities;

(9) For those participants whose license was withdrawn due to an alcohol and drug related offense on or before June 30, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, as verified by DPS, the assessor shall:

(A) ~~provide the participant with a certificate of completion~~verify the participant has completed the assessment to include payment in full;

(B) affix the official ~~embossed assessor seal~~red stamp;

(C) ~~report completion to the Department of Public Safety through ODMHSAS~~provide the participant with a certificate of completion; and

(D) ~~verify the participant has completed the assessment to include payment in full~~report completion to the Department of Public Safety through ODMHSAS.

(10) For those participants whose license was withdrawn due to receiving an alcohol and drug related offense on or after July 1, 2003, and needing to participate in the ADSAC assessment process for license reinstatement, the assessor shall:

(A) provide the participant with a certificate of completion;

(B) affix the official, embossed assessor seal and stamp, with the stamp in red ink; and

(C) report completion to the Department of Public Safety through ODMHSAS;

(D) ~~verify he or she has completed all tasks identified by the assessment and required for license reinstatement,~~

~~(E)~~ verify the participant has completed all recommendations identified through the assessment and required for license reinstatement prior to affixing the official, embossed assessor seal and stamp; and

(~~F~~E) verify the participant has completed the ADSAC assessment to include payment in full.

(11) Those participants whose most recent offense was before September 1, 1993 should be referred to DPS to verify an assessment is not required.

(12) Provide ODMHSAS notification of those participants successfully completing required education and treatment, including the participant's name, address, date of birth and driver's license number through the online data entry system known as ADSAC online, or in a manner prescribed by the Commissioner or designee. This notification shall be submitted to ODMHSAS within seventy-two (72) hours upon verification of successful completion of all requirements;

~~(13) Each assessor and assessment agency shall annually submit to ODMHSAS a written and signed statement verifying that the previously submitted information on the number of assessments conducted, number of participants assessed, and fees paid for assessments conducted for the previous twelve (12) months;~~

(~~14~~13) Certified ADSAC assessors and agencies must provide to a caller adequate information regarding the ADSAC assessment process and scheduling requirements. The phone number published specific for each assessor must be continuously available, either answered in person, answering machine, electronic voice mail, or a professional answering service. Numbers published for the purpose of ADSAC assessment and evaluation advertisement must be answered by individuals appropriately trained in all relevant aspects of 42 CFR, Part 2 and HIPAA regulations;

(~~15~~14) All assessors will complete a minimum of six (6) ADSAC assessments during each twelve (12) month period in order for assessor certification to remain active;

(~~16~~15) Each assessor and program shall maintain an inventory of required and approved instruments sufficient to meet ODMHSAS requirements;

(~~17~~16) Provide each individual assessed with information regarding all assessor certifications and licensures to include; name, phone number and address of the certifying or licensing body. If certified rather than licensed, the name of the licensed individual serving as supervisor with all licensures including; name, phone number and addresses of the licensing bodies pursuant to Oklahoma state statutes. Contact information for ODMHSAS, ADSAC personnel at ODMHSAS shall be included. All information shall be in a form prescribed by the Commissioner of ODMHSAS or designee;

(~~18~~17) Each certified assessor shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least 15 days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to 30 days after a change has occurred;

(~~19~~18) For participants who have a language other than English:

(A) The participant shall be referred to an ADSAC assessor fluent in that language, if such as assessor is available. If no assessor fluent in the language is available then an interpreter shall be present for the entire assessment process; and

(B) If an interpreter is required, the interpreter shall not be younger than eighteen (18) years of age and should not be related to the participant.

(~~20~~19) Provide assessment services only at sites approved by ODMHSAS;

(~~21~~20) Report all data to ODMHSAS within thirty (30) days or as otherwise directed in this Chapter;

(~~22~~21) Make recommendations based on ODMHSAS required assessment instruments;

(~~23~~22) Make all recommendations based on current accepted placement criteria; and

(~~24~~23) Preference in clinical referrals shall be given to institutions and organizations possessing a substance abuse certification from ODMHSAS, if such service is available.

450:22-1-15.1. Fitness of applicants

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as an assessor for evaluations related to driver's license revocation, and to set forth criteria by which the Commissioner or designee may determine the fitness of applicants.

(b) The substantiation of the items below related to the applicant may result in the initiation of suspension or revocation of certification, or denial of, or delay of certification of the applicant. These items include, but are not limited to:

(1) Evidence of the lack of necessary skill and abilities to provide adequate services;

(2) Misrepresentation on the application or any other materials submitted to the ODMHSAS;

(3) A violation of the rules of professional conduct set forth in this Chapter.

(4) Evaluations of supervisors, employers or instructors;

(5) Allegations form other governmental entities;
(6) Findings resulting from investigations prompted by allegations of-participants, peers or the public;
(7) Transcripts or other findings from official court, hearing or investigative procedures;
(8) Any convictions for alcohol and other drug related offenses, violent offenses, or moral turpitude within the last ~~ten (10)~~(5) years; or
(9) Any unpardoned felony convictions within five (5) years; or
(10) The revocation, suspension, reprimand or any other administrative action ordered by another certifying or licensing body may result in the denial, revocation or suspension of assessor certification by ODMHSAS.

(c) ODMHSAS may require explanation of negative references prior to issuance of certification.

(d) Those certified to conduct ADSAC assessments by ODMHSAS shall not perform such assessments when, for any reason, such services are impaired by an inability to perform such services. Assessors shall seek assistance for any problems creating an inability to perform as an assessor, and, if necessary, limit, suspend or terminate the delivery of ADSAC assessment services.

(e) A field examination submitted through questionnaires answered by persons competent to evaluate an assessor's professional competence which may include the submission of such documentary evidence relating to an assessor's experience and competence as required by ODMHSAS may be required.

(f) If in the course of an investigation, ODMHSAS determines that an assessor has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the assessor's certification to conduct ADSAC assessments.

(g) ODMHSAS may require remedial interventions to address any problems or deficiencies identified from this section as a requirement for retaining active certification.

450:22-1-20. Inactive status and closure

(a) An active ADSAC assessor certification may be placed on inactive status by written request:
(1) An inactive certification forfeits all rights and privileges granted by the certification;
(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;
(3) When certification is placed on inactive status, it shall remain inactive for at least twelve (12) months from the date of inactivation;
(4) Active status may be re-established upon ~~payment of a prorated renewal fee and submission of prorated continuing education hours required during the renewal year if there are no other impediments to certification~~written request;
(5) When an ADSAC assessor must cease operation for less than twelve (12) months all ADSAC assessment records must be secured as defined in 450:22-1-8;
(6) During such a temporary closure ADSAC assessment records shall remain accessible as defined in 450:22-1-22;
(7) Participants having received assessments shall be given written notification of the temporary closure with contact information for completing the ADSAC assessment process, in the event all recommendations are completed during the temporary closure; and
(8) ODMHSAS shall be notified in writing within thirty (30) days of any temporary closure of any office providing ADSAC assessments. The written notification shall contain:
(A) The reason for closing;
(B) Contact information for participant assessment records; and
(C) A projected date for resumption of business.

(b) An active ADSAC assessment agency certification may be placed on inactive status by written request:
(1) An inactive certification forfeits all rights and privileges granted by the certification;
(2) When certification is placed on inactive status, the certificate shall be returned to ODMHSAS;
(3) When certification is placed on inactive status, it must remain inactive for a minimum of one (1) year and no more than (3) years from the date of inactivation;
(4) Active status may be re-established upon request;
(5) When an assessment agency must cease operation for less than twelve (12) months, all participant records must be secured as defined in 450:22-1-22 and 450:22-1-25;
(6) During such a temporary closure, participant records shall remain accessible as defined in 450:22-1-22;
(7) Participants having received assessments shall be given written notification of the temporary closure with contact information for completing the ADSAC assessment process, in the event all recommendations are completed during the temporary closure; and
(8) ODMHSAS shall be notified in writing of any permanent closure of any assessment agency providing ADSAC assessments. The written notification shall contain:
(A) The reason for closing; and
(B) Contact information for participant assessment records.

[OAR Docket #16-435; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 24. STANDARDS AND CRITERIA FOR COMPREHENSIVE COMMUNITY ADDICTION RECOVERY CENTERS

[OAR Docket #16-436]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
450:24-1-2. [AMENDED]
Subchapter 3. Required Services
Part 5. Emergency Services
450:24-3-43. [AMENDED]
Part 15. Case Management
450:24-3-144. [AMENDED]
Subchapter 5. Optional Services
Part 19. Gambling Disorder Treatment Services [REVOKED]
450:24-5-162 through 450:24-5-166. [REVOKED]
Subchapter 19. Staff Development
450:24-19-3. [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-415.

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APPROVED BY GOVERNOR'S DECLARATION:
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n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 24 are part of the Department's review of Title 450. Proposed rules remove optional standards and criteria for providing gambling disorder treatment services, since these services will be allowed to be provided by facilities under standard outpatient services utilizing qualified providers without having to obtain the additional optional certification. Rules also revise provider qualifications for Gambling Treatment Professionals.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:24-1-2. Definitions

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

"Ambulatory Detoxification without extended on-site monitoring" means detoxification within an outpatient setting, directed by a physician and has attendant medical personnel including nurses for intoxicated consumers, and consumers withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances require ambulatory detoxification as determined by an examining physician. This corresponds to ASAM Treatment Level: Level I-D Ambulatory detoxification without extended on-site monitoring.

"ASAM criteria" or **"ASAM"** means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Comprehensive Community Addiction Recovery Center" or **"CCARC"** means a facility offering a comprehensive array of community-based substance use disorder treatment services, including but not limited to, outpatient services, Intensive outpatient services, ambulatory detoxification services, emergency care, consultation and education; and , certain services at the option of the center, including but not limited to, prescreening, rehabilitative services, aftercare, training programs, research and evaluation.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance use disorder crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance use disorder treatment services. This service is limited to CCARC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family therapy;
(D) Case management;
(E) Psychosocial rehabilitation; and
(F) Discharge planning.

"Gambling treatment professional" means~~:~~

~~(A)~~ an individual holding a valid NCGC I or II certification~~;~~ or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

~~(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve; or~~

~~(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.~~

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Intensive outpatient services" means an organized, non-residential outpatient treatment services with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week for adults or six (6) to twelve (12) treatment hours per week for children. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the consumer participates in daytime treatment services but goes home at night. This corresponds to ASAM patient Placement Criteria Treatment Level: Level II.1 Intensive outpatient.

"Levels of care" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the services offered. Each treatment option is a level of care.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) allopathic or osteopathic physicians with a current license and board certification in psychiatry

or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensure Candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology;
(B) Social Work (clinical specialty only);
(C) Professional Counselor;
(D) Marriage and Family Therapist;
(E) Behavioral Practitioner; or
(F) Alcohol and Drug Counselor.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CCARC and other providers.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Outpatient services" means an organized, non-residential treatment service in regularly scheduled session intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. This corresponds to ASAM criteria Treatment Level I, Outpatient Treatment. Services can address early intervention needs and increase in frequency and intensity up to 9 treatment hours per week.

"Peer Recovery Support Specialist" or **"PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance use disorder treatment services [43A O.S.§3-302(1)].

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Substance withdrawal" means a state of being in which a group of symptoms of variable clustering and degree of

severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle

SUBCHAPTER 5. OPTIONAL SERVICES

PART 19. GAMBLING DISORDER TREATMENT SERVICES [REVOKED]

450:24-5-162. Gambling Disorder Treatment Services [REVOKED]

~~The purpose of this Part is to set forth, in addition to all other applicable rules, the criteria for CCARCs who opt to provide gambling disorder treatment services. These rules implement 43A O.S. §§ 3-322 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.~~

450:24-5-163. Level of Care [REVOKED]

~~Any CCARC providing gambling disorder treatment services shall do so at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the requirements of this Part.~~

450:24-5-164. Admission criteria [REVOKED]

~~(a) Receipt of gambling disorder treatment services shall be conditioned upon a determination by the gambling disorder treatment professional in partnership with the consumer, and based on the problem gambling issues of the consumer utilizing ASAM criteria.~~

~~(b) Compliance with this Section may be determined by a review of the following:~~

~~(1) Policy and procedures;~~
~~(2) Admission protocols;~~
~~(3) Admission assessment instruments;~~
~~(4) Consumer records;~~
~~(5) Interviews with staff and consumers; and~~
~~(6) Other facility documentation.~~

450:24-5-165. Discharge criteria [REVOKED]

~~(a) Discharge from gambling disorder treatment services shall be determined by the following:~~

~~(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services, utilizing ASAM criteria;~~
~~(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and~~
~~(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.~~

~~(b) Compliance may be determined by a review of the following:~~

~~(1) Policy and procedures;~~
~~(2) Continuing Care Plans;~~
~~(3) Discharge assessments;~~
~~(4) Discharge summaries;~~
~~(5) Progress notes;~~
~~(6) Consumer records;~~
~~(7) Interviews with staff and consumers; and~~
~~(8) Other facility documentation.~~

450:24-5-166. Treatment services [REVOKED]

~~(a) Any CCARC choosing to provide gambling disorder treatment services shall provide, at a minimum, the following:~~

~~(1) **Screening and Assessment.** See Section 24-3-21 for requirements.~~

~~(2) **Service planning and revision.**~~

~~(3) **Individual therapy.** Individual therapy is a face-to-face therapeutic session conducted by a Gambling Treatment Professional (GTP) with one on one interaction between the GTP and a consumer to promote emotional or psychological change to alleviate disorders. Therapy must be goal directed and use a generally accepted approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment, in accordance with an individualized service plan.~~

~~(4) **Group therapy.** Group therapy is a face-to-face therapeutic session with a group of individuals and a GTP using the interaction of the GTP and two or more consumers to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives of the individual customer service plan and use a generally accepted framework for this modality of treatment. This service does not include social skill development or daily living skill activities. Group psychotherapy for adults is limited to eight total consumers. Group size is limited to a total of six consumers for all children. A group may not consist solely of related individuals.~~

~~(5) **Family therapy.** Family therapy is a face-to-face therapeutic session conducted by a GTP with family members/couples conducted in accordance with a documented service plan focusing on treatment family/marital problems and goals. The service must be provided to specifically benefit the consumer as identified in a service plan and use generally accepted treatment methods for this modality of treatment.~~

~~(6) **Case management.**~~

~~(7) **Education and/or educational groups.**~~

~~(8) **Discharge planning.**~~

~~(b) Compliance with this Section may be determined by a review of the following:~~

~~(1) Consumer records;~~

~~(2) Progress notes;~~

~~(3) Interviews with staff; and~~

~~(4) Other facility documentation.~~

SUBCHAPTER 19. STAFF DEVELOPMENT

450:24-19-3. Annually required in-service training for all employees

(a) In-service presentations shall be conducted each calendar year and are required for all employees upon hire and annually thereafter on the following topics:

(1) Fire and safety;

(2) AIDS and HIV precautions and infection control;

(3) Consumer's rights and the constraints of the Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights;

(4) Confidentiality;

(5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115; and

(6) Facility policy and procedures;(7) Cultural Competence;

(8) Co-occurring disorder competency and treatment principles;

(9) Trauma informed; and

(10) Age and developmentally appropriate trainings, where applicable.

(b) All clinical staff shall have non-physical intervention training in techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within three (3) months of being hired with annual updates thereafter.

(c) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. An employee, so designated by the Executive Director, shall not provide direct care services to consumers until completing this training.

(d) The training curriculum for 450:24-19-3 (b) and (c) must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.

(e) Compliance with 450:24-19-3 shall be determined by a review of in-service training records; personnel records; and other supporting written information provided.

[OAR Docket #16-436; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 27. STANDARDS AND CRITERIA FOR MENTAL ILLNESS SERVICE PROGRAMS

[OAR Docket #16-437]

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PROPOSED RULES:
Subchapter 1. General Provisions
450:27-1-2 [AMENDED]
Subchapter 3. Organization Structure and Administrative Operations
Part 3. Human Resources Organization
450:27-3-26 [AMENDED]
450:27-3-27 [NEW]
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450:27-7-24 [AMENDED]
450:27-7-25 [REVOKED]
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450:27-9-5 [AMENDED]

450:27-9-6 [AMENDED]
450:27-9-7 [AMENDED]
450:27-9-11 [AMENDED]
450:27-9-17 [AMENDED]
450:27-9-18 [REVOKED]

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n/a

ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 27 are part of the Department's review of Title 450. The proposed rules update Health Home certification standards in order to clarify inconsistencies. Revisions also add requirements for clinical supervision within facilities certified under this Chapter.

CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:27-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Advanced Practice Registered Nurse or (APRN)" means a registered nurse in good standing with the Oklahoma Board of Nursing, and has acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and has obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advanced Practice Registered Nurse services are limited to the scope of their practice as defined in 59 Okla. Stat. § 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9.

"Behavioral Health Home or BHH" means a specifically organized entity that functions within a currently ODMHSAS certified mental health treatment program organization to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. BHHs ensure comprehensive team-based health care, meeting physical, mental health, and substance use disorder care needs. Health care is delivered utilizing a whole-person, patient-centered, coordinated care model for adults with serious mental illness (SMI) and children with serious emotional disturbance (SED). Care coordination is provided for all aspects of the individual's life and for transitions of care the individual may experience.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Children's Health Home Specialist" means an individual within the children's Behavioral Health Home interdisciplinary team that will provide support, coaching and activities that promote good physical and mental health to individuals, families and groups. The focus of the Children's Health Home Specialist will include nutrition, healthy living habits, exercise, and preventing and/or managing chronic health conditions. Children's Health Home Specialists must be ~~certified~~credentialed by ODMHSAS as a Behavioral Health ~~Case Manager I or II and complete trainings as required by ODMHSAS including but not limited to Behavioral Health Aide and~~ Aide or higher and complete training in Well Power or credentialed as a Wellness Coach through ODMHSAS.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who

are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance abuse symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" or "Incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are missing or considered in to have eloped; neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. An incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted as defined in Title 43A O.S. Section 5-206.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Hospital liaison" means an individual within the Behavioral Health Home interdisciplinary team that works closely with hospital staff to assess the suitability of transition plans for consumers enrolled in a Behavioral Health Home. Hospital Liaisons will also work with other long term, residential facilities to plan for coordination of care during and after the consumer's residential stay. Hospital liaisons must be certified by ODMHSAS as a Behavioral Health Case Manager I or II and complete trainings as required by ODMHSAS.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) practitioners with a license to practice in the state in which services are provided by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology;
(B) Social Work (clinical specialty only);
(C) Professional Counselor;
(D) Marriage and Family Therapist;
(E) Behavioral Practitioner; or
(F) Alcohol and Drug Counselor.

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medically necessary" means health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"Nurse Care manager" means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Primary Care Practitioner (PCP)" means a licensed physician, Advanced Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Recovery Support Specialist" or **"RSS"** means an individual who has completed the ODMHSAS RSS training and has passed the ODMHSAS RSS exam.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Risk Assessment" means a clinical function that aims to determine the nature and severity of the mental health problem, determine which service response would best meet the needs of the consumer, and how urgently the response is required.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse

outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service Intensity" means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"SoonerCare" means Oklahoma's Medicaid program.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Systems of Care values" means a philosophy, which embraces a family-driven, child-centered model of care that integrates and coordinates the efforts of different agencies and providers to individualize care in the least restrictive setting that is clinically appropriate.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Wraparound approach" means a team-based planning and implementation process to improve the lives of children with complex needs and their families by developing individualized plans of care. The key characteristics of the process are that the plan is developed by a family centered team, is individualized based on the strengths and culture of the child and their family, and is driven by needs rather than services.

SUBCHAPTER 3. ORGANIZATION STRUCTURE AND ADMINISTRATIVE OPERATIONS

PART 3. HUMAN RESOURCES ORGANIZATION

450:27-3-26. Annually required in-service training for all employees

(a) The facility shall arrange for and document in-service training for each employee ~~no less frequently than every 12 month~~upon hire and annually therafter on the following topics:

(1) Fire and safety;

(2) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights;

(3) Confidentiality;

(4) Cultural Competence; and

(5) Impact of trauma.

(b) Compliance with 450:27-3-26 shall be determined by a review of in-service training records; personnel records; and other supporting written information provided.

450:27-3-27. Clinical supervision

(a) Clinical supervision is a vital component of the provision of quality treatment. Clinical supervision shall be provided for those delivering direct services and shall be provided by persons knowledgeable of clinical services as determined by the program.

(b) All facilities shall have written policies and procedures, operational methods, and documentation of the provision of clinical supervision for all direct treatment and service staff. These policies shall include, but are not limited to:

(1) Credentials required for the clinical supervisor;

(2) Specific frequency for case reviews with treatment and service providers;

(3) Methods and time frames for supervision of individual, group, and educational treatment services; and

(4) Written policies and procedures defining the program's plan for appropriate counselor-to-consumer ratio, and a plan for how exceptions may be handled.

(c) Ongoing clinical supervision should address:

(1) The appropriateness of treatment selected for the consumer;

(2) Treatment effectiveness as reflected by the consumers meeting their individual goals; and

(3) The provision of feedback that enhances the clinical skills of service providers.

(d) Compliance with this Section may be determined by a review of the following:

(1) Policies and procedures;

(2) Clinical services manuals;

(3) Clinical supervision manuals;

(4) Documentation of clinical supervision;

(5) Personnel records;

(6) Interviews with staff; and

(7) Other facility documentation.

(e) Failure to comply with this Section will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 7. CLINICAL SERVICES

PART 3. ADDITIONAL OR OPTIONAL SERVICES

450:27-7-24. Medication clinic services

(a) If provided, medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.

(b) Medication clinic services shall be co-occurring capable and shall utilize accepted practice guidelines for psychopharmacologic management of co-occurring disorders.

(c) The facility may offer comprehensive medication clinic services to consumers in need of this service, including, but not limited to:

(1) Prescribing or administering medication, including evaluation and assessment of the medication services provided.

(2) Medication orders and administration:

(A) ~~Only licensed~~Licensed staff physicians, medical residents or consultant physicians shall write medication orders and prescriptions. Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.

(B) A list of those physicians authorized to prescribe medications shall be maintained and regularly updated.

(C) Only authorized licensed staff shall administer medications.

(~~C~~D) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.

(~~D~~E) If physician's assistants and/or nurse practitioners write medication orders, or prescriptions those functions are performed consistent with state and federal law.

(d) The facility shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.

(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.

(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.

(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, administered, and stored.

(4) A qualified physician shall supervise the preparation and stock of an emergency kit which is readily available, but accessible only to physician, nursing and pharmacy staff. Documentation by the qualified physician shall clearly indicate that the supervision has been performed.

(e) The facility shall make available access to pharmacy services to meet consumers' psychiatric needs. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.

(~~d~~f) Compliance with 450:27-7-24 shall be determined by on-site observation and a review of the following: clinical records, written policy and procedures, written agreements for pharmacy services, on-site observation of in-house pharmacy, State of Oklahoma pharmacy license, and roster of licensed, credentialed staff.

(g) Failure to comply with 450:27-7-24(e) will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:27-7-25. Medication clinic, medication monitoring [REVOKED]

~~(a) If medication services are provided, medication administration, storage and control, and consumer reactions shall be regularly monitored.~~

~~(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.~~

~~(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.~~

~~(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.~~

~~(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, administered, and stored.~~

~~(c) Compliance with 450:27-7-25 shall be determined by on-site observation and a review of the following: written policy and procedures, clinical records, and PI records.~~

450:27-7-26. Pharmacy services [REVOKED]

~~(a) If medication services are provided, the facility shall make available access to pharmacy services to meet consumers' psychiatric needs. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.~~

~~(b) Compliance with 450:27-7-26 may be determined by a review of the following: clinical records; written agreements for pharmacy services; on-site observation of in-house pharmacy; and State of Oklahoma pharmacy license.~~

~~(c) Failure to comply with 450:27-7-26 will result in the initiation of procedures to deny, suspend and/or revoke certification.~~

SUBCHAPTER 9. BEHAVIORAL HEALTH HOME

450:27-9-5. Treatment team; general requirements

(a) The BHH must designate an interdisciplinary treatment team that is responsible, with each consumer's input and guidance, to direct, coordinate, and manage the care and services to be provided or arranged for by the BHH.

(b) The interdisciplinary team must~~, based on the comprehensive assessment,~~ identify for each consumer a specific licensed behavioral health professional (LBHP) or licensure candidate ~~on the interdisciplinary treatment team~~ to lead the process of the initial comprehensive assessment and plan and to provide therapy services if indicated on the integrated plan. This will ensure that each consumer's needs are assessed, and that the active treatment plan is implemented as indicated.

(c) Compliance with this Section will be determined by on-site observation, review of organizational documents, signed agreements, activity reports, and clinical records.

450:27-9-6. Treatment team; adult team

(a) Each BHH team serving adults shall include, the following positions, unless otherwise arranged as permitted in (b) below:

(1) Health Home Director;
(2) Nurse Care Manager;
(3) Consulting Primary Care Physician, Advanced Practice Registered Nurse, or Physician Assistant;
(4) Licensed Psychiatric Consultant;
(5) License Behavioral Health Professional;
(6) Certified Behavioral Health Case Manager I or II;
(7) Hospital Liaison/Health Home Specialist; and
(8) Wellness Coach~~/Certified Peer Support Specialist~~credentialed through ODMHSAS.

(b) Variations from the above staff pattern on a continuous basis, must be approved in advanced by the ODMHSAS Commissioner or a designee.

(c) If the health team experiences difficulty in recruiting staff to fill any of the above positions, a recruitment and contingency plan to maintain essential services, will be submitted to the ODMHSAS Director of Provider Certification for approval.

(d) The facility must have written policies and procedures defining the program's plan for staff-to-consumer ratio for each adult BHH team and a plan for how exceptions will be handled.

(e) Staffing ratios must be regularly monitored and evaluated within the facilities performance improvement activities.

(f) Compliance with this Section will be determined by on-site observation, review of organizational documents, personnel records, staffing schedules, and clinical records.

450:27-9-7. Treatment team; children and adolescent team

(a) Each BHH team serving children and adolescents shall include, the following positions, unless otherwise arranged as permitted in (b) below:

(1) Care Coordinator;
(2) ~~Project~~Health Home Director;
(3) Licensed Psychiatric Consultant;
(4) Licensed Nurse Care Manager (RN or LPN);
(5) Peer to Peer Family /Youth Support Provider;
(6) Children's Health Home Specialist; and
(7) Consulting Primary Care Practitioner.

(b) Variations from the above staff pattern on a continuous basis, must be approved in advanced by the ODMHSAS Commissioner or a designee.

(c) If the health team experiences difficulty in recruiting staff to fill any of the above positions, a recruitment and contingency plan to maintain essential services, will be submitted to the ODMHSAS Director of Provider Certification for approval.

(d) The facility must have written policies and procedures defining the program's plan for staff-to-consumer ratio for each child and/or adolescent BHH team and a plan for how exceptions will be handled.

(e) Staffing ratios must be regularly monitored and evaluated within the facilities performance improvement activities.

(f) Compliance with this Section will be determined by on-site observation, review of organizational documents, personnel records, staffing schedules, and clinical records.

450:27-9-11. Initial assessment

(a) A Licensed Behavioral Health Professional (LBHP) or Licensure Candidate, acting within his or her state scope of practice requirements, must complete the initial assessment for health home services in accordance with the standard in OAC 450:27-7-3 for consumers who have not been assessed by the facility within the past 6 months.

(b) ~~The~~In addition to the items required in 27-7-3, the initial assessment for Health Home services must include at a minimum, the following:

(1) The admitting diagnosis as well as other diagnoses;
(2) The source of referral;
(3) The reason for admission as well as stated by the client or other individuals who are significantly involved; and
(4) A list of current prescriptions and over-the counter medications as well as other substances the client may be taking.

(c) The BHH should provide access to an appropriate healthcare professional and a health screening within 72 hours of placement for children entering foster care.

(d) Compliance with this Section will be determined by on-site observation, review of organizational documents, program descriptions, outcome monitoring and other performance improvement activity reports, and clinical records.

450:27-9-17. Behavioral Health Home medication monitoring

(a) When medication services are provided as a component of the BHH services, medication administration, storage and control, and consumer reactions shall be regularly monitored.

(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.

(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.

(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.

(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, administered, and stored.

(c) The facility shall make available access to pharmacy services to meet consumers' pharmacological needs that are addressed by the BHH physicians and other BHH licensed prescribers. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.

(~~c~~d) Compliance with this Section will be determined by on-site observation and a review of the following: written policy and procedures, clinical records, written agreements for pharmacy services, State of Oklahoma pharmacy license and PI records.

450:27-9-18. Behavioral Health Home pharmacy services [REVOKED]

~~(a) When medication services are provided as a component of the BHH services, the facility shall make available access to pharmacy services to meet consumers' pharmacological needs that are addressed by the BHH physicians and other BHH licensed prescribers. Provision of services may be made through agreement with another program through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.~~

~~(b) Compliance with this Section may be determined by a review of the following: Clinical records; written agreements for pharmacy services; on site observation of in house pharmacy; and State of Oklahoma pharmacy license.~~

[OAR Docket #16-437; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 50. STANDARDS AND CRITERIA FOR CERTIFIED BEHAVIORAL HEALTH CASE MANAGERS

[OAR Docket #16-438]

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n/a
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 50 are part of the Department's review of Title 450. The proposed rules require that applicants seeking behavioral health case management certification submit a criminal background report from the Oklahoma State Bureau of Investigation.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:50-1-2. Definitions

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

"Board" means the State Board of Mental Health and Substance Abuse Services.

"Case management" means the application of principles and practices of linking, advocacy and referral in partnership with a consumer to support the consumer in self-sufficiency and community tenure.

"Certified Behavioral Health Case Manager I (CM I)" means any person who is certified by the Department of Mental Health and Substance Abuse Services (ODMHSAS) to offer behavioral health case management services as an employee of a mental health facility or drug or alcohol treatment facility that is operated ~~or certified~~ by the Department or contracts with the State to provide behavioral health services.

"Certified Behavioral Health Case Manager II (CM II)" means any person who is certified by ODMHSAS to offer behavioral health case management services and behavioral health rehabilitation services (BHR) as an employee of a mental health facility or drug or alcohol treatment facility that is operated ~~or certified~~ by the Department or contracts with the State to provide behavioral health services.

"Commissioner" means the Commissioner of Mental Health and Substance Abuse Services.

"Consumer" means an individual who is receiving or has received services (evaluation or treatment) from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in Title 450, Chapters 16, 17, 18, 19, 23, and 24 of the Oklahoma Administrative Code as client(s) or patient(s) or resident(s) or a combination thereof.

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

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103 (11).

"Web-Based Competency Exam" as prescribed by the Department is a competency exam certain individuals must pass to become certified as a Behavioral Health Case Manager.

"36-Months Experience" means twenty (20) or more hours work or volunteer experience per week over the course of time indicated with persons living with mental illness and/or substance abuse.

SUBCHAPTER 3. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION APPLICATION

450:50-3-2. Applications for certification

(a) Applications for certification as a Certified Behavioral Health Case Manager shall be submitted electronically to the Department on a form and in a manner prescribed by the Commissioner or designee.

(b) Depending on the type of CM certification that the applicant is applying for; the application shall include the following items:

(1) CM II must include (A), (B), (C) and ~~(E)~~(F) and ~~one of (C)~~either (D) or ~~(D)~~(E) as applicable:

(A) Application form completed in full according to its instructions.

(B) Official college or university transcript(s) or an electronic copy submitted to the Department by the college or university.

(C) Oklahoma State Bureau of Investigation criminal history report.

(~~C~~D) Documentation of current licensure as a registered nurse in the State of Oklahoma.

(~~D~~E) Current certification or Children's Certificate in Psychiatric Rehabilitation from USPRA.

(~~E~~F) Fees.

(2) CM I must include (A), ~~(D)~~(B), (E) and either ~~(B)~~(C) or ~~(C)~~(D):

(A) Application form completed in full according to its instructions.

(B) Oklahoma State Bureau of Investigation criminal history report.

(~~B~~C) Official College or university transcript(s) or an electronic copy submitted to the Department by the college or university.

(~~C~~D) Official high school transcript(s) or an electronic copy submitted to the Department by the high school and verification of work experience or volunteer experience.

(i) Verification shall only be submitted using a Department approved form.

(ii) Verification form(s) must be sent to the Department directly from the employer or volunteer agency.

(iii) Volunteer work must be time spent directly with persons who have a mental illness, co-occurring or substance abuse disorder.

(~~D~~E) Fees.

(c) An application must be submitted and approved by the Department prior to attending any web-based or face-to-face Certified Behavioral Health Case Manager certification training.

(d) Applications shall only be valid for a period up to six (6) months from the date of application.

(e) Applicants shall have no violations of moral turpitude or misconduct as set forth in these rules during time of application process.

(f) An applicant, who meets the requirements for certification and otherwise complied with this Chapter, shall be eligible for certification.

450:50-3-4. Fees

(a) **Application Fee.** Twenty-five dollars ($25.00) shall be submitted with the application form.

(b) **Renewal Fee.** Fifteen dollars ($15.00) shall be submitted with the renewal application and required continuing education documentation.

(c) **Late Renewal Fee.** An additional twenty-five dollars ($25.00) shall be included with the Renewal Fee ($15.00), renewal application, and required continuing education documentation if the certification is renewed after the ~~December 31~~June 30 deadline.

~~(d) **Replacement Fee.** Ten dollars ($10.00) shall be submitted to replace a certificate that has been lost, damaged or in need of revision.~~

[OAR Docket #16-438; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 55. STANDARDS AND CRITERIA FOR PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT

[OAR Docket #16-439]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Staff Development and Training
450:55-17-3 [AMENDED]
Subchapter 25. Behavioral Health Home
450:55-25-5 [AMENDED]
450:55-25-6 [AMENDED]
450:55-25-11 [AMENDED]
450:55-25-16 [AMENDED]
450:55-25-17 [REVOKED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306 and 3-319.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
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September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 55 are part of the Department's review of Title 450. The proposed rules update Health Home certification standards in order to clarify inconsistencies and update provider qualifications.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 17. STAFF DEVELOPMENT AND TRAINING

450:55-17-3. In-service

(a) In-service presentations shall be conducted yearly and shall be required for all employees upon hire and annually thereafter on the following topics:

(1) Fire and safety;
(2) Infection Control and universal precautions;
(3) Techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention;
(4) Consumer's rights and the constraints of the Mental Health Consumer's Bill of Rights;
(5) Confidentiality;
(6) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101 et seq. and Protective Services for the Elderly and for Incapacitated Adults Act, 43A O.S. §§ 10-101 et seq;
(7) Facility policy and procedures;
(8) Cultural competency;
(9) Co-occurring disorder competency and treatment principles;
(10) Trauma informed; and
(11) Age and developmentally appropriate trainings, where applicable.

(b) Staff providing clinical services shall have a current cardiopulmonary resuscitation certification.

(c) Compliance with 450:55-17-3 shall be determined by a review of in-service training records, personnel records and other supporting written information provided.

SUBCHAPTER 25. BEHAVIORAL HEALTH HOME

450:55-25-5. Treatment team; general requirements

(a) The BHH must designate an interdisciplinary treatment team that is responsible, with each consumer's input and guidance, to direct, coordinate, and manage the care and services to be provided or arranged for by the BHH.

(b) The interdisciplinary team must~~, based on the comprehensive assessment,~~ identify for each consumer a specific licensed behavioral health professional (LBHP) ~~on the interdisciplinary treatment team~~ to lead the process of the initial ~~comprehensive~~ assessment and plan and to provide therapy services if indicated on the integrated plan. This will ensure that each consumer's needs are assessed, and that the active treatment plan is implemented as indicated.

(c) Compliance with this Section will be determined by on-site observation, review of organizational documents, signed agreements, activity reports, and clinical records.

450:55-25-6. Treatment team composition

(a) Each BHH team serving adults shall include, the following positions, unless otherwise arranged as permitted in (b) below:

(1) Health Home Director;
(2) Nurse Care Manager;
(3) Consulting Primary Care Physician, Advanced Practice Registered Nurse; or Physician Assistant;
(4) Licensed Psychiatric Consultant;
(5) License Behavioral Health Professional;
(6) Certified Behavioral Health Case Manager I or II;
(7) Hospital Liaison/Health Home Specialist; and
(8) Wellness Coach~~/Certified Peer Support Specialist~~ credentialed through ODMHSAS.

(b) Variations from the above staff pattern on a continuous basis, must be approved in advanced by the ODMHSAS Commissioner or a designee.

(c) If the health team experiences difficulty in recruiting staff to fill any of the above positions, a recruitment and contingency plan to maintain essential services, will be submitted to the ODMHSAS Director of Provider Certification for approval.

(d) The facility must have written policies and procedures defining the program's plan for staff-to-consumer ratio for each adult BHH team and a plan for how exceptions will be handled.

(e) Staffing ratios must be regularly monitored and evaluated within the facilities performance improvement activities.

(f) Compliance with this Section will be determined by on-site observation, review of organizational documents, personnel records, staffing schedules, and clinical records.

450:55-25-11. Initial assessment

(a) A Licensed Behavioral Health Professional (LBHP), acting within his or her state scope of practice requirements, must complete the initial assessment for health home services in accordance with the standard in OAC 450:55-5-4 for consumers who have not been assessed by the facility within the past 6 months.

(b) ~~The~~In addition to the items required in 55-5-4, the initial assessment for health home services must include at a minimum, the following:
(1) The admitting diagnosis as well as other diagnoses;
(2) The source of referral;
(3) The reason for admission as well as stated by the client or other individuals who are significantly involved; and
(4) A list of current prescriptions and over-the counter medications as well as other substances the client may be taking.

(c) Compliance with this Section will be determined by on-site observation, review of organizational documents, program descriptions, outcome monitoring and other performance improvement activity reports, and clinical records.

450:55-25-16. Behavioral Health Home medication monitoring

(a) When medication services are provided as a component of the BHH services, medication administration, storage and control, and consumer reactions shall be regularly monitored.

(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.
(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.
(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.
(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, administered, and stored.

(c) The facility shall make available access to pharmacy services to meet consumers' pharmacological needs that are addressed by the BHH physicians and other BHH licensed prescribers. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.

(~~c~~d) Compliance with this Section will be determined by on-site observation and a review of the following: written policy and procedures, clinical records, written agreements for pharmacy services, State of Oklahoma pharmacy license and PI records.

450:55-25-17. Behavioral Health Home pharmacy services [REVOKED]

~~(a) When medication services are provided as a component of the BHH services, the facility shall make available access to pharmacy services to meet consumers' pharmacological needs that are addressed by the BHH physicians and other BHH licensed prescribers. Provision of services may be made through agreement with another program through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.~~

~~(b) Compliance with this Section may be determined by a review of the following: Clinical records; written agreements for pharmacy services; on-site observation of in-house pharmacy; and State of Oklahoma pharmacy license.~~

[OAR Docket #16-439; filed 6-14-16]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 65. STANDARDS AND CRITERIA FOR GAMBLING TREATMENT PROGRAMS

[OAR Docket #16-440]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:65-1-2 [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-108 and 2-109.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 65 are part of the Department's review of Title 450. Proposed rules revise provider qualifications for Gambling Treatment Professionals.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

450:65-1-2. Definitions

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

"Admission" means the acceptance of a consumer by a treatment program.

"Admission criteria" means those criteria which shall be met for admission of a consumer to gambling treatment.

"Assessment" means those procedures by which a gambling treatment program provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"Case management" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a problem gambling disorder.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

"Community education, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on problem gambling and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Consumer" means an individual, adult or adolescent, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19, 23, and 65 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary treatment services to ongoing recovery.

"Contact" means any encounter with a consumer who is inquiring about or seeking services.

"Contract" means a document adopted by the governing authority of an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and safety aspects of mental health, problem gambling, and substance abuse related crisis. These unscheduled face-to-face interventions are in response to emergencies to resolve acute emotional and physical dysfunction, secure appropriate placement in the least restrictive setting, provide crisis resolution, and stabilize functioning.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a treatment facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure

of information; damage to or theft of property belonging to a consumer or a treatment facility; other unexpected occurrences or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communication, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

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

"Diagnosis" means the determination of a disorder as defined by current DSM criteria.

"Discharge criteria" means general guidelines to inform the judgment of the gambling treatment professional which shall be considered in order for the consumer to be appropriately discharged from a treatment program.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

"Discharge summary" means a clinical document in the gambling treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to community services.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with CGAT standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, treatment records, policies, procedures, and announcements.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning gambling issues and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitudes or behaviors which may stimulate social action or community support of the program and the consumers.

"Educational group" means groups in which information focuses on topics that impact a consumer's recovery from problem and pathological gambling. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, relapse prevention, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate educational groups.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family therapy;
(D) Case management;
(E) Discharge planning.

"Gambling treatment professional" means~~:~~

~~(A)~~ an individual holding a valid NCGC I or II certification~~;~~ or has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve months; and is either a Licensed Behavioral Health Professional or Licensure Candidate.

~~(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of ten hours of problem gambling specific continuing education every twelve; or~~

~~(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.~~

"Gambling related disorders/problems" means gambling related issues or problems which impact the normal functioning of an individual.

"Goals" means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumer's treatment goals and objectives, and does not include social or daily skill development as described in educational group counseling.

"Individual therapy" means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a gambling treatment professional

with one consumer to promote positive emotional or behavioral change.

"Intake" means the overall process by which information is collected to determine the needs of the consumer.

"Intervention" means a process or technique intended to facilitate behavior change.

"Levels of care" means the different options for treatment that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed Alcohol/Drug Abuse Counselor" or **"LADC"** means an individual licensed to provide substance abuse counseling pursuant to Title 59 O.S., Chapter 43B, Licensed Alcohol and Drug Counselors Act.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-1-3(11).

"Linkage" refers to the communication and coordination with consumers and other service providers to assure timely and appropriate referrals between the CGAT program and other providers.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of problem and pathological gambling, and other mental disorders including substance abuse.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care that results or may result in physical or mental injury to a consumer.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

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

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Pathological gambling diagnosis" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits, as defined by the most recent edition of the DSM.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials and training information.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of gambling treatment services.

"Procedures" means the methods by which policies are implemented.

"Problem Gambling" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits as defined by the most recent edition of the DSM.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Program effectiveness-outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

"Progress notes" mean a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual or clinical team delivering the gambling treatment services.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Safety Officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further assessment for problem or pathological gambling.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need

for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Staff privileging" means an organized method for CGAT facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Treatment planning" means the process by which a gambling treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Treatment session-outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Update" means a dated and signed review of a report, plan or document with or without revision.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

"Walk through" means an exercise in which staff members of a facility walk through the CGAT program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

[OAR Docket #16-440; filed 6-14-16]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #16-418]

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PERMANENT final adoption
RULES:
Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2. [AMENDED]
485:10-3-5. [AMENDED]
485:10-3-6. [AMENDED]
Subchapter 5. Minimum Standards for Approved Nursing Education Programs
485:10-5-2. [AMENDED]
485:10-5-3.2. [AMENDED]
485:10-5-4. [AMENDED]
485:10-5-4.1. [AMENDED]
485:10-5-5. [AMENDED]
485:10-5-5.2. [AMENDED]
485:10-5-6. [AMENDED]
485:10-5-7. [AMENDED]
485:10-5-8. [AMENDED]
485:10-5-10. [AMENDED]
485:10-5-12. [AMENDED]
Subchapter 6. Minimum Standards for Approved Advanced Practice Registered Nursing (APRN) Education Programs (Effective January 1, 2016)
485:10-6-2. [AMENDED]
Subchapter 12. Corrective Action [NEW]
485:10-12-1. Purpose [NEW]
485:10-12-2. Definitions [NEW]
485:10-12-3. Imposition of Corrective Action [NEW]
485:10-12-4. Corrective Action Procedure [NEW]
Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse
485:10-15-4. [AMENDED]
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Registered Nurses
485:10-16-7. [AMENDED]
AUTHORITY:
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ANALYSIS:
Subchapters 3 and 5 reflect amendments and new language specific to regulations for approved nursing education programs and minimum standards for approved nursing education programs. Changes noted reflect the work of a task force consisting of Board staff, administrators and faculty of board-approved nursing education programs, and representatives of Oklahoma State Regents for Higher Education and Oklahoma Career and Technology Education. Over a period of twenty-eight months, the task force reviewed

the National Council State Boards of Nursing Model Rules, the national nursing education accreditation standards from the Commission on Collegiate Nursing Education and Accreditation Commission for Education in Nursing to identify needed changes leading to "right touch" regulation ensuring protection of the public and safeguarding of the preparation of nursing students. In consideration of efficient and effective use of resources, the amended and new language allows Board staff to accept the accreditation report in consideration of continuing nursing education program approval.

Effective January 1, 2016, by statute and current rule requirements, advanced practice registered nursing education programs in Oklahoma must meet identified standards to be approved programs, which include nursing faculty requirements. Currently, not all faculty of the advanced practice registered nursing education programs meet the nursing faculty qualifications in the Rules. Revisions to 485:10-6-2(4)(D) will allow any person employed in an advanced practice registered nursing education program as a program administrator, lead faculty and/or faculty member on December 31, 2015, to be deemed as meeting the educational and clinical experience qualifications. Retention of faculty in nursing education programs impacts public health, safety and welfare by providing adequate number of faculty to teach future health care providers. Limited number of faculty correlates to limited health care provider graduates, which further decreases access to care in Oklahoma.

Subchapter 12 reflects new language for promulgated rules specific to a new section of law [59 O.S. §567.8a] effective November 1, 2015. The new law grants the Board additional authority to dispose of certain violations of the Oklahoma Nursing Practice Act and Rules in an entirely new manner and directs the Board to promulgate rules to carry out the new law. The proposed rules: 1) define corrective action as remedial education and/or an administrative penalty imposed for a violation of the Oklahoma Nursing Practice Act and/or Rules, and make clear that a corrective action is not a disciplinary or negative action; 2) state what conduct may warrant a corrective action and exclude certain acts from eligibility for corrective action; 3) establish a maximum limit of five hundred dollars ($500.00) per violation for the administrative penalty; 4) establish the procedure for issuing a corrective action; and 5) state the consequences of failure to comply with the notice procedures and failure to fulfill the substantive requirements of a person's corrective action.

New language in OAC 485:10-15-4(c)(5)(D) aligns with reinstatement rules, OAC 485:10-15-5(b)(4)(D), and inactive status rules, OAC 485:10-15-5(c)(5)(D), allowing the endorsement applicant to demonstrate continued qualifications for practice through the submission of evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board.

OAC 485:10-16-7(a)(3) and OAC 485:10-16-7(b)(4) are deleted as the requirement exceeds those for applicants endorsing prescriptive authority into Oklahoma.

The agency carefully considered each of the proposed rules to ensure there were no less costly, non-regulatory, or less intrusive methods to implement the statutory requirements and meet the agency's mission of protection of the public. It was determined that each of the rules revisions provides the most effective and fiscally-responsible method for achieving the purpose.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. REGULATIONS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-3-2. Establishment of new nursing education programs

(a) **Step I. Initial application.**

(1) An institution wishing to establish a new nursing education program shall advise the Board of its intent in writing, and shall seek Board consultation in the initial planning.

(2) The institution shall submit the Step I Initial Application to the Board office at least eight weeks prior to a regularly-scheduled Board meeting, which provides the following information for the Board's consideration:

(A) mission and organization of the educational institution;

(B) accreditation status of the educational institution;

(C) type of nursing program to be established;

(D) relationship of nursing program to the educational institution;

(E) documentation of the rationale for the establishment of the nursing program in Oklahoma;

(F) tentative time-table for program development and implementation;

(G) source of potential qualified Nurse Administrator and faculty, with projected times of employment;

(H) tentative budget plans including evidence of financial resources adequate for developing, implementing, and continuing the nursing program;

(I) source of anticipated student population;

(J) description of support staff for the proposed program;

(K) description of physical facilities;

(L) description of available clinical resources with letters from clinical resources supporting development of a new program in nursing.

(3) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer educational programs in Oklahoma. Regional accreditation is recommended for institutions offering programs in nursing education.

(4) The Board shall advise the institution in writing of its decision to:

(A) approve proceeding with development of the program-Step II; or

(B) defer approval pending a visit to the institution and/or receipt of further information; or

(C) deny approval specifying reasons for denial.

(5) The application is limited to fifteen (15), single-sided, double-spaced pages.

(b) **Step II.Application for Provisional Approval.**

(1) The institution shall employ a qualified Nurse Administrator ensuring adequate time is provided to develop Step II. A consultative visit will be conducted by Board staff at least one month prior to submission of the Step II application. A report of the findings from this visit will be submitted to the Board with the Step II application.

(2) The Nurse Administrator shall prepare the following materials following the Guidelines for Provisional Approval for the Board's consideration:

(A) philosophy, program and course objectives;

(B) curriculum plan;

(C) policy statements;

(D) survey of clinical facilities, with evidence that a sufficient amount and variety of clinical experience is available to support an additional nursing education program in the service area;

(E) faculty qualifications, criteria and job descriptions;

(F) budget plan projected for a three (3) year period;

(G) learning resources; and

(H) institutional and program organizational plans.

(3) At least four months prior to the anticipated admission of students and at least eight weeks prior to a regularly-scheduled Board meeting, the Nurse Administrator shall submit the "Application for Provisional Approval" for Board review.

(4) Nursing education and institutional representatives may be present during the Board meeting. The Board shall advise the institution in writing of its decision to:

(A) grant Provisional Approval, authorizing the institution to proceed with implementation of the nursing education program and admission of students; or

(B) defer Provisional Approval and program implementation pending further development; or

(C) deny Provisional Approval.

(5) The program cannot admit students until Provisional Approval is granted.

(6) Faculty qualification forms must be submitted to the Board and qualified faculty employed at least thirty days prior to the admission of students.

(7) Progress reports shall be made by the Nurse Administrator as requested by the Board while on Provisional Approval.

(8) The application is limited to fifty (50), single-sided, double-spaced pages.

485:10-3-5. Reports to the Board

The Board shall take action on all reports as appropriate.

(1) **Faculty qualification report.**

(A) A ~~faculty~~ Faculty~~qualification~~ Qualification ~~record~~ Record shall be submitted for all instructional staff (full-time, part-time, classroom, or clinical), and shall include educational preparation and employment experience.

(B) The ~~faculty~~ Faculty~~qualification~~ Qualification ~~record~~ Record ~~shall~~ must be submitted to the Board office on a form provided by the Board within two weeks ~~following the~~of day of appointment by the Nurse Administrator ~~on a form provided by the Board~~, a change in title or status of position, and any time that an advanced degree is attained.

(2) **Enrollment and annual reports.** Enrollment and annual reports shall be submitted in formats requested by the Board.

(3) **Special reports.** Special reports to the Board shall include but not be limited to:

(A) ~~notifying~~notification in writing of administrative changes relating to and affecting the program within two weeks of the change, to include a change in Nurse Administrator;

(B) ~~requesting~~requests in writing to obtain approval prior to implementation for:

(i) major curriculum changes that alter the length of the program, substantially change the objectives, reorganize the course offerings, or reflect a significant philosophical or conceptual shift;

(ii) extended, distance learning, or off-campus offerings, when any nursing course is offered;

(iii) a significant change in instructional format;

(iv) a pilot or experimental program.

(4) **Pass Rate Reports.** Pass Rate Reports are required when the first-time NCLEX writer pass rate falls ten (10) percentage points or more below the national average and at least ten candidates wrote the examination (based on a calendar year.)

(5) **Completion Rate Reports.** A completion rate report is required when the program completion rate is less than 70% for the most recent calendar year. Program completion rate shall be calculated as 200% of the program length as defined by selective admission to the nursing program's first nursing course. Admission is defined as the grade of the first nursing course that is transcripted. Individual exceptions to the calculation of completion rate include death, military, and peace corp.

(6) All reports are limited to ten (10), single-sided, double-spaced pages.

485:10-3-6. Nursing education program visits

(a) **Survey visit.**

(1) Each nursing education program shall be surveyed:

(A) prior to receiving Full Approval;

(B) within three (3) years after receiving initial Full Approval; and

(C) at least every five (5) years thereafter unless ~~otherwise notified~~the program has current accreditation by a national nursing accrediting agency recognized by the United States Department of Education.

(D) Special and focused survey visits may be directed by the Board.

(2) A self evaluation report shall be completed by the nursing education program and submitted with the applicable fee thirty days prior to the survey visit.

(3) A draft of the survey visit report shall be available to the nursing education program for additions and corrections.

(4) The final report of the survey visit including commendations, recommendations and the decision of the Board shall be provided to the institution.

(b) **Programs with current accreditation by a national nursing accrediting agency recognized by the United States Department of Education.** Nursing education programs with full approval status will be periodically evaluated for continuing approval by the Board.

(1) The nurse administrator of the program shall submit a copy of the notification of accreditation status to the Board within two weeks of receipt, accompanied by the program's accreditation report, supporting documentation, follow-up and/or interim reports.

(2) The Board shall regularly review and analyze program performance reports submitted by the nursing education program including, but not limited to:

(A) Any program challenges or improvements identified by ongoing program improvement review;

(B) Annual reports;

(C) Follow-up or interim reports to national nursing accrediting bodies;

(D) Student retention, attrition, and on-time program completion rates;

(E) Adequate type and number of faculty;

(F) Faculty retention;

(G) Adequate laboratory and clinical learning experiences;

(H) Trended data on NCLEX pass rates and completion rates;

(I) Performance improvement initiatives related to program outcomes; and

(J) Program complaints/grievance review and resolution.

(3) Additional reports or survey visits may be directed by the Board, if the program is not in compliance with the minimum standards for nursing education programs or other sources of evidence regarding achievement of program outcomes.

(~~b~~c) **Consultation visit.** Consultation visits are available to the nursing education programs upon written request giving the purpose for the visit and are mandatory as indicated in 485:10-3-2. (b)(1)~~(b 1)~~.

SUBCHAPTER 5. MINIMUM STANDARDS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-5-2. Administration and organization

(a) The nursing education program shall be an integral part of an educational institution authorized by the state to confer credentials in nursing. ~~Regional and national accreditation are desirable.~~An accredited nursing education program shall be an integral part of a governing academic institution that is accredited by an accrediting agency that is recognized by the U.S. Department of Education. The nursing education program shall provide evidence of current accreditation by a national nursing accrediting agency recognized by the United States Department of Education or be approved by the Board as stated in OAC 485:10-3-1.

(b) The nursing education program shall have comparable status with other programs in the institution and relationships shall be clearly delineated.

(c) The nursing education program shall be organized with the lines of authority, responsibility, and channels of communication clearly defined.

(d) Organization of the nursing education program shall assure faculty involvement in determining nursing program policies and procedures and faculty responsibility for planning, implementing, and evaluating the curriculum.

(e) Nursing education program policies and procedures shall be in written form, congruent with those of the controlling institution, and shall be reviewed periodically.

(f) The mission and philosophy of the nursing education program shall be consistent with the controlling institution's mission and philosophy and with the law governing the practice of nursing.

485:10-5-3.2. Nursing administrator for nursing education programs

(a) The nursing education program leading to registered nurse licensure shall be administered by a Registered Nurse currently licensed in Oklahoma with the following qualifications:

(1) a minimum of a ~~master's~~graduate degree in nursing, preferably an earned doctorate from a regionally accredited institution;

(2) present evidence of ~~current practice with~~ a minimum of two (2) years full-time equivalent practice as a Registered Nurse in a clinical setting preceding the first date of first employment as a nursing faculty member, PROVIDED: any person employed in the administrator position on September 1, 2016, is deemed to meet this requirement; and

(3) one year teaching experience as a full-time nursing faculty member in a nursing education program leading to registered nurse licensure.

(b) The administrator of the nursing education program, with institutional input, shall have the authority and responsibility for:

(1) the administration of the nursing program;

(2) preparation and administration of the budget for the nursing program;

(3) implementation of faculty development and performance review;

(4) recommendation of qualified faculty for appointment, promotion, tenure (if applicable), and retention;

(5) notification to the Board of faculty appointments, changes in the program or its administration, and reports as directed by the Board.

(c) If the Nurse Administrator has teaching or other responsibilities, adequate time will be provided to fulfill administrative duties for the nursing education program.

(d) An acting Nurse Administrator must meet the qualifications of the role of Nurse Administrator and may be appointed, after Board approval, to fill the position of the Nurse Administrator, for a period of time not to exceed one (1) calendar year.

485:10-5-4. Resources, facilities, and services

~~(a) The nursing education program shall receive adequate financial support for faculty, other necessary personnel, equipment, supplies, learning resources, and services, in accord with~~

~~the program needs~~The following items shall be adequate to meet the nursing education program outcomes~~.~~;

(1) Financial support with a plan for sustainability for faculty;

(2) Other necessary personnel, equipment, supplies, learning resources and services necessary to fulfill the program mission, goals and expected outcomes. Adequacy of resources is reviewed periodically and modified as needed, as defined in the systematic program evaluation plan.

(3) Academic support services are sufficient to ensure program quality and are evaluated on a regular basis to meet program and student needs.

~~(b) Sufficient secretarial and related clerical services shall be provided to ensure appropriate use of faculty time and talents.~~

(~~c~~4) Adequate facilities, including classrooms, conference rooms, clinical skills laboratories, simulation laboratories and offices shall be available to meet the needs of the nursing education program.

(~~d~~5) Library space shall be adequate for size of nursing education program~~; and holdings shall be current, appropriate and adequate for the type of nursing education program, accessible to students and faculty, and provisions made for regular and current acquisitions to holdings~~.

(6) Learning resources and technology are selected with faculty input and are comprehensive, current, and accessible.

(~~e~~7) Clinical skills laboratory equipment and supplies ~~should be up to date~~are appropriate to current practice, accessible to students and faculty, and appropriate for the level of nursing education, so that students will have adequate opportunity to practice psychomotor skills.

~~(f) Current and adequate audiovisual and computer assisted instructional resources shall be available to assist students to meet their learning objectives.~~

485:10-5-4.1. Clinical learning experiences

(a) An adequate amount and variety of clinical learning experience to prepare students for practice at the appropriate educational level shall be planned by the faculty to meet program outcomes.

(b) Clinical facilities utilized shall provide a safe environment for students' learning experiences and shall provide the type of experiences needed to meet the objectives of the rotation.

(c) Written criteria for the selection of clinical facilities shall be utilized by the faculty, and the faculty shall evaluate the quality of the learning experiences provided by the facility on a regular basis.

(d) Written agreements with cooperating agencies shall be mutually developed and maintained, annually reviewed, shall specify the respective responsibilities, ~~and~~ include provisions for continuing use by currently enrolled students, and include provisions for termination of agreement.

(e) ~~Cooperating agencies~~Clinical facilities shall be acceptable to the Board for students' clinical learning and shall be approved by accreditation, evaluation or licensing bodies as appropriate.

(f) The maximum ratio of faculty to students in clinical areas involving direct care of patients or clients shall be defensible in light of safety, learning objectives, students' level, ~~and~~ patient acuity and program outcomes.

(g) Clinical preceptors may be used for supervision of students in community health, leadership/management, independent study, elective courses, home health and selected hospitals and long-term care facility experiences consistent with Board policy. Consistent with Board policy, preceptors, when utilized, are academically qualified, oriented, mentored and monitored, and have clearly documented roles and responsibilities.

(h) Clinical skills laboratory experiences, which may include simulated patient care experiences, shall be developed, implemented, and evaluated by the faculty to facilitate student preparation for clinical learning experiences.

(i) Nursing education programs on full approval status may substitute up to 30% of Simulated Patient Care Experiences (SPCE) for clinical hours for each clinical course. Programs not on full approval status must obtain Board approval to substitute simulation for clinical course hours.

485:10-5-5. Students

(a) Admission, readmission, progression, retention, dismissal and graduation requirements shall be:

(1) developed by the faculty;

(2) supported by administration;

(3) made available to the applicants and students in written form;

(4) congruent with those of the ~~controlling institution~~governing organization, publicly accessible, nondiscriminatory, and consistently applied;~~with~~ differences are~~being~~justified by the ~~nature of the program~~student learning outcomes and program outcomes;

(5) appropriate for type of nursing education program;

(6) selective enough to distinguish students capable of achieving ~~program objectives~~student learning outcomes;

(7) reflective of up-to-date educational practices;

(8) based on objective criteria ~~and~~ supported by a logical rationale, ~~and~~ implemented fairly, and consistently;

(9) appropriate to ensure that the program is able to maintain an acceptable ~~completion rate and~~ licensing examination pass rate and completion rate as indicated in OAC 485:10-3-5. (4) and (5).

(b) Facilities and services of the controlling institution shall be publicized and made available to nursing students in order to assist them to meet ~~their~~student learning ~~objectives~~outcomes.

(c) There shall be written policies for student welfare including health, safety, students rights and responsibilities, financial aid, and an appropriate appeal process.

(d) Advanced placement policies shall be written and employed, allowing fair, consistent, valid, and defensible evaluation of students' didactic knowledge and clinical competence.

(e) Students shall be informed of fees and expenses associated with the nursing education program.

485:10-5-5.2. Faculty for nursing education programs

(a) There shall be sufficient number of qualified full-time faculty to meet the purpose and ~~objectives~~student learning outcomes of the nursing program.

(b) Qualifications, rights, and responsibilities of faculty members shall be available in writing.

(c) Faculty policies shall be available in writing, shall include those used in evaluating performance, specify the teaching load for the faculty and Nurse Administrator, and be in keeping with accepted educational standards.

(d) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process.

(e) All nurse faculty shall:

(1) hold a valid unencumbered license to practice as a Registered Nurse in the State of Oklahoma;

(2) present evidence of ~~current practice with~~ a minimum of two (2) years full-time equivalent practice as a Registered Nurse in a clinical setting preceding the first date of first employment as a ~~teacher~~nursing faculty member, PROVIDED: any person employed in the faculty position on September 1, 2016, is deemed to meet this requirement;

(3) submit a Faculty Qualification Record to the Board office on a form provided by the Board and in accordance to OAC 485:10-3-5(1) ~~within two weeks of day of appointment, and anytime that an advanced degree is attained~~; and

(4) ~~participate in research projects, surveys, professional writing, continuing education, academic study, or clinical practice to improve own nursing competence in areas of responsibility.~~engage in teaching, scholarship, service and/or practice in keeping with the mission, goals, and expected faculty outcomes.

(f) All programs leading to licensure as a Registered Nurse in this state shall establish comparable educational qualifications for the nursing faculty as required for other teaching faculty in the controlling institution. The minimum requirements shall be as follows:

(1) a master's or higher degree in nursing; or

(2) a baccalaureate degree in nursing plus evidence of continued progress toward a master's or higher degree in nursing with completion of a minimum of six (6) semester hours per calendar year; and

(3) at least one-half of the full-time faculty having a master's or higher degree in nursing; and

(4) part-time clinical instructors, regardless of title used, having a minimum of a baccalaureate degree in nursing.

(g) There shall be a faculty organization with written policies and procedures to guide its activities and shall:

(1) hold regular meetings for all members to participate in planning, developing, implementing, and evaluating the nursing program;

(2) establish committees as necessary to carry out the functions of the program;

(3) provide for student participation; and

(4) maintain minutes of all meetings documenting actions and decisions of the faculty.

485:10-5-6. Curriculum

(a) ~~The curriculum shall be planned, developed, implemented, and evaluated by the faculty with opportunities for input from students, graduates, and employers.~~The curriculum is planned, developed, implemented and evaluated to reflect clear statements of expected individual student-learning outcomes that are congruent with program's outcomes, mission, and goals and expected aggregate student outcomes. Curricular objectives (course, unit, and/or level objectives or competencies) as identified by the program, provide clear statements of expected individual student learning outcomes.

(b) ~~The curriculum plan shall be based upon the mission, philosophy and objectives of the program and supported by a logical rationale for organizing and sequencing the content.~~ Classroom content shall be taught concurrently with or prior to related clinical experiences.

(c) ~~A syllabus shall be made available to students at the beginning of each course, and shall include course objectives, methods of instruction and evaluation, an outline of content, and, when appropriate, a schedule for course activities.~~The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and abilities necessary for the level, scope and standards of competent nursing practice expected at the level of licensure. Curriculum will be revised as necessary to maintain a program that reflects advances in health care and its delivery.

(d) ~~The curriculum of registered nursing programs shall prepare the graduate for licensure and the full scope of practice as a Registered Nurse, as defined in state law, and shall address the NCLEX-RN test content, current standards for nursing practice, and expected competencies of graduates at the appropriate educational level.~~ The curriculum, as defined by nursing education, professional and practice standards shall include, but not be limited to:

(1) ~~principles~~Principles and clinical practice in utilization of scientific problem solving for the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life process in a variety of settings, including clinical practice in nursing care of the adult, nursing care of children, maternal-infant nursing, and psychiatric-mental health nursing;

(2) ~~incorporation of principles of nutrition, pharmacology, growth and development, and ethical, legal, and professional roles of the registered nurse; and~~Experiences that promote the development and subsequent demonstration of evidence-based clinical judgment, skill in clinical management, and the professional commitment to collaborate in continuously improving the quality and safety of the healthcare system for patients.

(3) ~~supporting content from biological and physical sciences, social and behavioral sciences, and the humanities.~~Evidence-based learning experiences and methods of instructing, including distance education methods, consistent with the written curriculum plan.

(4) Coursework including, but not limited to:

(A) Content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(B) Content regarding professional responsibilities, legal and ethical issues, history and trends in nursing and health care; and

(C) Didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the lifespan and from diverse cultural, ethnic, social, and economic backgrounds. Patient experiences will occur in a variety of clinical settings and will include:

(i) Integrating patient safety principles throughout the didactic and clinical coursework.

(ii) Implementing evidence-based practice to integrate best research with clinical expertise and patient values for optimal care, including skills to identify and apply best practices to nursing care.

(iii) Providing patient-centered, culturally competent care that recognizes that the patient or designee is the source of control and full partner in providing coordinated care by;

(I) Respecting patient differences, values, preferences and expressed needs.

(II) Involving patients/designees in decision-making and care management.

(III) Coordinating and managing patient care across settings in accordance with scope of practice.

(IV) Explaining appropriate and accessible interventions to patients and populations that may positively affect their ability to achieve healthy lifestyles.

(iv) Collaborating with interprofessional teams to foster open communication, mutual respect, and shared decision-making in order to achieve quality patient care.

(v) Participating in quality improvement processes to monitor patient care outcomes, identify possibility of hazards and errors, and collaborate in the development and testing of changes that improve the quality and safety of health care systems.

(vi) Using information technology to communicate, mitigate error and support decision making.

~~(e) The curriculum of practical nursing programs shall prepare the graduate for licensure and the full scope of practice as a practical nurse, as defined in state law, and shall address the NCLEX-PN test content, current standards for practical nursing practice, and expected competencies of practical nursing graduates. The curriculum shall include, but not be limited to:~~

~~(1) principles and clinical practice in utilization of the nursing process, within the scope of practice as a practical nurse, to assist clients in all age groups to meet relatively stable nursing requirements and to assist the Registered Nurse in complex nursing situations, including clinical practice in nursing care of the adult, nursing care of children, and maternal-infant nursing;~~

~~(2) incorporation of basic concepts of anatomy and physiology and related sciences, nutrition, pharmacology, growth and development, mental health concepts, and ethical, legal, and professional roles of the practical nurse;~~

~~(f) A variety of instructional methods, based upon authenticated educational principles, shall be used to provide for individual learning needs. Programs offering non-traditional learning options to facilitate instruction shall establish policies and procedures in accordance with the Board's guidelines.~~

485:10-5-7. Evaluation

(a) **Program.**

(1) There shall be a written systematic program evaluation plan that effectively supports the planning process for the program and specifies responsibilities, time-frames and procedures for evaluating each aspect of the program;

(2) ~~Evaluation of the program shall include, but not be limited to, administration and organization, clinical facilities, physical facility, learning resources, student services, student and faculty policies and procedures, curriculum, methods of evaluation, and program outcomes (including data related to factors impacting completion rate and NCLEX pass rate).~~The systematic plan for evaluation of the nursing education unit emphasizes the ongoing assessment and evaluation of each of the following:

(A) student learning outcomes;

(B) program outcomes;

(C) role-specific graduate competencies; and

(D) administration and organization, clinical facilities, physical facility, learning resources, student services, student and faculty policies and procedures, curriculum, methods of evaluation, and program outcomes (including data related to factors impacting completion rate and NCLEX pass rate).

(3) ~~Opportunities shall be provided for input into the evaluation process by students, faculty, and clinical staff and/or employers of graduates.~~The systematic plan of evaluation contains specific, measurable expected levels of achievement; appropriate assessment methods; and a minimum of three (3) years of data for each component within the plan.

(4) ~~There shall be methodical documentation of the evaluation activity, including summaries of results of surveys and outcome measurements. Actions taken as a result of the evaluation activity will be documented and will reflect the evaluation findings.~~Evaluation findings are aggregated and trended by program option, location, and date of completion and are sufficient to inform program decision making for the maintenance and improvement of the student learning outcomes and the program outcomes.

(5) Evaluation findings are shared with communities of interest.

(6) The program demonstrates evidences of achievement in meeting the program outcomes.

(7) Graduate Program Satisfaction: Qualitative and quantitative measures address graduates six to twelve months post-graduation.

(8) Employer Program Satisfactions: Qualitative and quantitative measures address employer satisfactions with graduate preparation for entry-level positions six to twelve months post-graduation.

(9) Job Placement Rates: Expected levels of achievement are determined by the faculty and are addressed through quantified measures six to twelve months post-graduation.

(b) **Students.** Evaluation of student achievement shall be the responsibility of the faculty, and shall:

(1) be consistent with policies of controlling institution, with differences justified by the nature of the program;

(2) provide valid and reliable evidence of student's progress and achievement;

(3) adequately discriminate between students with differing levels of achievement;

(4) measure competencies essential for safe and effective nursing practice appropriate to type of nursing education program; and

(5) provide evidence that students are notified ~~in a timely manner~~ of their progress in the classroom and clinical area~~.~~ in a timely manner as defined in the course syllabus; and

(6) shall not use standardized testing as the sole criteria for progression or graduation.

485:10-5-8. Experimentation

A nursing education program which wishes to initiate an experimental program ~~or innovative approach~~ shall apply to the Board in writing for the approval of its plan. Nursing education programs approved to implement innovative approaches shall continue to provide quality nursing education that prepares graduates to practice safely, competently, and ethically within the scope of practice as defined in Oklahoma's statutes.

(1) Purposes

(A) To foster innovative models of nursing education to address the changing needs in health care.

(B) To assure that innovative approaches are conducted in a manner consistent with the Board's role of protecting the public.

(C) To assure that innovative approaches conform to the quality outcome standards and core education criteria established by the Board.

(2) Eligibility

(A) The nursing education program shall hold full Board approval with no warnings with unmet conditions or survey visit recommendations that are unmet.

(B) There are no substantiated complaints in the past 2 years.

(C) There are no rule violations in the past 2 years.

(3) Application. The following information shall be provided to the Board at least ~~one month~~60 days prior to a Board meeting:

(A) Identifying information (name of nursing program, address, responsible party and contact information).

(B) A brief description of the current program, including accreditation and Board approval status.

(C) Identification of the regulation(s) affected by the proposed innovative approach.

(D) Length of time for which the innovative approach is requested.

(E) Description of the innovative approach, including objective(s).

(F) Explanation of how the proposed innovation differs from approaches in the current program.

(G) Rationale with available evidence supporting the innovative approach.

(H) Identification of resources that support the proposed innovative approach.

(I) Expected impact innovative approach will have on the program, including administration, students, faculty, and other program resources.

(J) Plan for implementation, including timeline.

(K) Plan for evaluation of the proposed innovation, including measurable criteria/outcomes, method of evaluation, and frequency of evaluation.

(L) Additional application information as requested by the Board.

(4) Standards for approval

(A) Eligibility criteria in (2) and application criteria in (3) are met.

(B) The innovative approach will not compromise the quality of education or safe practice of students.

(C) Resources are sufficient to support the innovative approach.

(D) Rationale with available evidence supports the implementation of the innovative approach.

(E) Implementation plan is reasonable to achieve the desired outcomes of the innovative approach.

(F) Timeline provides for a sufficient period to implement and evaluate the innovative approach.

(G) Plan for periodic evaluation is comprehensive and supported by appropriate methodology.

(5) Review of application and board action

(A) Annually the Board may establish the number of innovative approach applications it will accept, based on available Board resources.

(B) The Board shall evaluate all applications to determine if they meet the eligibility criteria in (2) and the standards established in (3).

(C) Based on its evaluation, the Board may:

(i) Approve the application; or

(ii) Approve the application with modifications as agreed between the Board and the nursing education program; or

(iii) Defer a decision on the application pending receipt of additional information; or

(iv) Deny the application.

(6) The Board may rescind the approval or require the program to make modifications if:

(A) The Board receives substantiated evidence indicating adverse impact.

(B) The nursing education program fails to implement the innovative approach as presented and approved.

(C) The nursing education program has a change in its approval status, its ownership status or administrative structure, or its faculty, such as would significantly impact its ability to implement the innovative approach.

(7) Periodic Evaluation

(A) The education program shall submit progress reports conforming to the evaluation plan annually or as requested by the Board.

(B) The final evaluation report shall conform to the evaluation plan, detailing and analyzing the outcomes data.

(C) If any report indicates that students were adversely impacted by the innovation, the nursing program shall provide documentation of corrective measures and their effectiveness.

(8) Requesting continuation of the innovative approach. If the innovative approach has achieved the desired outcomes and the final evaluation has been submitted, the Board may consider a change in the rules that would provide for implementation of the innovative approach by nursing education programs.

485:10-5-10. Records

(a) **Student.** There shall be a record-keeping system following school policy that provides for accurate recording and safe preservation of student and graduate records~~ related to~~. Records shall include admission, progress, withdrawal, academic failure, and graduation.

(b) **Faculty.** There shall be faculty records that provide for verification of academic credentials and course work, current unencumbered licensure as a Registered Nurse in the state of Oklahoma, continuing education, clinical practice, and periodic performance evaluation.

(c) **Administrative.** Administrative records shall include, but not be limited to,~~general nursing education program records,~~ minutes of faculty and committee meetings, program publications, documents and school policies, and reports to the controlling board~~ and program bulletins~~.

(d) **Program ~~bulletin~~publications.** ~~The program bulletin shall be current and give an accurate description of the nursing education program.~~All program publications in print and in electronic format are current and accurately reflect the approval status of the program. Approval status is to be stated accurately including contact information for the Oklahoma Board of Nursing and is readily accessible to communities of interest.

485:10-5-12. Out-of-State nursing education programs conducting clinical experiences in Oklahoma

(a) Nursing education programs leading to initial licensure that wish to conduct clinical experiences in Oklahoma must obtain prior permission from the Board.

(b) To apply for permission from the Board, the program must submit a letter of request to the Board and provide evidence that the following standards will be met:

(1) The program must be on full approval status with the board of nursing in another member board jurisdiction;

(2) The program will provide for supervision of students while in the clinical area by a nursing faculty member ~~licensed~~with an unencumbered Oklahoma nursing license~~in Oklahoma~~;

(3) A written clinical affiliation agreement with the clinical facility will be in place; and

(4) If precepted clinical experiences are requested, the program will ensure they are conducted in accordance with the Board's policy.

(c) Registered Nurses enrolled in out-of-state advanced practice registered nursing education programs may participate in clinical experiences and clinical preceptorship in Oklahoma as part of the advanced practice registered nursing education program, under the following conditions:

(1) The advanced practice registered nurse student has an unencumbered Oklahoma license to practice registered nursing,

(2) The faculty responsible for oversight of the clinical component of the nursing education program has an Oklahoma license to practice nursing at the level of the education being taught or higher, and

(3) The advanced practice registered nursing education program meets the requirements established by the Oklahoma Board of Nursing for education preparation of Advanced Practice Registered Nurses.

SUBCHAPTER 6. MINIMUM STANDARDS FOR APPROVED ADVANCED PRACTICE REGISTERED NURSING (APRN) EDUCATION PROGRAMS (EFFECTIVE JANUARY 1, 2016)

485:10-6-2. Minimum standards for APRN education programs

To be approved as an APRN education program in the state of Oklahoma, the program shall meet the following standards:

(1) The APRN education program is a graduate-level program offered by a university accredited by an accrediting body that is recognized by the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA);

(2) The APRN education program holds accreditation or candidacy status from one of the following:

(A) The Accreditation Commission for Education in Nursing

(B) The Commission on Collegiate Nursing Education

(C) The Commission for Nursing Education Accreditation

(D) The Accreditation Commission for Midwifery Education

(E) The American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs;

(3) The curriculum of the APRN education program must prepare the graduate to practice in one of the four identified APRN roles (i.e., CRNA, CNM, CNS, or CNP) and in at least one of the six population foci (i.e., Family/Individual across the Lifespan, Adult-Gerontology (acute and/or primary), Neonatal, Pediatrics (acute and/or primary), Women's Health/Gender-Related, or Psychiatric/Mental Health). The curriculum shall include:

(A) Graduate APRN core courses, to include three separate graduate level courses in:

(i) Advanced physiology and pathophysiology, including general principles that apply across the lifespan;

(ii) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(iii) Advanced pharmacology (a minimum of a three academic credit hour course), which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents;

(B) Additional core course content, specific to the role and population in APRN core areas, integrated throughout the specific role and population focus didactic and clinical courses, to include the use and prescription of pharmacologic and non-pharmacologic interventions;

(C) Preparation in legal, ethical, and professional responsibilities of the APRN; and

(D) A minimum of 500 supervised clinical hours directly related to each role and population focus, including pharmacotherapeutic management of patients.

(4) An APRN program shall appoint the following personnel:

(A) An APRN program administrator whose qualifications shall include:

(i) A current, unencumbered APRN license in the state of Oklahoma;

(ii) A minimum of a master's degree in nursing and an earned doctoral degree; and

(iii) At least two years of clinical experience as an APRN.

(B) A lead faculty member to coordinate each role and population focus track in the APRN program, including curriculum development, whose qualifications shall include:

(i) A current, unencumbered APRN license in the state of Oklahoma;

(ii) A minimum of a master's degree in nursing that includes preparation in the same role and population focus as the track for which he/she is responsible;

(iii) At least two years of clinical experience as an APRN; and

(iv) Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.

(v) The APRN program administrator may also serve as the lead faculty member if all qualifications are met. If the APRN program administrator has teaching or other responsibilities, adequate time will be provided to fulfill administrative duties for the APRN education program.

(C) Nursing faculty, including adjunct clinical faculty, to teach any APRN nursing course that includes a clinical learning experience shall meet the following qualifications:

(i) A current, unencumbered APRN license in the state of Oklahoma;

(ii) A minimum of a master's degree in nursing that includes preparation in a role and population focus consistent with teaching responsibilities;

(iii) Two years of APRN clinical experience; and

(iv) Current knowledge, competence and certification as an APRN in the role and population foci consistent with teaching responsibilities.

(D) Any person employed in the position of APRN program administrator, APRN lead faculty, and/or APRN faculty member on December 31, 2015, shall be deemed to meet the education and clinical experience qualifications.

(~~D~~E) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to these areas of content.

(~~E~~F) Clinical preceptors will serve as a role model and educator to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace them.

(~~F~~G) Clinical preceptors will be approved by faculty and meet the following requirements:

(i) Hold a current, unencumbered license in the state of Oklahoma, or in another state (if employed by the United States Government or any bureau, division, or agency thereof; or if the preceptorship takes place in another state), as an APRN, Medical Doctor, or Doctor of Osteopathy and practices in a comparable practice focus;

(ii) Function as a supervisor and teacher and contribute to the evaluation of the individual's performance in the clinical setting; and

(iii) Have demonstrated competencies related to the area of assigned clinical teaching responsibilities.

(5) Each student enrolled in the APRN program shall have a current, unencumbered Oklahoma Registered Nurse license.

(6) APRN programs preparing for two population foci or a combined nurse practitioner/clinical nurse specialist shall include content and 500 hours of clinical experience in each functional role and population focus.

(7) Advanced placement policies shall allow fair, consistent, valid, and defensible evaluation of students' didactic knowledge and clinical competence. Students admitted with advanced placement must meet the program's APRN outcome competencies.

SUBCHAPTER 12. CORRECTIVE ACTION

485:10-12-1. Purpose

The rules of this Subchapter have been adopted for the purpose of complying with the provisions of the Oklahoma Nursing Practice Act. [59 O.S. § 567.8a] This Subchapter governs the imposition of Corrective Action in lieu of disciplinary action. A Corrective Action imposed under this Subchapter is not a disciplinary action, a negative action or an adverse action under the Oklahoma Nursing Practice Act.

485:10-12-2. Definitions

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

"Corrective Action" means an administrative penalty and/or remedial education that is not considered a disciplinary action, an adverse action or a negative action or finding imposed on an individual who is licensed or regulated under the Oklahoma Nursing Practice Act. The Board may consider a Corrective Action in an individual's subsequent violation(s) of the Oklahoma Nursing Practice Act, Board Rules or Corrective Action Order(s).

485:10-12-3. Imposition of Corrective Action

(a) A Corrective Action may be issued for any of the following violations:

(1) practice without current licensure/certification/recognition in accordance with time parameters identified in the Board's Violation Guidelines,

(2) initial failure to provide the Board with complete and accurate answers on any licensure application,

(3) failure of an Advanced Practice Registered Nurse to obtain prescriptive authority recognition in an additional role and population focus area, where the Advanced Practice Registered Nurse otherwise meets all requirements for the prescriptive authority recognition,

(4) other violations of the Oklahoma Nursing Practice Act and/or Board Rules that are appropriate for resolution at the remediation level of education and/or an administrative penalty, in accordance with the Board's Violation Guidelines.

(b) An individual may not be eligible for Corrective Action if, at the time of imposition:

(1) the individual has committed more than one of the violations listed in (a) of this subsection;

(2) the individual has previously received Corrective Action for similar practice-related violation(s);

(c) An individual shall not be eligible for Corrective Action if, at the time of imposition:

(1) the violation involved significant harm or substantial risk of harm to a patient or the public; or

(2) if the individual attempted to conceal his or her violation(s) at any time during the facility, government and/or Board investigation(s).

(d) The administrative penalty for each violation shall not exceed five hundred dollars ($500.00).

(e) The opportunity to enter into an agreed Corrective Action is at the sole discretion of the Executive Director within the parameters of these Rules as a condition of settlement by agreement. A contested procedure conducted pursuant to 59 O.S. § 567.8 and OAC 485:10-11-1 *et seq.* may result in a Corrective Action.

485:10-12-4. Corrective Action Procedure

(a) If the Executive Director determines that an individual has committed a violation for which a Corrective Action may be imposed, the Executive Director may give him or her written notice of the determination and recommendation for Corrective Action. The notice may be given by certified mail sent to the individual's address on file. The notice must:

(1) Include a brief summary of the alleged violation;

(2) State the recommended Corrective Action; and

(3) Inform the individual of his or her options in responding to the notice.

(b) Not later than the 20th day after receipt of the notice, the individual may:

(1) Accept in writing the Executive Director's determination and recommended Corrective Action; or

(2) Reject the determination and recommended Corrective Action.

(c) If the individual accepts the Executive Director's determination and recommended Corrective Action the case is placed in monitoring for the time period identified in the Corrective Action Order, or until the individual completes the requirements of the Corrective Action Order, whichever occurs first.

(d) The Executive Director may terminate Corrective Action proceedings and dispose of the matter as a disciplinary proceeding if the individual:

(1) does not accept the Executive Director's determination and recommended Corrective Action as originally proposed or as modified,

(2) fails to respond in a timely manner to the Executive Director's notice, or

(3) having accepted the recommended Corrective Action, fails to timely complete the terms of the Corrective Action Order.

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE REGISTERED NURSE

485:10-15-4. Application

(a) An applicant for licensure as an Advanced Practice Registered Nurse must:

(1) hold a current license to practice as a Registered Nurse in Oklahoma;

(2) submit an official transcript verifying completion of an advanced practice registered nursing education program in one of the four advanced practice registered nurse roles (CNP, CNM, CNS, and CRNA) and a specialty area recognized by the Board. Effective January 1, 2016, the applicant shall have completed an accredited graduate level advanced practice registered nursing education program in at least one of the following population foci: family/individual across the lifespan, adult-gerontology (acute and/or primary), neonatal, pediatrics (acute and/or primary), women's health/gender related, or psychiatric/mental health;

(3) submit evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board; and

(4) submit a completed application for licensure containing such information as the Board may prescribe and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(b) **Changing and adding certifications.**

(1) An Advanced Practice Registered Nurse who wishes to add an area of specialty and national certification must meet initial requirements for advanced practice licensure, as identified in 485:10-15-4(a).

(2) An Advanced Practice Registered Nurse who changes national certification and certifying body within the same specialty area must notify the Board in writing within thirty (30) days of the change and submit a copy of a current national certification recognized by the Board within the same specialty area.

(3) An Advanced Practice Registered Nurse holding more than one certification who does not renew or maintain one of the national certifications must notify the Board in writing within thirty (30) days of the change. The license for which the national certification has expired will be placed on inactive status. The Advanced Practice Registered Nurse shall not work in the specialty area upon expiration of national certification.

(c) **Endorsement.**

(1) An applicant who is licensed or recognized as an APRN in another U.S. state or territory may be issued an APRN license by endorsement if current Board requirements for licensure as an APRN are met. The applicant must have met all requirements of the advanced practice certifying body to maintain full certification, including requirements for maintaining continuing competence. An applicant for APRN licensure by endorsement who holds certification on provisional or conditional status may be considered for licensure by the Board.

(2) In addition to meeting other requirements for endorsement established by the Board in these rules, the applicant for endorsement of the APRN license must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of a completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of an APRN nursing refresher course meeting the requirements established by the Board in policy;

(B) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of APRN nursing courses in the same role and population focus as was previously held by the APRN in a graduate-level APRN program, which includes classroom and clinical instruction; and/or;

(C) Present evidence of current licensure or recognition as an APRN in another state or territory with employment in a position that requires APRN licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for endorsement in the Board office.

(D) Submission of evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board.

(d) **Temporary license for endorsement applicants.** Temporary licensure may be granted under the following conditions:

(1) Current unrestricted licensure as an RN in Oklahoma;

(2) Current unrestricted APRN licensure or recognition in another state or territory in the same role with no history of arrest or disciplinary action requiring further review;

(3) Demonstrates evidence of meeting continuing qualifications for practice through meeting the requirements of 485:10-15-4(c)(2);

(4) Evidence of completing an advanced practice registered nursing education program in one of the four roles and a specialty area recognized by the Board;

(5) Evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board;

(6) Completed application for endorsement and temporary recognition and the required fees; and

(7) Submission of fingerprints with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(8) The temporary license may not be issued for a period longer than ninety (90) days.

(9) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.

(e) **Certification program.** The Board shall identify and keep on file the current list of recognized APRN certifications and certifying bodies approved by the Board. A Board-recognized APRN holding recognition prior to July 1, 2012, may continue to be licensed as an APRN with his or her current certification, even if such certification is no longer included

on the list of recognized APRN certifications and certifying bodies approved by the Board, PROVIDED the APRN license remains in an active status and current certification is maintained. A licensee may request that a certification program be considered by the Board for inclusion on the list. Effective July 1, 2012, the certification program shall provide documentation of compliance with the following standards:

(1) The certification program is national in the scope of its credentialing;

(2) Conditions for taking the certification examination are consistent with standards of the testing community;

(3) Educational requirements are consistent with the requirements of the advanced practice role and specialty;

(4) The standard's methodologies used are acceptable to the testing community such as incumbent job analysis studies and logical job analysis studies;

(5) Certification programs are accredited by a national accreditation body as acceptable by the Board;

(6) The examination represents entry-level practice in the APRN role and specialty;

(7) The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to patients;

(8) Examination items shall be reviewed for content validity and correct scoring using an established mechanism, both before use and at least every five years. When possible, items will be reviewed for cultural bias;

(9) The passing standard is established using acceptable psychometric methods and is re-evaluated at least every five years;

(10) Certification is issued based upon meeting all certification requirements and passing the examination;

(11) A re-take policy is in place;

(12) Certification maintenance program, which includes review of qualifications and continued competence, is in place;

(13) Mechanisms are in place for communication to boards of nursing for timely verification of an individual's certification status, changes in the certification status, and changes in the certification program, including qualifications, test plan and scope of practice; and

(14) An evaluation process is in place to provide quality assurance in the certification program.

SUBCHAPTER 16. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE REGISTERED NURSES

485:10-16-7. Reinstatement/Inactive Status

(a) **Reinstatement.**

(1) If an Advanced Practice Registered Nurse fails to renew prescriptive authority prior to the expiration date of that authority, the Advanced Practice Registered Nurse's prescriptive authority shall expire and the Advanced Practice Registered Nurse shall cease prescribing.

(2) The Advanced Practice Registered Nurse may reinstate the prescriptive authority recognition by submitting:

(A) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral; and

(C) present evidence of:

(i) having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B); or

(ii) licensure or recognition as an APRN in the same role with prescriptive authority in another state with employment in a position that requires APRN prescriptive authority licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

~~(3) If reinstatement is not approved within three years of the expiration of prescriptive authority, the applicant will be required to meet initial application criteria.~~

(b) **Inactive Status.**

(1) An Advanced Practice Registered Nurse may submit a written request to place prescriptive authority on inactive status.

(2) The date of inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to Board staff.

(3) The Advanced Practice Registered Nurse may return to active status the prescriptive authority recognition by submitting:

(A) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral; and

(C) present evidence of:

(i) having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B); or

(ii) licensure or recognition as an APRN in the same role with prescriptive authority in another state with employment in a position that requires APRN prescriptive authority licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt

of the application for return to active status in the Board office.

~~(4) If return to active status of prescriptive authority is not approved within three (3) years of the date of approval of inactive status, the applicant will be required to meet initial application criteria.~~

[OAR Docket #16-418; filed 6-13-16]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 20. PURCHASE OF TRANSFERRED CREDITED SERVICE

[OAR Docket #16-532]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
550:20-1-2. Computation [AMENDED]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 27, 2016
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to OAC 550:20-1-2 includes technical IRS qualification language to maintain the tax exempt status of the Oklahoma Police Pension and Retirement System.
CONTACT PERSON:
Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

550:20-1-2. Computation

All purchases of transferred credited service pursuant to 11 O. S. Section 50-111.4, shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost, and any tables formulated for the purpose of determining such cost during each calendar year, shall be based on the actuarial assumptions utilized in the actuarial valuation report as of the preceding July 1.

(2) The actuarial value shall be based upon the member's age, salary and service at the time of purchase, together with the earliest age for retirement and actuarially projected salary at time of retirement. For purposes of this actuarial cost, it is assumed that all members are married at the time of retirement. If purchase is not made within 30 days of Board approval, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be formulated as a unisex table assuming post retirement mortality weighted 90% male and 10% female.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, the member's salary shall be annualized based upon the completed calendar months of payroll information.

(6) In lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer of non-Roth funds or direct rollover of non-Roth funds as authorized by the statutes governing the System.

(7) Notwithstanding (6) of this subsection, purchases may be made by a cash lump sum payment, installment payments (where otherwise allowed by Oklahoma state statutes), trustee-to-trustee transfer of non-Roth funds and/or direct rollover of non-Roth funds as described in (6) of this subsection.

(8) In the event that a member (A) elected to purchase transferred credited service pursuant to 11 O.S. Section 50-111.2, (B) has made payment for such transferred credited service under 11 O.S. Section 50-111.4, and (C) has not had such transferred credited service added under 11 O.S. Section 50-111.2.A by the time such member becomes entitled to a disability benefit under 11 O.S. Section 50-115, upon application by the member such payment shall be refunded from the Fund without interest thereon.

[OAR Docket #16-532; filed 6-15-16]

TITLE 600. REAL ESTATE APPRAISER BOARD CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS

[OAR Docket #16-523]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
600:10-1-5. Qualifying education prerequisites [AMENDED]
600:10-1-16. Supervision of trainee appraisers [AMENDED]
AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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February 4, 2016
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Approved by Governor's Declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Title 600, Chapter 10 at OAC 600:10-1-5 and OAC 600:10-1-16 will incorporate language from the Appraiser Qualification Criteria effective January 1, 2015 (the "AQB Criteria") which modifies the criteria by which the Oklahoma Real Estate Appraiser Board determines, upon application, whether a trainee applicant's qualifying education is deemed acceptable under said AQB Criteria. Further, the changes will reflect a mandatory change requiring that a supervisor be a certified appraiser in this jurisdiction for a period of at least three years prior to being eligible to supervise a trainee appraiser; clarification of a previous amendment to reflect that the supervisor should not have been subject to any disciplinary action with any jurisdiction within the last three years that affects the supervisory appraiser's legal eligibility engage in appraisal practice; and adds language that a supervisory appraiser must comply with the Competency Rule of USPAP for the property type and geographic location where the trainee appraiser is being supervised.
CONTACT PERSON:
Christine McEntire, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, Five Corporate Plaza, 3625 N.W. 56th Street, Suite 100, Oklahoma City, OK 73112 (405) 522-2475.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2016:

600:10-1-5. Qualifying education prerequisites

(a) Classroom hours shall be approved by the Board pursuant to the guidelines set forth in the Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation. Copies of official transcripts of college records or certificates of course completion will be considered as satisfactory evidence for qualifying education requirements.

(b) All qualifying education <u>by a trainee appraiser applicant</u> must be completed within the five-year period prior to the date of submission of an application.

600:10-1-16. Supervision of trainee appraisers

(a) Trainee Appraisers shall report to the Board, on a form prescribed by the Board, the identity of any supervisory appraiser. Trainee Appraisers may have more than one supervisory appraiser. When a Trainee Appraiser has more than one supervisory appraiser, each shall be reported to the Board as indicated above.

(1) The supervisor-trainee relationship shall become effective on the date of receipt of the original required form with original signatures in the administrative office of the Board.

(2) A supervisory appraiser shall notify the Board in writing immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(b) Trainee Appraisers shall maintain an appraisal log on a form prescribed by the Board. Separate appraisal logs shall be maintained for work performed with each supervisory appraiser. This appraisal log shall record the following information:

(1) Client name and date of report,

(2) Address or legal description of the real property appraised,

(3) Description of the work performed by the trainee appraiser and the scope of review and supervision of the supervisory appraiser,

(4) Number of actual hours worked,

(5) Type of property appraised,

(6) Form number or description of report rendered, and

(7) The signature and state certificate number of the supervisory appraiser.

(c) Experience credit for the purpose of upgrading will not be given unless:

(1) a properly completed trainee-supervisory report form is on file in the administrative office of the Board, and

(2) the Trainee Appraiser either signs the certification required by Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice, or the supervisory appraiser gives credit to the Trainee Appraiser in the certification and complies with the requirements of Standards Rule 2-2(a)(vii), 2-2(b)(vii), or 2-2(c)(vii) as applicable.

(d) Both supervisory and trainee appraisers shall maintain complete workfiles as required by the Uniform Standards of Professional Appraisal Practice and the Oklahoma Certified Real Estate Appraisers Act.

(e) A supervisory appraiser shall meet the following requirements:

(1) ~~have been a State Licensed or Certified Appraiser for a period of at least three (3) years;~~

~~(2) be a State Certified General Appraiser, State Certified Residential Appraiser, or State Licensed under AQB Criteria Appraiser on a credential issued by the Oklahoma Real Estate Appraiser Board, provided however, that trainee-supervisor relationships between State Licensed under AQB Criteria Appraisers shall only be permissible~~

~~until January 1, 2008;~~ be a State Certified General Appraiser or a State Certified Residential Appraiser on a credential issued by the Board for a period of at least three years;

(~~3~~2) be in good standing with the Board ~~and not have been revoked, suspended, or placed on supervised probation in the last three years;~~and not have been subject to any disciplinary action with any jurisdiction within the last three years that affects the supervisory appraiser's legal eligibility to engage in appraisal practice.

(3) accept responsibility for training, guidance, and direct supervision of the Trainee Appraiser by signing the form referenced in (a), above.

(4) must successfully complete a Board-sponsored course for trainees and supervisors; provided however, that supervisors in place as of the effective date of this rule must successfully complete this course within one (1) year following the effective date of this rule.

(5) supervisory appraisers must comply with the COMPETENCY RULE of USPAP for the property type and geographic location where the Trainee Appraiser is being supervised.

(f) A supervisory appraiser shall:

(1) accept responsibility for a Trainee Appraiser's appraisal reports by signing each report and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, and

(2) personally inspect each appraised property with the Trainee Appraiser until the supervisory appraiser determines that the Trainee Appraiser is competent, in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice, for the property type.

(g) A supervisory appraiser shall notify the Board immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(h) Prior to assuming duties as a supervisory appraiser, an appraiser who has been disciplined by the Board must receive approval from the Board.

(i) A supervisory appraiser may assume responsibility for more than three Trainee Appraisers under the following terms and conditions:

(1) The supervisor must apply for authority to supervise more than three Trainee Appraisers with the Board on forms approved by the Board for this purpose. This approval shall extend to the supervisor or supervisors, the facility and the training plan. Any approval issued hereunder shall specify a maximum number of trainees authorized.

(2) The supervisor must specify the location of the facility to be used for this purpose, which may not be a residence. The facility must have posted hours, approved by the Board, during which the facility will be open and a qualified supervisor present. During the operating hours, the facility and all records specified herein shall be subject to unannounced compliance inspection by a representative of the Board.

(3) The supervisor must prepare a training plan, based on the Core Curriculum and the Real Property Appraiser Body of Knowledge promulgated by the Appraiser Qualification Board of The Appraisal Foundation, appropriate to the level of licensure to which the trainee aspires and for which the supervisor is qualified. This training plan should, as a minimum, include learning objectives for the experience to be gained, a planned time line for further qualifying and continuing education required to bring the trainee to a fully qualified status, and a checklist for monitoring progress by the trainee toward meeting these objectives.

(4) Records maintained in the training facility must include the training plan, an appraisal log, a workfile for each appraisal assignment, and a progress checklist, each maintained on a contemporaneous basis, for each Trainee Appraiser. In addition, appropriate reference materials should be on hand, which must include the current edition of the USPAP.

(5) Approval of any supervisor or supervisors under this paragraph may be conditioned upon an interview of such supervisors by a representative of the Board.

(j) Trainee appraisers must successfully complete a Board-sponsored course for trainees and supervisors; provided, however, that trainee appraisers credentialed as of the effective date of this rule must successfully complete this course within one (1) year following the effective date of this rule.

[OAR Docket #16-523; filed 6-15-16]

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

[OAR Docket #16-427]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Availability of Information, Scope and Description of Open Meetings
612:1-17-2. Scope and description of the Open Meetings Act [AMENDED]
AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.1 et seq.; 74 O.S. § 166.2
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 1, 2015
COMMENT PERIOD:
December 15, 2015 through February 10, 2016
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March 14, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed changes throughout Chapter 1 involve updating and removal of antiquated language. The proposed change deletes the indication that all diabetics will be served by the DVRBVI division. Updates include clarifying and updating language to reflect current use of terms.
CONTACT PERSON:
Tina Calloway, Administrative Programs Officer, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 17. AVAILABILITY OF INFORMATION, SCOPE AND DESCRIPTION OF OPEN MEETINGS

612:1-17-2. Scope and description of the Open Meetings Act

The Oklahoma Commission for Rehabilitation Services public meetings are conducted in compliance with the Oklahoma Open Meeting Act. [25 O.S. § 301 through 314] The Oklahoma Secretary of State website serves as the open meeting clearinghouse.

~~(a) **General provisions.** The Oklahoma Open Meetings Act is codified in 25 O.S. Sections 301 through 314. In general the purpose of this Act is to ensure that all meetings of public bodies are open to the public, to encourage and facilitate an informed citizenry's understanding of the governmental process and governmental problems. In all meetings of public bodies, the vote of each member shall be publicly cast and recorded. No information gatherings or any other means of communications (telephonic or electronic) among a majority of the members of a public body shall be used to decide any action, take any vote on a matter or otherwise attempt circumvention of the Act. The proceedings of a public body are to be kept in the form of written minutes. The minutes are an official summary of the proceedings, showing those members present and absent, all matters considered and all actions taken by the body. The minutes of each meeting are open to public inspection and shall reflect the manner and time of notice required by the Act.~~

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

~~(1) **"Continued or recommended meeting"** means a meeting which is assembled for the purpose of finishing business appearing on an agenda of a previous meeting.~~

~~(2) **"Emergency meeting"** means any meeting called for the purpose of dealing with an emergency such as a situation involving injury to person or injury and damage to public or personal property or immediate financial loss.~~

~~(3) **"Executive session"** means closed meetings of public bodies, which can occur only on a vote by a majority of a quorum of the members present, and which are permitted only for the purpose of:~~

~~(A) discussing the employment, hiring, appointment, promotion, demotion, discipline or resignation of any officer or employee of the public body;~~

~~(B) the confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the body determines, upon advise of counsel, that disclosure will seriously impair the ability to process the claim or conduct a pending investigation, litigation, or proceeding in the public body;~~

~~(C) for the purpose of discussing negotiations concerning employees and representatives of employee groups; and,~~

~~(D) discussing the purchases or appraisal of real property. The vote or action thereon must be taken in public and the vote of each member publicly cast and recorded.~~

~~(4) **"Meeting"** means the conducting of business of a public body by a majority of its members being personally together.~~

~~(5) **"Public body"** means all Department boards, bureaus, commissions, trusteeships, authorities, councils, committed public trust, task forces, or study groups supported in whole or in part by public funds or entrusted with the expending of public funds or administering public property.~~

~~(6) **"Regularly scheduled meeting"** means a meeting at which the regular business of the public body is conducted.~~

~~(7) **"Special meeting"** means a meeting of a public body other than a regularly scheduled meeting.~~

~~(c) **Advance notice.** All regularly scheduled meetings shall be held at specified times and places which are convenient to the public and shall be open to the public, except as outlined in the definition of "Executive sessions" in this Section.~~

~~(1) Public bodies are to give notice in writing by December 15 of each calendar year of the scheduled meetings. A copy of the notice shall be given to the Secretary of State. The Secretary of State will keep a record of all notices in a register open to the public for inspection.~~

~~(2) If any change is to be made in the date, time or place of the meeting, then a notice in writing is given to the Secretary of State not less than ten days prior to the meeting.~~

~~(3) The Administrative Assistant to the Commission for Rehabilitation Services will forward all schedules and changes for the Commission to the Secretary of State. In addition the Administrative Assistant to the Commission for Rehabilitation Services will mail copies to each newspaper, person, radio, and television station that has filed~~

~~a written request to receive such notices. The written request is to be renewed annually and the Department may charge a fee of up to $18.00 per year for this service.~~

~~(d) **Posting of notice - regularly scheduled meetings.** In addition to advance notice, at least twenty-four hours prior to the meeting, public notices are to be displayed/posted in prominent public view at the principal office and at the location of the meeting. The notices are to include the following: name of the meeting, date, time, place, and the agenda. The twenty-four hour period for posting excludes holidays declared by the State and Saturdays or Sundays. The posting of an agenda does not preclude a body from considering any item as new business if the item was not known about or could not have been reasonably foreseen prior to the time of posting.~~

~~(e) **Special meetings.** Prior to a special meeting, the Secretary of State is to be given notice at least forty-eight hours before the meeting. The notice is to be given in writing, in person or by telephone and must include the date, time, place, and agenda of the meeting. In addition, the twenty-four hour posting notice in this Section is to be followed.~~

~~(f) **Emergency meetings - advance and posting notice.** An emergency meeting may be held without the notices required in this Section. Should an emergency meeting be necessary, as much~~

~~advance notice is given as is reasonable and possible under the circumstances. This notice is given in person, by telephone, or other means.~~

~~(g) **Penalties.** Any action taken in willful violation of the Open Meeting Act is invalid and persons willfully violating any provision of the Act are guilty of a misdemeanor, and upon conviction are punished by a fine not to exceed $500.00 or by imprisonment in a county jail for a period not to exceed one year, or both by fine and imprisonment.~~

[OAR Docket #16-427; filed 6-14-16]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 3. MANAGEMENT SERVICES DIVISION

[OAR Docket #16-428]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. ~~Policy Development and Program Standards~~Process Improvement
Part 1. General Provisions
612:3-5-1. Purpose [AMENDED]
Part 3. Policy ~~Development~~
612:3-5-12. Policy ~~Development~~ [AMENDED]
612:3-5-13. Drafting of new or revised policy [REVOKED]
612:3-5-14. Adoption of new or revised policy [REVOKED]
612:3-5-15. When new or revised policy becomes effective [REVOKED]
612:3-5-16. State office memoranda [REVOKED]
612:3-5-17. Department publications [REVOKED]
612:3-5-18. Petition requesting promulgation [REVOKED]
612:3-5-19. DRS staff responsibility [REVOKED]
Part 5. Program Standards
612:3-5-29. Program Standards [AMENDED]
612:3-5-30. Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired compliance reviews [REVOKED]
612:3-5-31. Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired outcome measures [REVOKED]
Part 7. Case Review [NEW]
612:3-5-35. Case Review [NEW]
AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.2
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 1, 2015
COMMENT PERIOD:
December 15, 2015 through February 10, 2016
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ADOPTION:
March 14, 2016
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March 14, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed changes to Chapter 3 involve name change of Policy Development and Program Standards becoming Process Improvement. Additional changes include combining policies into one cohesive document and eliminate multiple related policies.
CONTACT PERSON:
Tina Calloway, Administrative Programs Officer, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. ~~POLICY DEVELOPMENT AND PROGRAM STANDARDS~~ PROCESS IMPROVEMENT

PART 1. GENERAL PROVISIONS

612:3-5-1. Purpose

The purpose of this Chapter is to set forth the policies and procedures governing the operations of the Process Improvement Unit and its subsections, Program Standards, Case Review, and Policy, of the Department of Rehabilitation Services. The policies in this Chapter are promulgated under the authority of the Commission for Rehabilitation Services as established in 74 O.S., Section 166.1 et seq and the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

~~(a) The purpose of this Subchapter is to present the methods the Department of Rehabilitation Services will use to comply~~

~~with the Administrative Procedures Act. Authority for the policies contained in this Subchapter derive from enabling legislation for the Department, 74 O.S., Sections 166.1 et seq.; and the Administrative Procedures Act, 75 O.S., Sections 250 et seq. These policies are also based upon regulations published by the Office of Administrative Rules, OAC Title 655. Where Department policy is silent on policy development or program standards, decisions will be based upon regulations published by the Office of Administrative Rules, or upon regulations published by the Rehabilitation Services Administration.~~

~~(b) Agency policy communicates the expected standards for staff conduct and provides the necessary direction for carrying out the agency' mission. The intent of policy is to provide a common basis for decision making so that individuals can expect equitable treatment when dealing with the agency. Our policy is a public document so that the public will have the opportunity to know the mission of our program and how this agency intends to carry out that mission.~~

~~(c) Those who carry out policy, and those who are affected by it, will be given the opportunity to influence its development. This will be accomplished through direct involvement of appropriate agency staff and consumer representatives, as appropriate, in the policy development process.~~

~~(d) The success of fulfilling the agency's mission will be evaluated through measures appropriate to the particular program. Compliance with regulatory requirements will also be measured. The results of such evaluations will be reported to appropriate entities, including consumer councils.~~

PART 3. POLICY ~~DEVELOPMENT~~

612:3-5-12. Policy ~~Development~~

(a) ~~Policy Development is charged with assuring that the Department complies with the Administrative Procedures Act. This responsibility includes:~~**Purpose of Policy.** Agency policy communicates the expected standards for staff conduct and provides the necessary direction for carrying out the agency's mission. The intent of policy is to provide a common basis for decision making so that individuals can expect equitable treatment when dealing with the agency. Our policy is a public document, maintained as part of the Oklahoma Administrative Code by the Office of Administrative Rules, in the Secretary of State's Office, so that the public will have the opportunity to know the mission of our program and how this agency intends to carry out that mission.

~~(1) Ensuring that all Department statements of general applicability and future effect that implement, interpret, or prescribe law or policy, or describe the procedures or practice requirements of the Department are promulgated in accordance with the APA.~~

~~(2) That the public receives proper notice of the Department's intent to adopt, amend, or revoke rules so that opportunity is provided for public and consumer input during the rulemaking process.~~

~~(3) Management of the promulgation process for the Department in an efficient and effective manner that complies with the APA.~~

(b) ~~The Administrator of the Policy Development and Program Standards Unit, or designee, serves as the Department's liaison to the Office of Administrative Rules in the Office of the Secretary of State. This administrator, or designee also serves as the attestation officer, as delegated by the Oklahoma Commission for Rehabilitation Services, for purposes of 75 O.S., Section 254. An Administrative Officer within Policy Development will be designated as the back-up attestation officer for the Department.~~ **DRS Staff Responsibility.** DRS staff are expected to be thoroughly familiar with agency policies pertaining to their conduct and program.

(1) Supervisors and managers are responsible for ensuring that staff under their supervision are familiar with all policy and updates, and that their staff receive training on policy and updates.

(2) Staff are expected to use professional judgment in conducting the agency's business. The policies of this agency are to inform and guide the professional judgment and conduct of staff. When a staff person needs guidance in making a decision, the first step is to consult agency policy.

(c) ~~Once a Division or the Executive Office has developed proposed policy and supporting documentation, Policy Development staff will format and prepare the resulting documents for submission to the Commission for action. From that point, Policy Development staff will be responsible for the promulgation process from initial notices through distribution of the adopted policy.~~**Process Improvement Policy Section Responsibility.** The Policy Section is charged with assuring that the Department complies with the Administrative Procedures Act. This responsibility includes:

(1) Ensuring that all Department statements of general applicability and future effect that implement, interpret, or prescribe law or policy, or describe the procedures or practice requirements of the Department are promulgated in accordance with the APA.

(2) That the public receives proper notice of the Department's intent to adopt, amend, or revoke rules so that opportunity is provided for public and consumer input during the rulemaking process.

(3) Management of the promulgation process for the Department in an efficient and effective manner that complies with the APA.

(4) The Administrator of the Process Improvement Unit, or designee, shall serve as the Department's liaison to the Office of Administrative Rules in the Office of the Secretary of State. The administrator will also designate a staff member to act in the capacity of back-up liaison.

(5) The Administrator of the Process Improvement Unit, or designee, shall also serve as the attestation officer, as delegated by the Oklahoma Commission for Rehabilitation Services, for purposes of 75 O.S., Section 254. The administrator will also designate a staff member to act in the capacity of back-up attestation officer.

(d) ~~Policy Development staff is responsible for review of Departmental publications to assure consistency with existing policy, and conformance with the APA.~~**Drafting of New or**

Revised Policy. In compliance with the Administrative Procedures Act, new policy may be developed or an existing policy revised utilizing the following procedures:

(1) Each Division Administrator, Unit Administrator, and School Superintendent is responsible for ensuring that Departmental policies for his or her program conform to the requirements of applicable statutes and regulations, and are effective in achieving their program's mission.

(2) When a program administrator, or the Director, decides there is a need to draft new policy, or to amend existing policy,

(A) The program administrator will initiate drafting content through whatever method deemed most effective by the administrator. Policy Section staff are available to provide guidance if requested.

(B) The program administrator will provide to Policy Section staff the completed draft content, the reasons for changing the policy and any budgetary impact these changes may incur.

(C) Policy Section staff will format the draft content in accordance with APA standards. Once drafted, Policy Section staff will consult with the program administrator concerning any needed revisions and produce a revised draft.

(D) Revised draft policy will be distributed to Executive Team members for further review and response. Comments and suggestions for revision will be provided to the program administrator. The program administrator shall consider the comments and suggestions for inclusion and may revise the content again if appropriate.

(E) The program administrator will provide the latest draft version to the Policy Section. Policy Section staff will provide this draft version to agency staff for comment.

(F) Agency staff shall be notified via e-mail that draft policy is available for comment. The notification will include:

(i) Identification and summary of the draft policy;

(ii) General instructions on where the draft policy can be accessed;

(iii) How to submit comments, and the due date for submission of comments, and;

(iv) Where to direct questions about the draft policy.

(G) Policy Section staff will collect and collate agency staff comments and develop a summary. The collated comments and the summary will be provided to the originating program administrator for consideration.

(H) The program administrator will decide on what policy changes to make in response to the submitted comments, if any. The program administrator will also draft responses to the comments, which will at a minimum explain any instance in which staff recommendations were not adopted and will send the response to the Policy Section so it can be forwarded to the respective commentator.

(I) Policy Section staff will work with the program administrator to finalize draft policy. This step will include a final check by the program administrator for consistency with existing policies, regulations, and applicable statutes. Policy Development staff will obtain authorization from the appropriate program administrator to proceed with promulgation of the draft policy.

(J) When the draft policy pages are submitted to the Policy Section for promulgation, the draft policy is then referred to as proposed policy.

(e) **Adoption of New or Revised Policy.** Proposed policy must be approved by the DRS Commission prior to submission for promulgation.

(1) Policy Section staff will submit the proposed policy and/or notice, including executive summary and resolution, to the Director for review and to the Commission support staff by the established deadline for inclusion in the Commission meeting packet.

(2) The originating administrator, with the assistance of the Administrator of Process Improvement, will be responsible for the presentation of proposed policy at the Commission meeting. Once proposed policies are presented to the Commission for approval their content will not be changed unless so ordered by the Commission.

(3) Upon adoption of the proposed policy by the Commission, Policy Section staff will manage the promulgation process.

(f) **Effective Dates of Policy Revisions.** The effective dates of policy revisions will be determined by the policy type.

(1) The effective date will be noted on each page of the adopted policy. Whether internal management policies or administrative code, policies can only be applied prospectively from their effective date.

(2) Internal management policies that do not fall under the APA become effective immediately upon adoption by the Commission.

(3) Permanent rules become effective ten days after they are published in the Oklahoma Register pursuant to the APA. DRS permanent rules will usually be published following the legislative session. If a later date is specified in statute, or in the rules, the later date will become the effective date.

(4) Emergency rules become effective immediately or at a stated date after certification by the Governor. The Governor has forty-five calendar days from the date rules are submitted to review them.

(5) Policy Section staff will notify the appropriate Division Administrator, Superintendent, and the Director of approvals.

(g) **Permanent Rules; Modification Limitations.** Once the Governor and Legislature have approved the rules, they may only be modified or revoked through the rulemaking process. The APA states that any agency shall not by internal

policy, memorandum, or other action not otherwise authorized by the APA:

(1) amend, interpret, implement or repeal a statute or a rule;

(2) expand upon or limit a statute or rule; and;

(3) except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.

(h) **Petition Requesting Promulgation.** Per the APA, any interested person or group may petition the Department requesting the promulgation, amendment, or repeal of a rule.

(1) The petition must be submitted in writing to the Director of the Department of Rehabilitation Services at the Department's state office. A request to amend or repeal a rule will include a copy of the rule in question.

(2) The Department shall act upon such a request within a reasonable time period; however; if the Department does not initiate rulemaking proceedings within 30 calendar days of receiving the request, the petition will be considered to have been denied.

612:3-5-13. Drafting of new or revised policy [REVOKED]

~~(a) The administrators in each division, at each school, and in the executive offices are responsible for keeping informed of the statutes and regulations which govern the operation of programs under their authority. These administrators are also in the best position to know the needs of his or her programs' consumers, staff, and service partners. Each Division Administrator, Unit Administrator, and School Superintendent is therefore responsible for ensuring that Departmental policies for his or her program conform to the requirements of applicable statutes and regulations, and are effective in achieving their program's mission. Whenever possible, drafting of new or revised policies should begin at least twelve months in advance of their intended effective date.~~

~~(b) When an administrator, or the Director, decides there is a need to draft new policy, or to amend existing policy, the Unit Administrator, Division Administrator, Superintendent, Chief of Staff or Director will assure that sufficient opportunity for input on the needed changes will be given to individuals and groups as designated by the administrator or Director. The appropriate program administrator will provide the Policy Development staff the reasons for changing policy as well as any budget impact these changes may incur and is to consult with Policy Development staff about the need to arrange for, announce, and hold any public forums. Public comments and responses to them must be submitted to the Policy Development Section for inclusion in the rulemaking record. Policy Development staff assistance in developing a summary of comments and responses is available.~~

~~(c) The appropriate program administrator will initiate drafting of policy content through whatever method deemed most effective by the administrator. Policy Development Section staff will provide assistance as requested. The Policy Development Section will be responsible for drafting Departmental policy pages using the content drafts provided by the appropriate program administrator. Once this first draft is completed, Policy Development staff will consult with the appropriate administrator concerning any needed revisions. When these are completed, the draft policy will be distributed to Executive Team members for review and response. Administrators will consider comments and revise drafts as appropriate, providing final draft versions to the Policy Development Section. The appropriate program administrator will determine when the draft policy is ready for distribution to Departmental staff for comment. Staff comment will be obtained as follows:~~

~~(1) An email will be addressed to all Departmental staff advising them that the draft policy is available for comment, and will include:~~

~~(A) identification and summary of the draft policy;~~

~~(B) general instructions on where the draft policy can be accessed;~~

~~(C) how to submit comments, and the due date for submission of comments; and~~

~~(D) where to direct questions about the draft policy.~~

~~(2) Comments will be sent to the Policy Development Section where they will be collated, and a summary of them developed. The summary and collated comments will be provided to the appropriate program administrator. The appropriate program administrator will decide on what policy changes to make in response to the submitted comments, if any. The appropriate program administrator will draft responses to the comments, which will at a minimum explain any instance in which staff recommendations were not adopted and will send the response to the Policy unit so it can be forwarded to the respective commentator.~~

~~(3) Policy Development staff will work with the appropriate program administrator to finalize draft policy. This step will include a final check for consistency with existing policies, regulations, and applicable statutes. Policy Development staff will obtain authorization from the appropriate program administrator to proceed with promulgation of the draft policy.~~

~~(d) When the draft policy pages are submitted to the Policy Development Section for promulgation, the draft policy is then referred to as proposed policy. Policy Development staff will submit the proposed policy and/or notice, including executive summary and resolution, to the Director for review prior to submission to the Commission for discussion or action.~~

612:3-5-14. Adoption of new or revised policy [REVOKED]

~~(a) Policy Development gives proposed policy to the Director for review and to the Administrative Assistant for the Commission by the established deadline for inclusion in the Commission meeting packet. The originating administrator, with the assistance of the PDPS Administrator, will be responsible for the presentation of proposed policy at the Commission meeting.~~

~~(b) Upon adoption of the proposed policy by the Commission, Policy Development staff will manage the promulgation process.~~

~~(1) Internal management policies will be formatted for the DRS Policy Manual and the effective date will be the date the commission approves the policy.~~

~~(2) Permanent or emergency rules will be managed through the Governor's and Legislature's offices. Formatting and publishing in the Department's policy manual will be done after gubernatorial and legislative approval have been obtained.~~

~~(c) Once proposed policies are presented to the Commission for approval their content will not be changed unless so ordered by the Commission. Once proposed rules are adopted by the Commission, a vote of the Commission will be required to withdraw proposed rules from the rulemaking process. Once the Governor and Legislature have approved the rules, they may not be withdrawn from the rulemaking process, and can only be revoked through the rulemaking process.~~

612:3-5-15. When new or revised policy becomes effective [REVOKED]

~~(a) The effective date will be noted on each page of the adopted policy. Whether internal management policies or administrative code, policies can only be applied prospectively from their effective date.~~

~~(b) Internal management policies that do not fall under the APA become effective after adoption by the Commission.~~

~~(c) Permanent rules become effective ten days after they are published in the Oklahoma Register pursuant to the APA. DRS permanent rules will usually be published following the legislative session. If a later date is specified in statute, or in the rules, the later date will become the effective date.~~

~~(d) Emergency rules become effective immediately or at a stated date after certification by the Governor. The Governor has forty-five calendar days from the date rules are submitted to review them.~~

~~(e) Policy Development staff will notify the appropriate Division Administrator, Superintendent, and the Director of approvals.~~

612:3-5-16. State office memoranda [REVOKED]

~~(a) The APA states that an agency shall not by internal policy, memorandum, or other action not otherwise authorized by the APA:~~

~~(1) amend, interpret, implement, or repeal a statute or a rule;~~

~~(2) expand upon or limit a statute or rule; and~~

~~(3) except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.~~

~~(b) State office memoranda are those containing information or procedural direction issued by administrators in state office for general distribution. Types of state office memoranda and designation of those authorized to issue them will be established by the Director.~~

~~(c) Reviews of state office memoranda by Policy Development staff may be done in order to:~~

~~(1) assure consistency of memoranda content with existing Departmental policy; and~~

~~(2) assure state office memoranda content does not violate the APA.~~

612:3-5-17. Department publications [REVOKED]

~~Agency publications, including brochures, handbooks, manuals, or other publications are not the Department's official rules. The official rules of this Department are those as published in the Oklahoma Register, and included in the OAC. All agency publications are to be reviewed by the Policy Development Section prior to publication.~~

612:3-5-18. Petition requesting promulgation [REVOKED]

~~(a) An interested person or group may petition the Department requesting the promulgation, amendment, or repeal of a rule. The Department will act upon such a request within a reasonable period of time. However, if the Department does not initiate rulemaking proceedings within 30 calendar days of receiving the request, the petition will be considered to have been denied.~~

~~(b) A petition requesting promulgation must be submitted in writing to the Director of the Department of Rehabilitation Services at the Department's state office. A request to amend or repeal a rule will include a copy of the rule in question.~~

612:3-5-19. DRS staff responsibility [REVOKED]

~~(a) The DRS Policy Manual communicates the expected standards for staff conduct and provides the necessary direction for carrying out the mission of this agency. The official rules of the Department are maintained as part of the Oklahoma Administrative Code by the Office of Administrative Rules, in the Secretary of State's office.~~

~~(b) Staff are expected to use professional judgement in conducting the agency's business. The policies of this agency are to inform and guide the professional judgement and conduct of staff. When a staff person needs guidance in making a decision, the first step is to consult agency policy.~~

~~(c) DRS staff are expected to be thoroughly familiar with agency policies pertaining to their conduct and program. Supervisors and managers are responsible for ensuring that staff under their supervision are familiar with all policy and updates, and that their staff receive training on policy and updates.~~

PART 5. PROGRAM STANDARDS

612:3-5-29. Program Standards

(a) ~~The Program Standards section is responsible for conducting studies and reviewing statistical data that measures agency performance based on the program standards~~

~~established by individual divisions, schools and units or programs. Performance measures may include qualitative and/or quantitative analysis of service delivery and service outcomes, customer satisfaction, and employee climate, as well as measuring compliance with various agency strategic planning documents. The section serves as a resource to agency programs regarding statistical research and analysis.~~**Purpose of Program Standards.** The purpose of the Program Standards Section is to inform agency strategic decision-making and support agency programs through the use of research, statistical analysis, program evaluation and process improvement methodologies aimed at improving programmatic outcomes.

(b) ~~Program Standards staff will also produce appropriate reports of its findings. Such reports will be designed to provide the relevant information in a useful format.~~**Responsibilities of Program Standards.** Program Standards staff are charged with supporting agency programs by:

(1) Conducting studies and surveys of agency staff, clients and the public to determine opinions and needs regarding agency programs;

(2) Analyzing statistical data collected either by the agency or obtained from recognized external data sources regarding client demographics, behavior, participation, needs and outcomes to inform program administrators and agency leadership;

(3) Applying program evaluation methodologies to agency programs, either formative or summative, focused on process/implementation fidelity, outcomes/performance measures, or cost effectiveness/efficiency;

(4) Through the use of Lean and Six Sigma methodologies, facilitating work groups to analyze and streamline business processes, identify and correct areas of programmatic concern, and improve effectiveness and efficiency of programmatic flow;

(5) Verifying, cleaning and reporting data to the Rehabilitations Services Administration as required by federal regulation;

(6) Participating, as required, in external auditing procedures by state or federal entities;

(7) Monitoring programmatic outcomes for report to program and agency leadership.

(c) ~~Survey, sampling, review, and reporting techniques will be so designed as to keep the identity of individuals confidential within Department policy.~~ **Federal Data Reporting.** Federal regulation requires the reporting of data to RSA on a periodic basis.

(1) Data will be cleaned, verified, and if necessary, corrected prior to submission.

(2) Federal reports will be submitted prior to or on the deadline date specified by RSA.

(3) The Administrator of Process Improvement, or designee, shall serve as the data submission liaison with RSA. The administrator shall designate a backup staff member from Program Standards to fulfill federal reporting standards in the absence of the primary liaison.

(d) **Confidentiality.** All activities of the Program Standards Section will be conducted in a manner to ensure the confidentiality of participants.

612:3-5-30. Vocational Rehabilitation and Vocation Rehabilitation for the Blind & Visually Impaired compliance reviews [REVOKED]

~~(a) Assigned Case Review staff will conduct reviews on a random sample of closed cases to determine if case documentation indicates consumers are being served according to standards established by the Rehabilitation Act and agency policy. Staff will use the instrument currently approved by the Director or designee and will report their findings to appropriate staff on a regular schedule.~~

~~(b) Upon request and as other duties allow, Case Review staff will conduct reviews of active cases and will report their findings to appropriate staff within agreed upon deadlines.~~

~~(c) Case Review staff will participate in compliance reviews conducted by RSA as assigned. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator for Policy Development and Program Standards.~~

612:3-5-31. Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired outcome measures [REVOKED]

~~(a) Assigned Program Standards staff will conduct data analysis and consumer surveys to determine actual service outcomes for the Divisions of Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired. Such information will be gathered from a statistically significant random sample of consumer cases. Staff will report their findings on a regular basis to be specified by affected administrators.~~

~~(b) Outcome measures will be used to determine the overall effectiveness of the Divisions of Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired in carrying out their mission. Results will therefore be reported on a program level, and not on an individual caseload level.~~

~~(c) Assigned Program Standards staff will assist RSA staff in conducting reviews of agency programs and community based rehabilitation programs funded under the Rehabilitation Act. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator of Policy Development and Program Standards.~~

PART 7. CASE REVIEW

612:3-5-35. Case Review

(a) **Purpose.** The purpose of the Case Review Section is to conduct evaluations on programmatic case documentation to ensure compliance with federal regulation and to enhance agency effectiveness.

(b) **Case Review Responsibilities.** Case Review staff are charged with the following responsibilities:

(1) Conducting reviews on a random sample of closed cases to determine if case documentation indicates consumers are being served according to standards established by the Rehabilitation Act and agency policy. Staff will use the instrument currently approved by the Director or designee and will report their findings to appropriate staff on a regular schedule.

(2) Upon request and as other duties allow, conducting reviews of active cases or other specialized reviews and will report their findings to appropriate staff within agreed-upon deadlines.

(3) Participating in compliance reviews conducted by RSA as assigned. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator for Process Improvement.

(4) Acting as subject matter experts in the area of case review, compliance and best practices, including providing training as requested.

(c) **Confidentiality.** All activities of the Case Review Section will be conducted in a manner to ensure the confidentiality of clients and staff.

[OAR Docket #16-428; filed 6-14-16]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED

[OAR Docket #16-429]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:10-1-2. Definitions [AMENDED]
Subchapter 7. Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired
Part 1. Scope of Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired
612:10-7-1. Overview of Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired [AMENDED]
Part 3. Case Processing Requirements
612:10-7-21.1. Processing incoming referrals [AMENDED]
612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
Subchapter 9. Rehabilitation Teaching Services
Part 5. Services
612:10-9-32. Diagnosis and evaluation ~~for homemaker cases~~ [AMENDED]
Subchapter 11. Independent Living Services for Older and Individuals who are Blind
Part 1. Scope of Services
612:10-11-2. Basic eligibility requirements [AMENDED]
Part 3. Case Processing
612:10-11-25. Unsuccessful Closure Status [REVOKED]
612:10-11-26. Previously closed cases [REVOKED]
612:10-11-27. Inter-program transfers [REVOKED]
Part 5. Provision of Services
612:10-11-43. Reader/~~Sighted~~ Guide services [AMENDED]
612:10-11-44. Orientation and Mobility services (O&M) [REVOKED]
612:10-11-58. Adapted Communication Skills Training [AMENDED]
AUTHORITY:
Commission for Rehabilitation Services; 29 USC 701, 705, 723, and 796; 74 OS § 166.1 et seq.; 34 CFR 267 and 361.50.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a
ANALYSIS:
The proposed changes to Chapter 10 consist of updating use of terms to match federal law; revision of rehabilitation teaching eligibility to specify teachers may serve persons with any visual impairments that result in significant functional issues; adding the revised WIOA language regarding advancing in employment; the addition of language regarding pre-employment transition services to be compliant with the new federal Workforce Innovation and Opportunity Act and the deletion of reference to 'homemaker' to be compliant with the federal rules eliminating the option for a vocational goal.
CONTACT PERSON:
Tina Calloway, Administrative Programs Officer, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Best correction" refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self-worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable services and benefits" means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to further the progress of the individual toward achieving his/her identified employment outcome.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/VRBVI Specialist and VR/VRBVI Coordinator.

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"DVR" means the Division of Vocational Rehabilitation.

"DVRBVI" means the Division of Vocational Rehabilitation for the Blind & Visually Impaired.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, ~~enter, engage in, or retain gainful~~ secure, retain, advance in or regain employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most ~~severe~~ significant disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a ~~severe~~significant disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, ~~certification that the~~a finding that an individual is legally and/or functionally blind,~~or~~ has a rapidly progressive

eye condition ~~and may have secondary disabilities~~; or has a visual impairment that with or without secondary disabilities results in functional visual limitations; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community~~;~~.

~~(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.~~

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most ~~severe~~significant disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE, except that DRS may provide and pay for extended services for youth with the most significant disabilities for a period not to exceed 4 years.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Independent Living (IL) Core services" is defined as information and referral services; independent living skills training; peer counseling; ~~and~~ individual and systems advocacy; and services that facilitate the transition of individuals with significant disabilities from institutions to community-based residences, assist individuals at risk of entering institutions to remain living in the community, and assist the transition to postsecondary life for youth with significant disabilities who were eligible for special education and are no longer in school .

"Independent Living Services" as defined in the Rehabilitation Act, 29 USC Section 705 (17) and (18), include IL core services and counseling, housing procurement and modifications, personal assistance, mobility training, rehabilitation technology, life skills training, interpreters, readers, transportation, community integration, supported living, physical rehabilitation, aids and devices, social and recreational opportunities, and other services that are necessary and not inconsistent with the Act's provisions related to independent living.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Individual with a severe disability" means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

"Individual with significant disability" means an individual with a significant barrier to employment, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction,

interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most significant disability" means an individual with the most significant barrier to employment as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" is a service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term

of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Other Qualified Rehabilitation Personnel" means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level as Certified Vision Rehabilitation Therapists (CVRT) or who are CRC-eligible (Section 101(a)(7)(B) of the Act). The agency has determined that nationally certified rehabilitation teachers of the blind are necessary for the provision of vocational rehabilitation services and accomplishment of employment outcomes in Homemaker cases and that in their role as Other Qualified Rehabilitation Personnel; nationally certified rehabilitation teachers are approved to manage Homemaker cases through closure.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most ~~severe~~significant disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most ~~severe~~significant disabilities due to mental illness (see the definition for "transitional employment").

"Transitional employment" (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most ~~severe~~ significant disabilities due to mental illness.

"Transportation" is a service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"Unpaid family worker" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

"VRBVI" means the Division of Vocational Rehabilitation for the Blind & Visually Impaired, depending upon the context.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED

612:10-7-1. Overview of Vocational Rehabilitation and Vocational Rehabilitation for the Blind & Visually Impaired

(a) Vocational rehabilitation services are provided by the Division of Vocational Rehabilitation and the Division of Vocational Rehabilitation for the Blind & Visually Impaired to help eligible individuals achieve employment outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of each eligible individual. To the maximum extent appropriate, VR services are meant to result in competitive employment in an integrated setting. Vocational rehabilitation services include services for individuals and services to groups of individuals.

(b) Vocational rehabilitation services for an individual are prescribed in an Individualized Plan for Employment (IPE) that is based on an assessment of the individual's rehabilitation needs, guidance provided by a qualified vocational rehabilitation professional and the individual's informed choice with regard to employment goal, services and service providers. Services may include but are not limited to:

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) referral and other services to secure needed services from other agencies through cooperative agreements if such services are not available from DVR or DVRBVI;

(4) job-related services, including job search and placement assistance, job retention services, ongoing services, and extended services;

(5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) to the extent that financial support is not readily available from a source (such as health insurance or comparable services and benefits) other than DVR or DVRBVI, diagnosis and treatment of physical and mental impairments;

(7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an Individualized Plan for Employment;

(8) transportation, including training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to participate in rehabilitation services or to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including rehabilitation engineering, assistive technology devices and assistive technology services;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the Individualized Plan for Employment, and pre-employment transition services as described in 34 CFR 361.48(a) and 29 USC 733;

(16) supported employment services for individuals with the most significant disabilities that need ongoing support services from a job coach to obtain and maintain employment;

(17) employment and retention services for individuals with significant disabilities who require short term job coach support to obtain and maintain a successful employment outcome;

(18) transitional employment services for individuals with the most significant disabilities due to mental illness who have little or no successful work history and need work adjustment/trial work experience;

(19) job placement services for individuals with disabilities who are job ready, including customized employment services;

(20) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(21) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(c) Vocational rehabilitation services for groups of individuals with disabilities are described in 34 CFR 361.49 and include:

(1) ~~in~~In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by DVR or DVRBVI, the provision of such services and supervision, along or together with the acquisition by DVR or DVRBVI of vending facilities or other equipment and initial stocks and supplies~~;~~.

(2) ~~services that contribute to the rehabilitation of a group of individuals but are not related directly to an individualized plan for employment of any one individual with a disability;~~Transition services to youth and students with disabilities who may not have applied or been determined eligible for vocational rehabilitation services, that involve collaboration of a vocational rehabilitation counselor with education agencies, programs serving individuals with developmental disabilities, businesses, workforce programs, independent living centers, housing and transportation authorities and related entities. Such services are to benefit a group of youth or students with disabilities and may not be individualized services related to an individual plan for employment. Services may include group tours of training programs and businesses, career fairs, interview practice, resume writing, and other group activities that support future employability.

(3) ~~the~~The use of telecommunications systems (including telephone, television, video description services, tactile-vibratory devices, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;

(4) ~~special~~Special services to provide access to information for individuals who are blind, visually impaired, deaf, hard of hearing or deaf-blind including:

(A) the use of telecommunications, Braille, sound recordings, or other appropriate media;

(B) captioned television, films, or video cassettes for individuals who are deaf or hard of hearing;

(C) tactile materials for individuals who are deaf-blind; and

(D) other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) ~~technical~~Technical assistance ~~and support services~~ to businesses that are ~~not subject to Title I of the Americans with Disabilities Act of 1990 [42 USC 12111 et seq.] and that are~~ seeking to employ individuals with disabilities~~; and~~.

(6) ~~consultative~~Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(7) The establishment, development or improvement of assistive technology demonstration, loan, reutilization or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998.

(8) The establishment, development or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-21.1. Processing incoming referrals

(a) **Processing incoming referrals.** All referrals to DVR and DVRBVI will be contacted by the VR counselor and appropriate action taken within 30 days, after receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to referrals who are deaf or non-English speaking. In situations where the individual cannot be personally contacted, correspondence will be mailed to the individual for informational purposes.

(b) **Referrals to rehabilitation teachers.** All individuals who are legally blind, whether being served by a DVR counselor or a DVRBVI counselor, will be referred to a rehabilitation teacher. Rehabilitation teachers may also receive counselor referrals and provide services for individuals who are not legally blind but have functional limitations due to vision loss and have potential to benefit from rehabilitation teaching services.

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

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, ~~enter, engage in, or retain gainful~~secure, retain, advance in, or regain employment; and

(3) can benefit in terms of an employment outcome from vocational rehabilitation services.

(b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from rehabilitation services due to the severity of the individual's disability.

(c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) shall be:

(1) considered to have a significant disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(d) Eligibility requirements shall be applied without regard to:

(1) duration of residence in the state,

(2) type of disability,

(3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.

(4) gender, race, color or national origin,

(5) type of expected employment outcome,

(6) source of referral, or

(7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.

(e) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:

(1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.

(2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.

(f) **Applicants who are employed.** Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services to advance in or retain employment, or when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(g) **Citizenship.** Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.

(h) **Criteria.** Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a ~~psychiatrist, psychologist, medical doctor or certified substance abuse counselor~~qualified professional. Clients must be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating professional must be filed in the case record upon IPE development.

(2) **Allergies/Asthma.** Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below, as performed by a qualified audiologist or other qualified professional as determined by the Department. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

(II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when;

(I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

(II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(4) **Diabetes.** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. ~~All diabetics will need to complete a knowledge survey regarding current best practices for the management of diabetes. Should the knowledge survey identify significant need for diabetes training, the training will be incorporated into the IPE.~~ Diabetes management training will be incorporated into the IPE unless the client shows that he/she has previously completed diabetes management training. When recommended by a physician, diabetes management training will be incorporated into the IPE regardless of past diabetes education received by the individual.

(5) **Facial and Disfigurement Conditions.** When these conditions result in an impediment to employment an individual may be eligible for VR services.

(6) **Learning Disabilities.** An individual may be identified as learning disabled:

(A) When there is a marked discrepancy between verbal and performance intellectual level or

(B) When the individual's achievement on individually administered, standardized tests in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM~~,IV~~current edition).

(7) **Mental Disorders.** Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.

(8) **Intellectual Disability.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the intellectual disability range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the intellectual disability range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** ~~The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis.~~ Any ~~one or all~~ of the following ~~factors~~conditions may ~~be used to determine whether a 25% loss of total efficiency exists~~provide a basis for eligibility due to visual disability:~~.~~

(A) ~~**Central visual acuity (Snellen method or equivalent)**~~**Blindness.** ~~Acuity of 20/60 or less in the better eye after best correction (in the case of difference of acuity between reading and distance use the greater loss).~~A central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in the field of vision in the better eye so that the widest diameter of the visual field subtends an angle of 20 degrees or less. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis.

(B) **Visual impairment.** A central visual acuity of 20/60 or less in the better eye with best correction, or other visual condition which, for the individual, results in functional limitations and constitutes a barrier to employment. Other visual conditions which may result in functional limitations include, but are not limited to, limited peripheral vision, extreme light sensitivity, loss of depth perception, loss of stereopsis, diplopia (double vision), aphakia, total absence of color discrimination or red-green deficiency, blurred vision, eye muscle and movement conditions, and cortical visual impairment.

(C) **Progressive eye disease.** Diagnosis of a progressive sight threatening disease or condition that has resulted in functional limitations for the individual or is expected to progress rapidly. Progressive eye diseases which may result in significant vision loss include, but are not limited to, retinitis pigmentosa, diabetic retinopathy, glaucoma and macular degeneration.

~~(B) **Loss of depth perception or stereopsis.**~~

~~(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a~~

~~25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.~~

~~(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.~~

~~(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.~~

~~(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.~~

~~(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.~~

~~(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability.~~

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 5. SERVICES

612:10-9-32. Diagnosis and evaluation ~~for homemaker cases~~

Through diagnosis and evaluation the rehabilitation teacher gathers information to aid in determining eligibility as well as goals and strategies that may be included in the IPE.

(1) **Diagnosis.** The teacher must determine the medical causes of impairments to recognize the problems of each consumer and how they affect the ability to function. Individual differences and capabilities will be considered. The teacher will secure medical and/or psychological information when possible. If the teacher's evaluation indicates a need for medical or psychological treatment the specialist will refer the consumer to outside resources for help if it is not within the scope of rehabilitation teaching.

(2) **Vocational evaluation.** The rehabilitation teacher plays an important role in the evaluation of a consumer's ability to benefit from rehabilitation services in terms of the employment outcome~~ of homemaker~~.

(A) The rehabilitation teacher evaluates the consumer's characteristics and skills based on observation and assessment.

(B) An important service provided by the teacher is the initial evaluation of the consumer's adjustment to vision loss and ability to function independently. Areas to be evaluated include, but are not limited to, consumer and family attitudes toward blindness, degree of competence in communication, personal management, home management, and basic orientation to immediate surroundings.

(3) **Family evaluation.** The teacher must be aware of the family influence on the rehabilitation outcome that can be expected for an individual.

(4) **Community evaluation.** Visual impairment may restrict consumer's use of and access to community resources. Location, cost, eligibility, visual prerequisites, attitudinal barriers, and the level of consumer's skills are to be considered when evaluating community resources.

(5) **Evaluation of personal adjustment skills.** Prior to the development and implementation of the IPE, the rehabilitation teacher will thoroughly evaluate the consumer's ~~functioning as a homemaker~~functional limitations and skills, to include basic skills such as home management, communication, personal management, health management, and adjustment to disabilities.

SUBCHAPTER 11. INDEPENDENT LIVING SERVICES FOR OLDER AND INDIVIDUALS WHO ARE BLIND

PART 1. SCOPE OF SERVICES

612:10-11-2. Basic eligibility requirements

(a) The basic criteria for eligibility for OB services are:

(1) the consumer's primary disability is defined as legal blindness;

(A) Legal blindness is defined as a Visual Acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less. Best correction means the best visual acuity that can be obtained with normal prescription lenses. If there is a difference in near and distance acuity, the worse acuity is used for determination of eligibility.

(B) Documentation of legal blindness should be obtained from an eye care physician. If only a general medical report is available stating legal blindness or if documentation is unobtainable, a functional assessment consisting of a detailed explanation of how the consumer functions with distance and near acuity will be provided.

(2) the age of the individual is 55 years or older;

(3) there is a reasonable expectation that OB services will significantly assist the individual to improve his/her ability to function independently or improve his/her quality of life; and

(4) the individual does not meet the eligibility criteria to participate in the vocational rehabilitation program ~~with the goal of homemaker~~.

(b) The guidelines for application for OB services are the same as guidelines for the application for vocational rehabilitation services, with the addition of information to be supplied indicating the age of the applicant.

(c) Eligibility must be determined within 60 days of the date the application for services is submitted.

PART 3. CASE PROCESSING

612:10-11-25. Unsuccessful Closure Status [REVOKED]

~~Cases are closed in Unsuccessful status when services have been initiated, but have not resulted in the client gaining greater independence. A case may be closed in this status only after death of the consumer, full consultation with the client, his/her guardian, or other representative, or after there has been opportunity provided for full consultation.~~

612:10-11-26. Previously closed cases [REVOKED]

~~(a) A new application can be taken on a case closed as successful when the client is in need of additional services to remain independent, or to become more independent. No more than one case can be closed in successful Status on the same client in the same fiscal year.~~

~~(b) A new application can be taken on a case closed as unsuccessful when there is indication the client can benefit from OB services.~~

612:10-11-27. Inter-program transfers [REVOKED]

~~Cases cannot be transferred in the usual manner between the DRS traditional services program and the OB services program and will require a new application be initiated.~~

PART 5. PROVISION OF SERVICES

612:10-11-43. Reader/~~Sighted~~ Guide services

Reader/~~Sighted~~ Guide services includes the provision of volunteers to read mail, etc. and use of ~~sighted~~ guides to get to medical, recreational activities, etc. In planning the provision of reader services, the Department may also make use of available volunteer reading from family members, community groups and others.

612:10-11-44. Orientation and Mobility services (O&M) [REVOKED]

~~O&M services assist consumers to adjust to their surroundings and learn to move around safely in one's home or community. OB consumers can be referred for evaluation and training.~~

612:10-11-58. Adapted Communication Skills Training

Staff will evaluate the consumer's need for instruction in communication skills which includes but is not limited to:

(1) use of full page, signature, check book, envelope or other hand writing guides;

(2) reading and writing Braille;

(3) keyboarding;

(4) using the telephone;

(5) taking messages;

(6) telling time - watch and clock;

(7) evaluating the need for assistive listening devices for hearing impaired consumers;

(8) developing skills in expressive and receptive communications; ~~and~~

(9) utilizing access technology when appropriate~~.~~; and

(10) use of communication technology devices (e.g. iPads).

[OAR Docket #16-429; filed 6-14-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #16-533]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Practice and Procedure
Part 3. Description of Administrative Review and Hearings
710:1-5-14 [REVOKED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. § 203
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:1-5-14 has been revoked consistent with the passage of Senate Bill 1947 [2006] which repealed Section 260 of Title 68 of the Oklahoma Statutes relating to criminal prosecutions conducted by a Tax Commission special tax enforcement unit.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

710:1-5-14. Criminal tax prosecution and referral [REVOKED]

~~The Commission has the authority to pursue criminal prosecution in appropriate cases pursuant to the provisions of 68 O.S. §260. Such efforts are conducted by a special tax enforcement unit and may include investigation and initiation of criminal actions for violation of state tax laws. The prosecution of an action authorized by this section may be by an attorney of the special enforcement unit or by a district attorney.~~

[OAR Docket #16-533; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #16-534]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:10-1-2 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2.2 [AMENDED]
Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-1 [AMENDED]
710:10-14-5 [AMENDED]
Subchapter 16. Unremarried Surviving Spouses of Persons Who Died In the Line of Military Duty
710:10-16-1 [AMENDED]
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n/a
ANALYSIS:
Proposed amendments to **Subchapter 1,** *"General Provisions,"* have been made consistent with the passage of House Bill 1407 which enacts Section 2819.1 of Title 68 to prohibit county assessors from decreasing the assessment ratio used to compute the taxable value of real or personal property without written notice of such intent submitted at least 90 days prior to the decrease taking effect.

Proposed amendments to **Subchapter 7,** *"Manufacturing Facilities,"* have been made to implement the provisions of Senate Bill 387 and Senate Bill 498. Senate Bill 387 relates to the payroll requirements for purposes of qualification for the five year manufacturing ad valorem exemption and Senate Bill 498 relates to the removal of wind electric power generation facilities from exemption eligibility. [68:2902]

Proposed amendments to **Subchapter 14,** *"Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate,"* have been made to clarify the application of the portability provision added to property tax exemption afforded 100% disabled veterans in Section 8E of Article 10 of the Oklahoma

Constitution pursuant to the passage of State Question 770, adopted by voter approval, effective November 4, 2014.

Proposed amendments to **Subchapter 16,** *"Unremarried Surviving Spouses of Persons Who Died in the Line of Military Duty,"* have been made to outline the application of the portability provision relating to the property tax exemption allowed in Section 8F of Article 10 of the Oklahoma Constitution to unremarried surviving spouses of persons who died in the line of military duty in accordance with the adoption of State Question 771 (adopted by voter approval, effective November 4, 2014)

CONTACT PERSON:

Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

710:10-1-2. Assessment percentage guidelines

(a) **Guidelines for the assessment percentage.** Beginning on January 1, 1997, for ad valorem year 1997, Oklahoma's Constitution provides for the capping of the assessment percentage used in Oklahoma's Ad Valorem system, as of December 31, 1996.

(b) **Percentages used for real property and for personal property may differ.** The assessment percentage used for real and personal property may be different, but all real property must be assessed at the same percentage and all personal property must be assessed at the same percentage.

(c) **Assessment percentages in effect for January 1, 1996 control.** Each county assessor shall continue to use, **for both real and personal property**, the assessment percentages in effect for January 1, 1996, unless those percentages are increased in the future by a vote of the people as provided for by Section 8, Article 10 of the Oklahoma Constitution, or decreased by the County Assessor. Before a county assessor may decrease an assessment percentage the notice and meeting requirements outlined below must be met:

(1) The county assessor must provide written notice of intent to decrease an assessment ratio at least 90 days prior to the decrease taking effect.

(A) The written notice must be made by certified mail with return receipt requested to the county treasurer, county clerk, county sheriff, to each of the county commissioners, and to the governing board of any local government jurisdiction that levies ad valorem taxes upon any property located within the county.

(B) The notice must be mailed not later than 60 days prior to the expiration of the 90 day period and must clearly state the assessment ratio in effect prior to the decrease, the category of property to be affected by the proposed decrease, and the date that such decrease is proposed to take effect.

(C) The assessor must publish notice of intent at least one time for three (3) consecutive weeks in a newspaper of general circulation in the county.

(D) The beginning of the notice must have the following wording: "NOTICE OF INTENT TO DECREASE ASSESSMENT RATIO WITH RESPECT TO REAL OR PERSONAL PROPERTY OR BOTH IN (insert applicable county name) FOR THE (insert applicable year) ASSESSMENT YEAR.

(2) The assessor must conduct at least three (3) public meetings in the county prior to the date the assessment ratio decrease is to take effect. The last of the three (3) meetings must be held at least 30 days prior to the date any assessment percentage decrease is implemented.

(A) Notice of the meetings must be posted in the offices of the county assessor, county treasurer, county commissioners, county clerk and other public places within the county.

(B) The assessor must attend all public meetings to answer questions about the proposed decrease in assessment ratio and any possible effects on budgets of any ad valorem taxing jurisdiction

(d) All other property which is assessed by the State Board of Equalization shall be assessed at the percentage of its fair cash value at which it was assessed on January 1, 1996, as provided for in Article X, Section 8(A)(3) of the Oklahoma Constitution.

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2.2. Exemption requirements for qualified manufacturing and research and development facilities established, expanded or acquired

(a) ~~**Manufacturing.** In order to be approved as a "manufacturing facility," the facility must be engaged in an activity defined as "manufacturing" by the North American Industrial Classification System (NAICS), published by the U.S. Office of Management & Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6B of the Oklahoma Constitution.~~

~~(b) **Research & development.** In order to be approved as "research and development" the facility must be engaged in activities defined by 68 O.S. §2902(B)(3).~~

~~(c) **Facilities with sales tax exemptions.** The Tax Commission shall recognize all business issued Manufacturers Exemption Permits pursuant to 68 O.S. § 1359.2 .~~

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

(1) **Manufacturing facilities** means manufacturing facilities~~*engaged in the mechanical or chemical transformation of materials or substances into new products.*~~ as defined in 68 O.S. § 2902(B)(1).

(2) **Facility or facilities** *means and includes the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly*

and exclusively in the manufacturing process. 68 O.S. § 2902(B)(2).

(3) **Research & development** *means activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*. 68 O.S. § 2902(B)(3).

(4) ~~**Annualized**~~ **Base payroll** means ~~using the average of the third and fourth quarters for the initial base payroll line calculation and multiplying the result by four. This method shall be used for calculation of the initial and base year and all subsequent years.~~ total payroll for the calendar year the construction, acquisition, or expansion assets are first placed in service and the subsequent four (4) calendar years of eligibility.

(5) ~~**Base line**~~**Initial payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. ~~The base line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.~~In the event initial payroll is not comprised of a complete year's payroll, the amounts reported must be computed to arrive at an annual figure.

(~~e~~b) **Qualification or statutory requirements.** Except as otherwise provided in ~~(e)~~(6) and ~~(e)~~(7) of this ~~Section of rule~~subsection, facilities must meet the requirements mandated by statute and summarized in ~~(e)~~(1) through ~~(e)~~(5) of this ~~Section of rule~~ subsection:

(1) Facilities must satisfy the requirement of being new, expanded, or acquired.

(2) The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Investment Cost shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment.

(3) ~~The net increase in annualized~~Base payroll for the calendar year the assets are placed in service must be increased ~~at least Two Hundred Fifty Thousand Dollars ($250,000.00)~~ over initial payroll by at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons according to the most recent federal decennial census ~~while maintaining or increasing payroll~~; or by at least One Million Dollars ($1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census ~~while maintaining or increasing payroll~~. For the subsequent four years of eligibility, base payroll must be maintained in an amount equal to, or greater than, the base payroll amount established for the calendar year the assets are first placed in service.

(A) To determine ~~base line~~initial andbase payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing OESC reports for the applicable calendar year~~. immediately preceding the year for which initial application is made.~~ [See: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll ~~may~~shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. ~~It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section of rule.~~

(C) A manufacturing facility shall have the option of excluding certain components from its payroll~~, payments to sole proprietors, members of partnerships, members of a limited liability company or stockholder employees under certain circumstances~~. Manufacturing facilities electing ~~this option~~to exclude either of the options in (i) or (ii) of this subparagraph, shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. ~~Supp. 2005~~ § 2902(C)(4)

(i) Payments to sole proprietors, members of partnerships, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company, or stockholder employees of a corporation who own at least ten percent (10%) of the stock in the corporation may be excluded from payroll.

(ii) Nonrecurring bonuses, exercise of stock option or stock rights, or other nonrecurring, extraordinary items included in total payroll numbers as reported by the OESC may be excluded from payroll. Nonrecurring bonuses shall not include additional wages or other compensation paid on the basis of length of service.

(D) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Tax Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase of the required ~~annualized~~base payroll. When the increased payroll requirement is met, the affidavit will be ~~deemed~~ considered ~~to be~~ satisfied and no longer in effect.

(4) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [**See:** 68 O.S. § 2902(C)(4)(b)] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(5) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(6) Entities engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, if there is a net increase in ~~annualized~~ payroll at the facility of at least Two Hundred Fifty Thousand Dollars ($250,000.00), or a net increase of Two Million Dollars ($2,000,000.00) or more in capital improvements while maintaining or increasing payroll, and all other requirements of this Section are met. Effective January 1, 2017, an~~entities~~entity engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, shall not be defined as a qualifying manufacturing concern for purposes of the exemption authorized pursuant to Section 6B of Article X of the Oklahoma Constitution or qualify as a manufacturing facility as defined in this Section. While facilities which qualified for exemption pursuant to the filing of an exemption application before 2018 will be allowed to claim the exemption for any periods remaining in the five years provided all qualification requirements are met, no initial application for exemption shall be filed by or accepted from an entity engaged in electric power generation by means of wind on or after January 1, 2018.

(7) For applications received after November 1, 2007, establishments primarily engaged in distribution as defined under industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual latest revision, must meet all criteria required by statute and outlined in ~~paragraphs (e)~~(4) and ~~(e)~~(5) of this ~~Section~~subsection and the following subparagraphs:

(A) Initial capital investment of at least Five Million Dollars ($5,000,000.00);

(B) Employment of at least one hundred (100) FTE as certified by OESC;

(C) Wages and salaries equal to or exceeding one hundred seventy-five percent (175%) of the federally mandated minimum wage; and

(D) Commencement of construction on or after November 1, 2007, to be completed within three (3) years from the date of commencement of construction. [**See**: 68 O.S. ~~2007 Supp.~~§ 2902(B)(1)(e)].

(~~f~~c) **Review of facility eligibility.** ~~Eligibility subject to review by the Tax Commission. The~~To confirm eligibility, the Tax Commission may request any information from the applicant or require verification of any information as ~~required~~needed.

(~~g~~d) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S. ~~Supp. 2003,~~ § 2902(A)].

(~~h~~e) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

SUBCHAPTER 14. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption of the full fair cash value for homestead property and household personal property of qualified owners for ad valorem purposes.

(b) The "one hundred percent disabled veterans exemption" refers to the implementation of the constitutional amendments added to the Oklahoma Constitution, Article 10, § 8E, by State Question 715, effective January 1, 2006 and Article 10, § 8D, by State Question 735, effective January 1, 2009. The amendments direct county assessors to exempt the total amount of the actual fair cash value of the homestead real property and household personal property of any qualified person who has made proper application. The applicant's real property must be a valid homestead property, with evidence of a homestead exemption, or eligible for homestead exemption. As with any homestead-based exemption, the general statutes governing homestead exemption qualification apply to the one hundred percent disabled veterans exemption. Only one homestead, and by extension, only one exemption, is permitted in any one year, per applicant The exemption applies only to owner-occupied homestead property and may not be applied to any non-homestead property. [**See:** 68 O.S. §§ 2888, 2889, 2890, 2893]

(c) The passage of State Question 770, effective November 4, 2014, adds an amendment to Article 10 Section 8E to allow for the transfer of the exemption set forth therein under the circumstances where a qualifying veteran or surviving spouse of the veteran sells a previously exempted homestead property in Oklahoma and acquires, in the same calendar year, a new homestead property in the state. The full fair cash value of the newly acquired property shall be exempt ~~to the same extent as the homestead property previously owned by such person~~from ad valorem tax. The exemption on the property sold will remain in effect through the end of the calendar year.

710:10-14-5. Application

(a) In order to be eligible for the one hundred percent disabled veterans exemption, the individual must apply at the county assessor's office by completing an Application for 100% Disabled Veterans Property Tax Exemption, Oklahoma Tax Commission Form 998. The application should be made between January 1 and March 15th in the same manner as for homestead exemptions. However, if the county assessor

becomes aware of an otherwise-qualified applicant at any time during the current tax year, the county assessor may, upon compliance with all qualification criteria, make the appropriate adjustment. Providing all homestead requirements are met, if an otherwise qualified applicant receives their one hundred percent (100%) disability rating effective on or before the date of application, the property is exempt for the entire year regardless of the status of disability on January 1. If an otherwise-qualified applicant is discovered after the tax roll has been certified, then a tax roll correction may be made pursuant to 68 O.S § 2871(C)(2). Any applications that are denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the disability rating of any veteran participating in the exemption program is reduced by the U.S. Dept. of Veterans Affairs to less than one hundred percent, the veteran shall immediately notify the county assessor of the change in status. Failure to do so will result in loss of any future homestead exemption pursuant to 68 O.S. §§ 2892(K) and 2900.

(b) To transfer the exemption to a newly acquired homestead property the qualified veteran or surviving spouse of the veteran must file **Form 998-B, Application For 100% Disabled Veterans Exemption Acquired Homestead Property** with the county assessor. Beginning with the month the deed instrument is filed of public record and the application is approved the homestead property will be exempt to the same extent as the homestead property previously owned in this state by such person or persons for the year during which the new homestead property is acquired and each year thereafter providing qualifications are maintained.

(c) The exemption application must be filed in the year requested. Filing for previous years is prohibited pursuant to Oklahoma Constitution Article 10 § 22A.

SUBCHAPTER 16. UNREMARRIED SURVIVING SPOUSES OF PERSONS WHO DIED IN THE LINE OF MILITARY DUTY

710:10-16-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption for the full fair cash value of homestead property of qualified unremarried surviving spouses.

(b) The exemption for "unremarried surviving spouses of military personnel who died in the line of duty" refers to the implementation of an amendment added to the Oklahoma Constitution, Article 10 § 8F, by State Question 771, effective for the 2014 calendar year and years thereafter. The amendment directs county assessors to exempt the full amount of the actual fair cash value of the homestead property. The applicant's real property must be a valid homestead property with evidence of a homestead exemption or be eligible for homestead exemption. Only one homestead and by extension only one exemption, is permitted in any one year. The exemption applies only to owner-occupied homestead property and may not be applied to non-homestead property. [**See:** 68 O.S. §§ 2888, 2889, 2890, and 2893]

(c) The exemption provided by this Section may be transferred under circumstances where a qualifying spouse sells a homestead property previously exempted pursuant to this Section and acquires, in the same calendar year, a new homestead property in this state. The full fair cash value of the newly acquired property shall be exempt from ad valorem taxation.The exemption on the property sold will remain in effect through the end of the calendar year.

[OAR Docket #16-534; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 22. BOATS AND MOTORS

[OAR Docket #16-535]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:22-1-23 [NEW]
Subchapter 5. Procedures for Registration
710:22-5-11 [AMENDED]
Subchapter 9. Excise Tax
710:22-9-1 [AMENDED]
AUTHORITY:
68 O.S. § 203; 63 O.S. § 4004; Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 9, 2016
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ANALYSIS:
New Section 710:22-1-23 has been added and Section 710:22-9-1 has been amended to outline Commission policy relating to the excise tax treatment of and registration requirements for amphibious vehicles.
Section 710:22-5-11 has been amended consistent with the Commission's anticipated change from a postcard to a letter for purposes of boat and motor registration renewal notification.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

710:22-1-23. Amphibious vehicles

Amphibious vehicles are vehicles designed, manufactured and capable of operating on the roadways and waterways of this state. Such vehicles are to be issued two (2) certificates of title, both vehicle and vessel, and are to be concurrently registered as both vehicle and vessel. Only vehicle excise tax levied pursuant to Section 2103 of Title 68 is to be assessed. Both titles are to be assigned and provided to any subsequent owner.

SUBCHAPTER 5. PROCEDURES FOR REGISTRATION

710:22-5-11. Registration renewal notification

(a) **Notification options.** Boat and outboard motor registrants may choose from the following three (3) registration expiration notification methods.

(1) **Mail notification.** Registrants may choose to receive mailed renewal notices, for an additional fee set by statute, by advising the registering tag agency of their choice and paying the applicable fee. If renewing by mail, the registrant may indicate their choice on the renewal form and remit the applicable fee. Armed Forces personnel eligible for the reduced military registration fee set forth in 63 OS § 4021 may continue to receive mailed boat/motor renewal notices at no charge. If the mail notification fee is not remitted by the registrant, no notice will be mailed. Failure to receive the mailed notification shall not relieve the taxpayer from their responsibility to timely renew their registration(s).

(2) **Email notification.** Registrants may choose to receive an email renewal notification, at no charge, by either signing up for email notification via the Commission's online renewal website; or by advising the registering tag agency of their choice and providing to the agent an email address to which the notification is to be sent; or by indicating the email option and providing an email address to which the notification is to be sent on the mail-in renewal registration ~~postcard~~notice. Email notification will supersede any other type of registration expiration notification. Failure to receive the email notification shall not preclude the taxpayer from their responsibility to timely renew their registration(s).

(3) **No notification.** Registrants may choose to receive no notification by advising the registering tag agency of their choice, or by indicating their choice on the mail-in registration renewal ~~postcard~~notice.

(b) **Motor license agent responsibility.** It shall be the duty of motor license agents to advise all in-person registrants of their renewal notification options and process the chosen options per Commission guidelines. When the taxpayer chooses the email reminder notification option, the agent shall obtain the taxpayer's email address to which the notification is to be sent and enter that email address to the Commission's registration system in the manner prescribed by the Commission.

SUBCHAPTER 9. EXCISE TAX

710:22-9-1. General provisions

(a) **Date due; penalty.** Excise tax, as levied by Section 4103 of Title 63, is due at the time of transfer of legal ownership or possession of a boat or an outboard motor and must be paid within thirty (30) days of such date. After the thirtieth (30th) day, a penalty is to be collected in addition to the tax due. A daily penalty will accrue until the tax is paid. However, the penalty is not to exceed the amount of the tax due.

(b) **Determination of taxable value.** The taxable value, for excise tax purposes, of a new boat or outboard motor is the manufacturer's original retail delivered price of the boat or outboard motor. The taxable value for used boats or outboard motors is depreciated, based on the age of the boat or outboard motor, as provided by statute.

(c) **Rate on sale of new boat or outboard motor by dealer.** A new boat or outboard motor sold for the first time will always be assessed the first year rate, regardless of the model year. If resold during the same year, the second year rate is assessed.

(d) **Rates generally; determination of model year.** In all other cases, the excise tax rate is based on the model year and the year in which the title is assigned. In determining the number of years, include the model year, year of assignment, and each year in between.

(e) **Exemptions.** Certain transactions and transfers of title, as enumerated in Section 4106 of Title 63, are exempt from the assessment of excise tax.

(f) **Exceptions.** Amphibious vehicles, concurrently titled as both vehicle and vessel, are to be assessed only vehicle excise tax levied pursuant to Section 2103 of Title 68.

[OAR Docket #16-535; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 23. CHARITY GAMES TAX

[OAR Docket #16-536]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
710:23-1-2 [AMENDED]
710:23-1-4 [AMENDED]
710:23-1-8 [AMENDED]
710:23-1-12 [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
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n/a
ANALYSIS:
Sections 710:23-1-4 and 710:23-1-8 have been amended to implement the provisions of Senate Bill 574 which provided for an exemption from charity games tax for 501(c)(3) charitable healthcare organizations. [3A:421]
Sections 710:23-1-2 and 710:23-1-12 have been amended to update statutory references.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

710:23-1-2. Definitions

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

"ABLE" means the Alcoholic Beverage Laws Enforcement Commission.

"Act" means the Oklahoma Charity Games Act, 3A O.S. ~~Supp. 1993,~~ § 401 et seq.

"Commission" means the Oklahoma Tax Commission.

"Conforming bingo faces" means bingo faces with the word "Oklahoma" and outline of the state of Oklahoma printed thereon.

"Defaulting organization" means any licensed entity that has failed to pay to the distributor the tax required by the Act.

"Dual license holder" means any entity licensed as both a distributor and manufacturer under the Act.

"Exempt entity" or **"exempt organization"** means an organization specifically designated as exempt by the terms of Section 405 of the Oklahoma Charity Games Act, 3A O.S. § 401, et seq.

"Licensed distributor" means a distributor of charity game equipment as defined under the Act, licensed by the Oklahoma ABLE Commission.

"Licensed manufacturer" means a manufacturer of charity game equipment as defined under the Act, licensed by the Oklahoma ABLE Commission.

"Veterans' organization" means an organization whose members consist primarily of past or present members of the United States armed forces, where the organization is *exempt from taxation pursuant to the provisions of paragraph (4), (7), (8), (10) or (19) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq.* [**See:** 3A O.S. ~~2001,~~ § 421(D)]

710:23-1-4. Distributor operations and reporting

(a) **Sales of conforming bingo faces.** A licensed distributor must sell bingo faces, imprinted with the word "Oklahoma" and outline of the state of Oklahoma ("conforming bingo faces"), to licensed organizations, exempt organizations, and exempt entities. Except for sales to veterans' organizations, ~~and sales to~~ group homes for mentally disabled individuals, <u>and charitable healthcare organizations,</u> all sales of conforming bingo faces are subject to tax. Conforming bingo faces may not be sold to federally recognized Indian tribes or nations.

(b) **Records and reports required.** The following items apply to records and reports of distributors:

(1) A distributor who sells, leases, or otherwise provides charity game equipment must record the transaction on a sales invoice.

(2) A sales invoice must be on a form approved by the Tax Commission and must contain the following information:

(A) The "ABLE" license number of the distributor;

(B) The name of the licensed organization, entity, or licensed distributor;

(C) The complete business name and address of the organization, entity, or licensed distributor;

(D) The "ABLE" license or "ABLE" exemption permit number of the organization, entity, or licensed distributor;

(E) The invoice number;

(F) The date the equipment was shipped;

(G) A full description of each item of equipment sold;

(H) The serial numbers of the bingo sets, U-Pik-Em game sets, breakopen ticket games, and selection equipment. The invoice for bingo faces must designate whether the bingo faces are conforming bingo faces;

(I) The identity of the manufacturer from which the distributor purchased the equipment;

(J) The date of the sale of the charity game equipment;

(K) The name of the person who ordered the charity game equipment;

(L) Whether the sale was an exempt sale made to a veterans' organization;

(M) Whether the sale was an exempt sale made to a group home for mentally disabled individuals.

<u>(N) Whether the sale was an exempt sale made to a charitable healthcare organization.</u>

(c) **Monthly reporting.** Each distributor shall submit monthly to the Tax Commission:

(1) **Purchase invoices.** Copies of all purchase invoices from the licensed manufacturer, licensed distributor, or printer (jobber), stating the amount and price of each item obtained and in the case of invoices for bingo faces, whether they are conforming or nonconforming;

(2) **Sales invoices.** Copies of all sales invoices submitted for payment to purchasers of charity game equipment, bingo faces (conforming and nonconforming), U-Pik-Em game sets, and breakopen ticket games, regardless of whether the sale was to a licensed organization, exempt organization or entity, or person or entity excluded from the Act;

(3) **Printing invoices.** Copies of all invoices and work orders for conversion by jobbers, (i.e., the printing of the outline of the state of Oklahoma onto nonconforming paper) and for the printing of U-Pik-Em game sets. The invoice and work order must include the name of the printer, the number of bingo faces, and the series and serial numbers of the bingo faces. If the bingo faces printed are in sets, only the serial number of the top sheet must be included.

(4) **Reconciliation of inventory of charity game equipment.**

(A) The perpetual reconciliation of inventory is reported on the monthly reporting form, Schedule A, pertaining to bingo faces, and shall be detailed as to the number of conforming, nonconforming, and U-Pik-Em bingo games purchased from licensed manufacturers, licensed distributors, and printers (jobbers). It must reflect the total number of faces and U-Pik-Em games purchased and sold by the distributor.

(B) The breakopen ticket game reconciliation is reported on Schedule B on the monthly reporting form and must reflect the retail sales value of the breakopen ticket games purchased and sold by the distributor.

(C) Distributors who are also licensed as manufacturers must include in the reconciliation, the number of U-Pik-Em bingo game sets printed or purchased and transferred by the manufacturer and the number of U-Pik-Em bingo game sets printed by a jobber for the distributor.

(5) **Physical inventory required.** All licensed distributors shall be required to file a physical inventory of all paper (designated conforming and nonconforming), U-Pik-Ems, Tabs, and Equipment, the month following the ending month of the distributor's fiscal year. Such inventory shall include the number of conforming faces, nonconforming faces, and U-Pik-Ems, and for Tabs and Equipment, the total number of deals and items, as well as the total retail value.

(6) **Remittance of tax.** Remittance of tax is due on charity game equipment sold, rented or leased the previous month, less any discount lawfully retained. With the exception of conforming bingo faces sold to veterans' organizations and group homes for mentally disabled individuals, all conforming bingo faces sold or otherwise transferred during the previous month are subject to tax. Adjustments may be made upon proper showing, as a result of destruction or breakage. [**See:** 710:23-1-6]

(7) **Remuneration.** A distributor who timely reports and remits monthly may retain the discount provided in the Act. If the tax becomes delinquent, the discount is forfeited by the distributor.

(8) **Interest and penalty.** Interest and penalty as provided in 68 O.S. §217 shall apply to all liability not paid at the time required by the Act.

(d) **Quarterly reporting.** Each distributor, on the last day of the month following the end of the quarter, shall submit a report and supporting data to the Tax Commission containing the name, address, and license or exemption number, if any, of each purchaser of charity game equipment.

(e) **Magnetic or electronic reporting.** The quarterly report may, if desired, be submitted via magnetic media (tape or diskette) or by modem, directly to the Commission. Reports submitted via the magnetic media or electronic data shall conform to the Magnetic Media Guide prepared by the Oklahoma Tax Commission.

710:23-1-8. Limited exemptions

(a) **Use of conforming bingo faces required.** If an exempt entity or exempt organization chooses to use disposable paper bingo faces in conducting charity games, only bingo faces with the word "Oklahoma" and outline of the state of Oklahoma printed thereon ("conforming bingo faces") purchased from a licensed distributor may be used and the tax levied by the Act must be paid.

(b) **Charity game equipment purchased from licensed distributors.** An exempt entity or exempt organization purchasing charity game equipment from a licensed distributor or licensed organization shall pay the tax levied by the Act in the same manner as prescribed for licensed organizations.

(c) **Exemption if tax levied by the Act is paid.** An exempt entity or exempt organization shall be exempt from sales and use tax on any item of charity game equipment purchased by the exempt entity or organization on which tax levied by the Act has been paid.

(d) **Sales of charity game equipment to ~~veterans'~~certain organizations.** The sale of charity game equipment to ~~a veterans' organization~~organizations outlined in (1),(2) and (3) of this subsection is exempt from sales tax and charity games taxes levied pursuant to Section 421 of Title 3A.

(1) Veterans' organizations exempt from taxation pursuant to the provisions of paragraph (4), (7), (8), (10) or (19) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq.,

(2) Group homes for mentally disabled individuals exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and

(3) Charitable healthcare organizations exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

~~(e) **Sales of charity game equipment to group homes for mentally disabled individuals.** The sale of charity game equipment to a group home for mentally disabled individuals is exempt from sales tax and charity games tax levied pursuant to Section 421 of Title 3A.~~

710:23-1-12. Admissions, concessions and other property subject to sales tax

(a) **Admission charges.** The gross receipts received from the sale of admission tickets or fees for admission to a charity game location are subject to sales tax. If admission tickets are sold or fees charged, the value of all free or complimentary admissions provided by an organization is also subject to sales tax and must be reported on the organization's monthly sales tax report.

(b) **Concessions.** Sales of food or drink at a charity game are subject to sales tax. The person making such sales must comply with the Sales Tax Code and Rules of the Tax Commission promulgated thereto.

(c) **Other property.** Sales of tangible personal property other than items on which charity game tax is levied are subject to sales tax. The person making such sales must comply with the Sales Tax Code and Rules of the Tax Commission promulgated thereto. [**See:** Chapter 65 of this Title.]

(d) **Failure to collect, report and remit sales tax.** Failure to collect, report and timely remit sales tax on items subject thereto shall be reported to the Alcoholic Beverage Laws Enforcement Commission, pursuant to 3A O.S.~~Supp.1993,~~ §407.

[OAR Docket #16-536; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #16-537]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Required Returns and Reports
710:45-5-1 [AMENDED]
AUTHORITY:
68 O.S. §§ 203, 1001(M), 1001.1 and 1013; Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2016
COMMENT PERIOD:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:45-5-1 has been amended to outline the mandatory electronic filing requirement for all gross production tax remitters.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. REQUIRED RETURNS AND REPORTS

710:45-5-1. ~~Minimum requirements of monthly~~Monthly production ~~report~~ reports

(a) **Minimum requirements of monthly production report.** All producers or purchasers of asphalt or ores bearing lead, zinc, jack, or copper or petroleum oil, mineral oil, other crude oil, condensate, reclaimed oil, gas, natural gas, casinghead gas, or liquid hydrocarbons from oil or gas produced in this state shall report volume and value of such production monthly on OTC Form 300~~,~~ or any other form as may be prescribed and required by the Oklahoma Tax Commission. ~~A separate monthly report shall be filed for each county wherein production is reported.~~ Each monthly report shall include the following information:

(1) Commission assigned purchaser reporting number;
(2) Commission assigned producer reporting number;
(3) Commission assigned production unit number, subnumber, and merge number for each lease from which production is reported;
(4) Assigned product code number for the product reported;
(5) Gross amount of the product reported from each lease from which production is reported;
(6) Total value of the product reported from each lease from which production is reported; and, the Gross Production Tax and the Petroleum Excise Tax for said lease;
(7) Taxpayer identification number or, if applicable, the federal employer identification number (FEI).

(b) **Reports must be filed electronically.** OTC Forms 300 and 300C must be filed electronically in the format prescribed by the Compliance Division of the Oklahoma Tax Commission.

[OAR Docket #16-537; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #16-538]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Returns and Reports
Part 3. Liability; Penalties
710:50-3-21 [AMENDED]
Part 7. Other Required Reporting
710:50-3-54 [AMENDED]
Subchapter 11. Intercept of Refunds
710:50-11-4.1 [NEW]
710:50-11-5 [AMENDED]
710:50-11-6 [AMENDED]
710:50-11-7 [AMENDED]
710:50-11-9 [AMENDED]
710:50-11-10 [AMENDED]
710:50-11-11 [AMENDED]
710:50-11-12 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 7. Credits against Tax
710:50-15-74 [AMENDED]
710:50-15-114 [AMENDED]
710:50-15-115 [AMENDED]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51 [AMENDED]
Appendix E. Computation of Adjustment for Expenses Allocated to Nontaxable Income [NEW]

AUTHORITY:
68 O.S. §§ 203, 205.2, 2357.206; Oklahoma Tax Commission

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APPROVED BY GOVERNOR'S DECLARATION:
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June 9, 2016

EFFECTIVE:
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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Section 710:50-3-21 has been amended to correct a scrivener's error.

Section 710:50-3-54 has been amended to update a form number reference to conform with the current form number.

Proposed amendments to **Subchapter 11,** *"Intercept of Refunds,"* have been made to implement the provisions of HB 1825 which for purposes of intercepting income tax refunds for purposes of payment of debts of certain entities defined a qualifying entity as a state agency, municipal court, district court, public housing authority operating pursuant to Section 1062 of Title 63 of the Oklahoma Statues, district attorney seeking to collect unpaid court-ordered monetary obligations, or the designee of an above entity. As a result references to the above entities have been replaced with the singular "qualified entity" throughout Subchapter 11.

Section 710:50-15-74 has been amended to implement the provisions of Senate Bill 502 to include the prohibition of claiming the Credit for investment / new jobs for any investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System, No. 221119 effective January 1, 2017.

Sections 710:50-15-114 and 710:50-15-115 have been amended to implement the provisions of HB 1693 to change the number of additional years of commitment from two (2) to one (1) for the additional amount of credit.

Section 710:50-17-51 has been amended to outline Commission policy relating to the application of expenses allocated to nontaxable income.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 3. LIABILITY; PENALTIES

710:50-3-21. Penalty for filing insufficient or spurious information; no response to impermissible inquiries

(a) For the purposes of this Subchapter, a return shall be considered to be in **"not processible form"** if it does not contain sufficient information to properly determine the accuracy and correctness of any and all claims. This is intended to include all applicable schedules from Federal Income Tax Returns, or any other documentary evidence deemed necessary by the Tax Commission to properly administer or enforce any state tax law. This may also include any statements or claims that the taxpayer is not subject to tax, that Federal Reserve Notes do not carry the same value as dollars, assertions of 5th Amendment Rights, the substitution of the word "Object" or "Objection" for any number required on any income tax form, or any other similar claim or scheme.

(b) It shall be the policy of the Tax Commission to not respond to telephone ~~inquires~~inquiries or correspondence from a taxpayer which contains questions of a nature, or state a position, which, if included in, or on, an Income Tax Return, would subject the taxpayer to penalty imposed by Statute. [**See:** 68 O.S. §247]

PART 7. OTHER REQUIRED REPORTING

710:50-3-54. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;

(E) A member of a limited liability company; or,

(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-19-1 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

(4) When a pass-through entity is making distributions subject to the withholding requirements for non-resident attorneys set out in 5 O.S.Supp.2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;

(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;

(6) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,

(7) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the

lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form ~~OW-9-C~~WTP10003) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

SUBCHAPTER 11. INTERCEPT OF REFUNDS

710:50-11-4.1. Definition of a qualifying entity

For purposes of this subchapter, a qualifying entity shall mean a:

(1) State agency;

(2) Municipal court;

(3) District court;

(4) Public housing authority operating pursuant to Section 1062 of Title 63 of the Oklahoma Statutes;

(5) District attorney seeking to collect unpaid court-ordered monetary obligations; or

(6) The designee of an entity described in paragraphs (1) through (5) of this subsection. [See: 68 O.S. §205.2(A)]

710:50-11-5. Refunds shall be intercepted

Prior to payment of any refund, the Tax Commission shall deduct from any state refund due to a taxpayer the amount of delinquent state tax, penalty, and interest thereon, which the taxpayer owes pursuant to any state tax law. [**See:** 68 O.S. § 205.2~~(E)~~(F)]

710:50-11-6. Priority of claims; procedures

(a) The Tax Commission shall have first priority over all ~~other agencies, municipal courts, district courts or public housing authorities~~qualified entities when the Tax Commission is collecting a debt, municipal fines and cost, or final judgment. Subsequent to the Tax Commission priority, a claim filed by the Department of Human Services for the collection of child support and spousal support shall have priority over all other claims filed pursuant to this Subchapter. Priority in multiple claims by other ~~agencies, authorities, municipal courts, or district courts~~qualified entities pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the ~~agencies, authorities, municipal courts, and district courts~~qualified entities required by (b) of this Section. [**See:** 68 O.S. § 205.2~~(F)~~(G)]

(b) A ~~state agency, municipal court, district court, or public housing authority~~qualified entity ~~operating pursuant to Section 1062 of Title 63 of the Oklahoma Statutes~~ seeking to collect a debt, unpaid fines and cost, or final judgment of at least Fifty Dollars ($50.00) from an individual who has filed a

state income tax return may file a claim with the Tax Commission, requesting that the amount owed to the ~~agency, municipal court, district court, or public housing authority~~qualified entity be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security Number of the debtor. [**See:** 68 O.S. § 205.2~~(A)~~(B)]

(c) Upon receiving a claim from a ~~state agency, municipal court, district court, or public housing authority~~qualified entity, the Tax Commission shall deduct the claim amount, plus collection expenses as provided in *OAC* 710:50-11-11, from the tax refund due the debtor and transfer the amount to the ~~municipal court, the district court, the agency, or the public housing authority~~qualified entity. Provided, the Tax Commission need not report available funds of less than Fifty Dollars ($50.00).

(d) The Tax Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtor's or municipal court defendant's obligations.

710:50-11-7. Notice to taxpayer

(a) The referring ~~agency, municipal court, district court, or public housing authority~~qualified entity to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The ~~state agency, municipal court, district court, or public housing authority~~qualified entity shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The ~~state agency, municipal court, district court, or public housing authority~~qualified entity shall send notice to the judgment debtor or municipal court defendant by first class mail at the last-known address of the judgment debtor or municipal court defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid municipal fines and cost. The Tax Commission shall provide in an agreed electronic format to the Department of Human Services the amount withheld by the Tax Commission, the home address and the Social Security number of the taxpayer. The notice shall state:

(1) That a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or municipal court defendant which would satisfy the debt, unpaid municipal fines and cost, or final judgment in full or in part;

(2) The basis for the claim;

(3) That the Tax Commission has deducted an amount from the refund and remitted it to ~~suchstate agency, municipal court, district court, or public housing authority~~the qualified entity;

(4) That the debtor or municipal court defendant has the right to contest the claim by sending a written request to the ~~Tax Commission~~, ~~state agency, municipal court, district court, or the public housing authority~~ qualified entity for a hearing to protest the claim and if the debtor or municipal court defendant fails to apply for a hearing within sixty (60) days of the date of mailing of the notice, the debtor or municipal court defendant shall be deemed to have waived the opportunity to contest the claim. If the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of mailing of the notice; and,

(5) That a collection expense of five percent (5%) of the gross proceeds owed to the ~~state agency, municipal court, district court, or public housing authority~~qualified entity has been charged to the debtor or municipal court defendant and withheld from the refund.

(c) If the ~~state agency, municipal court, district court, or public housing authority~~qualified entity determines that a refund is due the taxpayer, the ~~state agency, municipal court, district court, or public housing authority~~qualified entity shall reimburse the amount claimed plus the five percent (5%) collection expense to the taxpayer. The ~~state agency, municipal court, district court, or public housing authority~~qualified entity may request reimbursement of the two percent (2%) collection expense retained by the Tax Commission. The request shall be made within ninety (90) days of the reimbursement to the taxpayer. If timely requested, the Tax Commission will make reimbursement to the ~~state agency, municipal court, district court, or public housing authority~~qualified entity within ninety (90) days of the request.

710:50-11-9. Joint returns intercept

(a) The Tax Commission will intercept a refund from a Joint Income Tax Return to offset a past due obligation if either spouse is legally responsible for the past due obligation.

(b) In the case of a joint return, the notice shall state:

(1) The name of the taxpayer named in the return, against whom no debt, no unpaid fines and cost, or final judgment is claimed;

(2) The fact that a debt, unpaid municipal fines and cost, or final judgment is not claimed against the taxpayer;

(3) The fact that the taxpayer is entitled to receive a refund if it is due, regardless of the debt, municipal fines and cost, or final judgment asserted against debtor or municipal court defendant; and,

(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the ~~Tax Commission, municipal court, district court, referring agency, or public housing authority~~qualified entity named in the notice within sixty (60) days after the date of the mailing of the notice. If the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice. Tax Commission Form 505 can only be used to

claim the refund when the Tax Commission is the agency claiming that a debt is owed.

(c) If the taxpayer against whom no debt, no unpaid municipal fines and cost, or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. If the claim was filed by the Department of Human Services, the notice must state that if the taxpayer fails to apply in writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund. [**See:** 68 O.S. § 205.2~~(A)~~(B)(4)]

710:50-11-10. Nondebtor spouse protest

If the ~~municipal court, district court, agency, or public housing authority~~qualified entity asserting the claim receives a written request for hearing from the debtor or taxpayer against whom no debt, no municipal fines and cost, or final judgment is claimed, the ~~agency, municipal court, district court, or the public housing authority~~qualified entity shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid fines and cost, or final judgment asserted by the ~~municipal court, district court, agency, or the public housing authority~~qualified entity, no action shall be taken in furtherance of the collection of the debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act. [**See:** 68 O.S. § 205.2~~(B)~~(C)]

710:50-11-11. Notification after final determination at hearing

(a) Upon final determination at a hearing, as provided for in 710:50-11-10, of the amount of the debt, unpaid fines and cost, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid fines and cost, or final judgment is claimed to request such a hearing, the ~~municipal court, district court, agency, or the public housing authority~~qualified entity shall apply the amount of the claim to the debt owed. Any amounts held by the ~~municipal court, district court, agency, or public housing authority~~qualified entity in excess of the final determination of the debt and collection expense must be refunded by the ~~municipal court, district court, agency, or public housing authority~~qualified entity to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid fines and cost, or final judgment, the balance due the ~~state agency, the municipal court, district court, or public housing authority~~qualified entity shall be a continuing debt or final judgment until paid in full.

(b) Upon receipt of a claim as provided in *OAC* 710:50-11-6 the Tax Commission shall:

(1) Deduct from the refund five percent (5%) of the gross proceeds owed to the ~~state agency, municipal court, district court, or public housing authority~~qualified entity and distribute it by retaining two percent (2%) and transferring three percent (3%) to the ~~municipal court, district court, state agency, or the public housing authority~~qualified entity as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Tax Commission Fund;

(2) Transfer the amount of the claimed debt, unpaid fines and cost, or final judgment or so much thereof as is available to the ~~state agency, municipal court, district court, or the public housing authority~~qualified entity;

(3) Notify the debtor in writing as to how the refund was applied; and,

(4) Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid fines and cost, or final judgment. [**See:** 68 O.S. § 205.2~~(C)~~(D) and ~~(D)~~(E)]

710:50-11-12. Debts owed to the Internal Revenue Service

The Tax Commission may employ the procedures provided by Section 205.2 of Title 68 in order to collect a debt owed to the Internal Revenue Service. [**See:** 68 O.S. § 205.2~~(I)~~(J)]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 7. CREDITS AGAINST TAX

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.

(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on the investment or new employees when other qualifications are met. (See OTC Form 506).

(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [**See:** 68 O.S. §§ 2357.4, 2357.5]

(d) **"Processing" defined.** For purposes of this Section, **"processing"** means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being

processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.

(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exists between the employer manufacturing or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

(1) The right of the employer to control the details of the employees work;

(2) The employer furnishing the tools and the workplace;

(3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;

(4) The employer's right to discharge the employee; and

(5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.**

(1) No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. Effective January 1, 2010, this limitation does not apply to the investment / new jobs credit earned under 68 O.S. § 2357.4 (which requires a $40 million investment within a three (3) year time period). Further, the entity must pay an annualized wage which equals or exceeds the state average wage. The qualifying entity must also obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate. [**See:** 68 O.S. §§ 3607, 3909 and 3919]

(2) Business entities that benefit from proceeds of obligations issued by the Oklahoma Development Finance Authority from the Economic Development Pool may not generate, accrue or otherwise claim any investment tax credits during the period of time that withholding taxes attributable to the payroll of said entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Oklahoma Development Finance Authority pursuant to the provisions Oklahoma Community Economic Development Pooled Finance Act.

(3) Beginning January 1, 2017, except with respect to tax credits allowed from investment or job creation occurring prior to January 1, 2017, the credits authorized by 68 O.S. § 2357.4 shall not be allowed for investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System No. 221119.

(i) **Tax credit moratorium.**

(1) Credits based on assets placed in service or jobs created prior to July 1, 2010 are not affected by the tax credit moratorium and may be claimed as provided under 68 O.S. § 2357.4.

(2) No credit may be claimed for assets placed in service or new jobs created on or after July 1, 2010 through June 30, 2012. Credits generated during this time period are deferred, and may be claimed beginning with tax year 2012 returns, subject to the following limitations:

(A) Credits accrued during the period from July 1, 2010 through June 30, 2012, shall be limited to a period of two (2) taxable years.

(B) Only fifty percent (50%) of the total amount of the credit generated between July 1, 2010 and June 30, 2012 may be claimed each taxable year.

(C) Amended returns shall not be filed after July 1, 2012 to claim the credits generated between July 1, 2010 and June 30, 2012 for tax years prior to tax year 2012.

(3) For example, a calendar year taxpayer places qualifying assets of $150,000.00 in service in August 2010 which generates $1,500.00 of credit for investment/new jobs per tax year for a five (5) year period (tax year 2010 through 2014) for a total of $7,500.00. This results in the taxpayer generating $3,000.00 of tax credits between July 1, 2010 and June 30, 2012. The taxpayer can initially claim $1,500.00 in tax year 2012 and $1,500.00 in tax year 2013 of credits generated during the moratorium. Taxpayer may also claim an additional $1,500.00 of credits in both tax year 2012 and 2013. Final $1,500.00 of credits can be claimed in tax year 2014.

710:50-15-114. Credit for contributions to a scholarship-granting organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible scholarship-granting organization. [68 O.S. § 2357.206]

(b) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

(c) **~~Two~~Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for ~~two (2)~~an additional ~~consecutive years~~year, the credit shall be seventy-five percent (75%) of the total amount of the contribution ~~the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years~~ made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(d) **Registration.** An eligible scholarship-granting organization is required to register with the Tax Commission (OTC Form 80002).

(e) **Limitation of credit.** If total credits claimed exceed $3,500,000 annually the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (f)(2) of this Section. At least once each taxable year, the eligible scholarship-granting organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the scholarship-granting organization shall provide electronically to the Tax Commission:

(A) The scholarship-granting organization's account number;

(B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;

(C) The date and amount of each contribution; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The scholarship-granting organizations shall notify contributors of that amount annually.

(g) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible scholarship-granting organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(h) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(i) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

710:50-15-115. Credit for contributions to an educational improvement grant organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible educational improvement grant organization. [68 O.S. § 2357.206]

(b) **Application.** An educational improvement grant organization shall submit an application to the Tax Commission (OTC Form 80001). The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

(d) **~~Two~~Additional year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for ~~two (2)~~an additional ~~consecutive years~~year, the credit shall be seventy-five percent (75%) of the total amount of the contribution ~~the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years~~ made during the taxable year. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.** If total credits claimed exceed $1,500,000 annually, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (f)(2) of this Section. At least once each taxable year, the educational

improvement grant organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the educational improvement grant organization shall provide electronically to the Tax Commission:

(A) The educational improvement grant organization's account number;

(B) The name of each contributor and sufficient other information to accurately determine the identity of each contributor;

(C) The date and amount of each contribution; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The educational improvement grant organization shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain eligibility, an educational improvement grant organization shall annually report the following information to the Tax Commission, on forms prescribed by the Tax Commission, on or before September 1 of each year:

(1) *The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,*

(2) *A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,*

(3) *The names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented,*

(4) *Where the organization collects information on a county-by-county basis, and*

(5) *The total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.*

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible educational improvement grant organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(i) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(j) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income.

(A) An adjustment is required when~~When~~ a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income~~, an adjustment is required. The expense adjustment is used to more clearly reflect true income~~.

(B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is ~~nontaxable~~ allocable, by the average of total assets. This ~~result~~percentage is then applied to certain expenses claimed on the return to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.

(C) Generally, interest expense is the only expense against which ~~this~~the adjustment described in subparagraph (B) of this paragraph~~result~~ is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)] [See example in Appendix E of this Chapter]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses

from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. **[See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars ($175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as

provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

APPENDIX E. COMPUTATION OF ADJUSTMENT FOR EXPENSES ALLOCATED TO NONTAXABLE INCOME [NEW]

A non-Oklahoma domiciled taxpayer has the following beginning of year and end of year balance sheets (assets only):

ASSET:	BOY	EOY	COMMENT
Cash	5,000	10,000	
Accounts Receivable	100,000	150,000	These assets are the result of the sales of the products sold by the unitary business
Inventory	80,000	120,000	These assets are the products on hand to be sold by the unitary business
US Government Obligations (A)	25,000	50,000	These assets generate interest income from US government obligations not taxable in Oklahoma
Other Current Assets	8,000	10,000	These assets relate to the unitary business
Investments in Subsidiaries (A)	500,000	600,000	These assets may generate dividend income or gain (loss) on sale that is allocated to the taxpayer's domiciliary situs (commercial domicile)
Investments in Corporate Stock (A)	5,000	5,000	These assets may generate dividend income or gain (loss) on sale that is allocated to the taxpayer's domiciliary situs (commercial domicile)
Investments in Partnerships (A)	100,000	120,000	These assets generate partnership income (loss) that is allocated to the state (s) where the partnership has business operations or gain (loss) on sale that is allocated to the taxpayer's domiciliary situs (commercial domicile)
Fixed Assets (Net)	1,000,000	1,500,000	These assets are used in the unitary business to produce the products sold
Intangible Assets (Net)	500,000	600,000	These assets are used in the unitary business to produce the products sold
Long Term Notes Receivable (A)	100,000	100,000	These assets generate interest income not related to working capital that is allocated to the taxpayer's domiciliary situs (commercial domicile)
Other Assets	50,000	50,000	These assets relate to the unitary business
Total Assets	2,473,000	3,315,000	

The taxpayer incurs interest expense on borrowed funds necessary to operate their overall business. Oklahoma utilizes an asset based ratio to allocate the interest expense incurred between the unitary business operations and all other activities that do not produce unitary income as follows:

ASSET:	BOY	EOY	COMMENT
Assets that may produce allocable or nontaxable income [sum of (A)]	730,000	875,000	
Average assets that may produce allocable or nontaxable income		802,500	73,000 plus 875,000 divided by 2
Average total assets		2,894,000	2,473,000 plus 3,315,000 divided by 2
Ratio of assets that may produce allocable or nontaxable income to total assets		0.27729786	

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TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

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Subchapter 5. Motor Vehicle Titles
Part 1. General Provisions
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Part 9. Affidavits for Use in Titles
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Part 11. Liens
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Subchapter 7. Motor Vehicle Excise Tax
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Subchapter 9. Motor Vehicle License Agents/Agencies
Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
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Part 5. Specific Recordkeeping Duties
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Part 7. Specific Reporting Duties
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Part 9. Specific Fiscal Duties
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Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:
June 9, 2016

EFFECTIVE:
August 25, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

Section **710:60-3-10** has been amended consistent with existing policy regarding when a vehicle registration may be renewed. [47:1112]

Section **710:60-3-17** has been amended to implement the provisions of Senate Bill 246 which modified the procedures for substantiating insurance coverage when registering a motor vehicle. [47:7-602].

Section **710:60-3-27** has been amended consistent with the Commission's anticipated change from a postcard to a letter for purposes of motor vehicle registration renewal notification. [47:1131].

Section **710:60-3-70** has been amended consistent with the provisions of Senate Bill 255 which provided a definition of *"Autocycle"*. The definition of *"Moped"* was also added in accordance with current statutory provisions. [47:1-103.2 & 1-133.2].

Section **710:60-3-111** has been revised to administer the provisions of Senate Bill 331 relating to the payment of certain license fees for intercity and intracity motor buses. This Section has also been amended to outline Commission policy relating to the excise tax treatment of and registration requirements for amphibious vehicles. [47:1134.1].

Section **710:60-3-113** has been amended to set forth Commission policy relating to the registration mark for former military vehicles. [47:1136.2].

Section **710:60-5-2** has been amended to set forth the title numbering system implemented pursuant to utilization by the Tax Commission of a new integrated computer system effective March 16, 2015. [47:1105].

Section **710:60-5-71** has been amended in accordance with Senate Bill 339 which provides an exception to the requirement for a notarized signature on a certificate of title when there is a transfer of the ownership of a vehicle to an insurer resulting from the settlement of a total loss claim. [47:1107]

Section **710:60-5-77** has been amended to clarify provisions regarding vehicle transfers utilizing a Small Estate Affidavit. [58:393]

Section **710:60-5-91** has been updated to provide for the new vehicle make designation for an assembled vehicle on a certificate of title. [47:1105]

Section **710:60-5-95** has been amended to clarify the documentation required for purposes of a repossession affidavit. [47:1110]

Section **710:60-5-117** has been amended to strike outdated language consistent with current policy and practice regarding acceptance of lien release documents.

Section **710:60-7-5** has been amended to update provisions regarding status designation on titles for new dealer vehicles temporarily registered for personal use by an individual. [47:1116.1]

New Section **710:60-7-9** has been added to implement the provisions of Senate Bill 451 which exempts a retail implement dealer from the title and excise tax payment requirements relating to the purchase or transfer of off-road vehicles. [47:581 & 1107]

Section **710:60-9-14** has been amended to provide for expedited payment procedures relating to motor license agents owing amounts determined to be due pursuant to a field audit conducted by the Tax Commission and to state the actions that may be taken by the Commission as a result of audit discrepancies. The Section has also been amended in relation to the application of the penalty imposed in accordance with Section 1142 of Title 47 for the underpayment by motor license agents of taxes and fees to the Commission. [47:1142]

Section **710:60-9-54** has been amended to set forth the revised motor license agent procedures for ordering OTC supplied inventory items and inventory accountability. [47:1149]

Section **710:60 9-55** has been amended to revise the period in which motor license agents must respond to a notification regarding missing inventory items. [47:1149]

Section **710:60-9-70** has been revoked and Section **710:60-9-72** has been amended to revise the current procedures for semimonthly reporting by motor license agents. [47:1142]

Sections **710:60-9-90** and **710:60-9-91** have been amended to update the provisions regarding the requirement imposed upon motor license agents to enter deposit information into their respective OTC depository accounts. [47:1142]

Section **710:60-9-92** has been amended to delete outdated language consistent with existing policy. [47:1142]

Section **710:60-9-94** has been amended to state the time frame in which required documentation must be sent to the OTC by a motor license agent in relation to a dishonored check accepted by the agent in payment of motor vehicle taxes and fees. The Section has also been amended to revise the parameters under which a credit may be allowed motor license agents for dishonored checks.

Section **710:60-9-120** which consists of a summary of operation requirements for motor license agents has been amended consistent with the proposed changes outlined above.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-10. General registration information

(a) **Motor vehicles to be registered; license tag required; title.** Every motor vehicle, except salvage and junked vehicles, vehicles on used car dealer's lots for sale and vehicles assigned to charitable organizations licensed through the Oklahoma Secretary of State's office, is required to be registered and a license tag displayed on the rear bumper. In most cases, the tag is designed to remain on the vehicle until the Oklahoma Tax Commission authorizes a replacement and is renewed each year by means of a registration decal. The type of registration required depends on the type of vehicle and, in some cases, its use. A vehicle cannot be registered without an Oklahoma title or proof that such Oklahoma title exists and is in the name of the registrant. Proof of previous year's registration must be obtained before renewing registration on any non salvaged

vehicle. A current mail-out registration notice is considered proof for either purpose.

(b) **Expiration; renewal; early renewal.** Registration may not be renewed before the first day of the month ~~of~~preceding expiration.

(c) **Registration and licensing of leased vehicle.** An individual leasing a vehicle may make application for any special tag or registration rate that he or she is entitled to. A copy of the lease agreement, listing the applicant as lessee, must be submitted and attached to the Oklahoma Tax Commission's copy of the paperwork.

(d) **Information required from registrant.** Upon every application for registration of a vehicle in this state, the vehicle owner shall provide to the registering motor license agent the following information:

(1) The driver license number of the vehicle owner, if the owner is an individual; or

(2) The Federal Employer Identification Number of the owner if such owner is not an individual.

(e) **Proper entry of required information.** It shall be the duty of the registering motor license agent to properly enter the driver license number or Federal Employer Identification Number of the vehicle owner in the Motor Vehicle computer file record at time of registration of the vehicle.

710:60-3-17. Liability insurance

(a) **Insurance information.** The owner of a motor vehicle to be registered or titled in this state must provide current liability insurance information ~~to the tag agent~~ prior to the processing of his registration, unless otherwise provided. When registering a motor vehicle, the owner must certify the existence of insurance coverage for the vehicle by providing a motor license agent or other registering agency necessary information from the current owner's insurance verification to allow confirmation of coverage through the online verification system. The information shall include the name of the insurance carrier or identification number issued by the National Association of Insurance Commissioners to the current insurance carrier authorized to do business in this state and the policy number applicable to the vehicle being registered.

(b) **Electronic insurance verification.** In cooperation with the Oklahoma Department of Public Safety and the Oklahoma Insurance Department, the Commission shall provide an online electronic liability insurance verification system and instruct motor license agents in its use. No vehicle subject to electronic liability insurance verification shall be registered in this state without current insurance coverage having been verified by that electronic system, unless an exception is warranted per guidelines established by the Commission. Whenever a motor license agent grants an exception to electronic verification, the agent shall maintain in his or her files, for a period of no less than two (2) years, a full record of the reason for that exception and make available for inspection by the Commission, or any other qualified requestor, documentation sufficient to justify that exception.

(c) **Applicable only to motor vehicles; vehicles not in use.** Only motor vehicles are subject to the liability insurance verification process described herein. Owners of vehicles not in use at the time of registration may register their vehicle upon filing a Non-Use Affidavit in a manner prescribed by the Commission.

(1) The yearly validation decal issued to the owner of a vehicle who has filed a Non-Use Affidavit in lieu of liability insurance verification will be a decal of a separate and distinct color from all other yearly decal types. It shall be the owner's responsibility to obtain insurance if such vehicle is put into service at a later time.

(2) The owner of the vehicle is not required, upon putting the vehicle back in service, to purchase another registration decal indicative of liability insurance coverage. If the owner chooses to purchase another registration decal, insurance verification will be required, as well as payment of a replacement tag/decal fee, and the insurance verification fee.

(d) **Exceptions to insurance verification requirements.** The following shall not be subject to insurance verification at time of registration.

(1) Any vehicle owned or leased by the Federal or State Government or any agency or political subdivision thereof.

(2) Any vehicle bearing the name, symbol, or logo of a business, corporation or utility on the exterior and which is in compliance with the provisions of the Compulsory Insurance Law according to records of the Corporation Commission which reflect a deposit or fleet policy.

(3) Any vehicle authorized for operation under a permit number from the Interstate Commerce Commission or the Oklahoma Corporation Commission.

(4) Any licensed taxicab.

(5) Any vehicle held for sale by a licensed Used Car Dealer.

(6) Applicant for a duplicate Oklahoma title, provided registration renewal is not required.

(7) Applicant for title (only) to a vehicle to be later registered under the International Registration Plan.

(8) All-terrain vehicles, utility vehicles and off-road motorcycles.

(e) **Exceptions to electronic insurance verification.** The following are subject to insurance verification at time of registration, but exempt from the electronic verification process:

(1) Vehicles covered by commercial or fleet insurance policies.

(2) Vehicles owned by active duty military personnel who are either Oklahoma residents stationed out of state, or out-of-state residents stationed in Oklahoma.

(f) **Processing fee authorized.** The motor license agent is authorized to charge a fee for processing insurance verification or a Non Use Affidavit upon registration of a motor vehicle.

(g) **Military personnel insurance verification.** Members of the United States Armed Forces may furnish a vehicle insurance policy or bond from an out-of-state insurance company indicating compliance with the liability insurance requirements of the Oklahoma Vehicle License and Registration Act. If the service person is an out-of-state resident who is stationed in Oklahoma, the form must be from Oklahoma or from the service person's state of residence, as indicated on the Armed

Forces Affidavit (OTC Form 779). If the service person is a resident of Oklahoma, the form must be either an Oklahoma form, or a form from the state in which the service person is currently stationed.

710:60-3-27. Registration renewal notification

(a) **Notification options.** Vehicle registrants may choose from the following two (2) registration expiration notification methods. Failure to receive either type of notification shall not relieve the taxpayer from their responsibility to timely renew their registration(s).

(1) **Mail notification.** Registrants may choose to receive mailed renewal notices.

(2) **Email notification.** Registrants may choose to receive an email renewal notification by either registering via the Commission online renewal website; advising the registering tag agency of their choice and providing to the agent an email address to which the notification is to be sent; or indicating the email option and providing an email address to which the notification is to be sent on the mail-in registration renewal ~~postcard~~notice. Renewing a registration via the Commission's online renewal process will automatically result in an email notification being sent out upon that registration's expiration. Email notification will supersede any other type of registration expiration notification.

(b) **Motor license agent responsibility.** It shall be the duty of motor license agents to advise all in-person registrants of their renewal notification options and process the chosen options per Commission guidelines. When the taxpayer chooses the email reminder notification option, the agent shall obtain the taxpayer's email address to which the notification is to be sent and enter that email address into the Commission's registration system in the manner prescribed by the Commission.

PART 7. NONCOMMERCIAL VEHICLES

710:60-3-70. Noncommercial vehicles

Annual registration rates are based on the number of years the vehicle has been registered pursuant to a five-tiered registration scheme approved by popular vote on August 22, 2000. The following vehicles are registered using this method.

(1) **Automobiles. "Automobiles"** includes noncommercial trucks and vans and nonagricultural trucks.

(2) **Travel trailers.** Travel trailers are any vehicular portable structure built on a chassis and used as a temporary dwelling for travel, recreational or vacation use. The dimensions of a travel trailer cannot exceed 40 feet in length (including hitch or coupling) or 8 feet in width.

(3) **Motorcycles.** Motorcycles are defined as those vehicles designed and constructed to travel on not more than three (3) wheels, having a saddle or a single seat for the use of the rider.

(4) **Recreational vehicles. "Recreational vehicle"** means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this subsection such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle.

(5) **Moped.** ~~A moped is a motorized bicycle having pedals for aid in propulsion. Mopeds are banned from limited access and interstate highways.~~A "moped" is any motor-driven cycle with a motor producing no more than two brake horsepower and which is not capable of propelling the vehicle at a speed in excess of thirty (30) miles per hour on level ground. If an internal combustion engine is used, the displacement shall not exceed fifty (50) cubic centimeters, and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.~~Motorized bicycles~~Mopeds are subject to all the provisions of the Motor Vehicle License and Registration Act. No dealer's license is required to sell them. If sales tax was paid upon purchase, no excise tax should be assessed when titling.

(6) **Dirt bikes, minibikes, all-terrain vehicles (3 & 4 wheelers), and golf carts.** Dirt bikes, minibikes, all-terrain vehicles (3 & 4 wheelers), and golf carts are not street legal and are not to be titled and tagged for street or highway use in Oklahoma. All-terrain vehicles and off-road motorcycles meeting the criteria outlined in *OAC* 710:60-3-140 are subject to titling and registration, as therein specified. Golf carts owned by the Tourism and Recreation Department may be operated on streets and highways located within the boundaries of a state park by employees of the Department, or by employees of an independent management company on behalf of the Department.

(7) **Autocycle.** An autocycle, which is to be issued a standard vehicle license plate, means any motor vehicle with the following:

(A) A seat or saddle for the use of each rider;

(B) Three wheels in contact with the ground, but excluding a tractor;

(C) A combustion engine with a piston or rotor displacement of one hundred fifty cubic centimeters (150 cu cm) or greater;

(D) A fully enclosed compartment for the driver and any passenger;

(E) For each occupant, safety belts or safety shoulder harnesses which shall be of a type and shall be installed pursuant to 49 C. F. R., Section 571.208 et seq.;

(F) All equipment required by the provisions of Article II et seq. of Chapter 12 of Title 47 of the Oklahoma statutes, with respect to equipment on vehicles.

PART 11. OTHER VEHICLES

710:60-3-111. Miscellaneous vehicles; definitions

(a) **Farm trucks. "Farm truck"** means pickup, truck, or truck tractor used primarily for agricultural purposes. For purposes of farm truck registration eligibility **"pickup" means a small, light truck with an open back or box used for hauling and designed primarily for the carrying of property, rather than people and "truck" means a motor vehicle designed or converted primarily for carrying or hauling farm commodities, property, livestock, or equipment, rather than people.** To qualify for farm truck registration, the applicant must provide either a copy of Schedule F (or comparable form) of the previous year's Federal Income Tax Return, or an agricultural exemption permit (SMX number) assigned by the Oklahoma Tax Commission. The permit must be in the name of the vehicle owner, with the following exceptions: An agriculture exemption permit may be utilized by any family member or employee of the permit holder, who uses his/her vehicle primarily for agricultural purposes on behalf of the permit holder to qualify for farm truck registration. If the permit holder is not reflected as a vehicle owner on the title record, a statement from the permit holder that the vehicle is utilized primarily for agricultural purposes on the permit holder's behalf is to be submitted. Any person registering a farm truck, other than a pickup, must also complete and submit a "Declaration of Gross Vehicle Weight for Vehicle Registered with a Farm Tag" (OTC Form 786). If a laden weight of 55,000 pounds or more is listed, the owner must provide I.R.S. Form 2290 and a Schedule 1.

(b) **Farm trailers.** Farm trailers are not required to be registered. An optional farm trailer tag is available. This is an optional registration only transaction and no certificate of title may be issued. If a serial number is stamped on the trailer, it will be used for the vehicle identification number (VIN) on the registration record. Otherwise, the driver license number of the owner will be utilized. The registration will expire one year from date of issuance. As registration is optional, no delinquent registration fees or penalties are to be assessed. Upon initial issuance of a farm trailer tag, the applicant will be required to complete a Registration Application form, affirming their ownership of the trailer and providing copies of available acquisition documentation.

(c) **Buses.** Buses transporting passengers in a commercial capacity are classified as either ~~Inter-City~~ intercity or ~~Intra-City~~ intracity. ~~The Inter-City~~intercity buses operate between ~~different~~ cities. ~~The Intra-City~~intracity buses operate within a ~~given~~ city. ~~The rates~~Registration fees for such vehicles are based on ~~the~~ seating capacity. With the exception of intercity buses registered under the International Registration Plan,~~All~~ buses in these classifications ~~must be licensed by the Oklahoma Corporation~~are registered by the Oklahoma Tax Commission.

(d) **Private school buses.** Private school buses are those privately owned buses used exclusively to transport school children.

(e) **Taxicabs.** Taxicabs are motor vehicles for hire, designed to carry ten (10) persons or less, operated upon any street or highway, or on call or demand, accepting or soliciting passengers indiscriminately for transportation for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported. In order to register as a taxicab, the owner shall be required to validate proper taxicab operating authority. Validation shall normally constitute presentation of a photocopy of the license issued by the applicable municipality in which the taxicab operates, or a photocopy of the For Hire Carrier License issued by the Oklahoma Corporation Commission.

(f) **Rental vehicles.** Rental vehicles are vehicles acquired by rental companies not to be rented for more than ninety (90) days at a time. Rental passenger vehicles and light trucks (pickups, vans, sport utility vehicles) are entitled to special registration fees as set forth by statute. Larger trucks utilized in a rental capacity are to be registered commercially.

(g) **Private trailers.** Private trailers are not required to be registered. An optional private trailer registration and license plate is available to owners of noncommercial boat and utility type trailers not being utilized in a commercial capacity. This is an optional registration only transaction and no certificate of title may be issued. If a serial number is stamped on the trailer, it will be used for the vehicle identification number (VIN) on the registration record. Otherwise, the driver license number of the owner will be utilized. The registration will expire one year from date of issuance. As registration is optional, no delinquent registration fees or penalties are to be assessed. Upon initial issuance of a private trailer tag, the applicant will be required to complete a Registration Application form, affirming their ownership of the trailer and providing copies of available acquisition documentation.

(h) **Mini-truck. "Mini-truck"** means a foreign-manufactured import or domestic-manufactured vehicle powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters (1,000 cu cm) or less, which is sixty-seven (67) inches or less in width, with an unladen dry weight of three thousand four hundred (3,400) pounds or less, traveling on four or more tires, having a top speed of approximately fifty-five (55) miles per hour, equipped with a bed or compartment for hauling, and having an enclosed passenger cab. Any vehicle meeting that description is required to be titled and registered, as of November 1, 2008. Excise tax is not assessed on mini-trucks purchased prior to November 1, 2008.

(i) **Registration and titling guidelines.** Mini-trucks may be registered in the same manner and under the same classification guidelines as any other light truck. Mini-trucks are subject to the same titling and lien filing guidelines as other light trucks, with the exception of required documentation at time of initial titling. Those general titling documentary guidelines are as follows:

(A) **New mini-trucks purchased on or after November 1, 2008.** A properly assigned Manufacturer's Statement of Origin (MSO) and dealer's invoice (to establish purchase price) is required to apply for an Oklahoma title.

(B) **All other mini-trucks.** A properly assigned certificate of title or Manufacturer's Statement of Origin (MSO) is to be submitted, if available. If not

available, the Commission may accept a notarized bill of sale, or other similar ownership instrument, as an alternative.

(j) **Amphibious vehicles.** Amphibious vehicles are vehicles designed, manufactured and capable of operating on the roadways and waterways of this state. Such vehicles are to be issued two (2) certificates of title, both vehicle and vessel, and are to be concurrently registered as both vehicle and vessel. Vehicle excise tax is to be assessed. Both titles are to be assigned and provided to any subsequent owner.

710:60-3-113. Former military vehicle registration

(a) **Definition. "Former military vehicle"**, when used in this Section, means a vehicle which has been, and is no longer, used by the armed forces of a national government, and which displays official markings so indicating.

(b) **Use of vehicle.** A former military vehicle which is used only for exhibition, club activities, and parades may be registered at a reduced annual registration rate, so long as it is not utilized for regular transportation.

(c) **Application and renewal.** Former military vehicle registration may be ~~approved and~~ issued upon initial submission of a properly completed affidavit form (OTC Form 740) ~~to the Oklahoma Tax Commission Motor Vehicle Division~~, along with insurance verification and the fee prescribed by statute. ~~Thereafter, renewals may be issued by the Commission or by a Motor License Agent.~~

(d) **Identifying mark.** The unique identifying mark, similar to the mark assigned that vehicle by the armed forces branch in which the vehicle was used, will be designated as the registration mark for the vehicle. If no such mark exists, or if the registration mark number conflicts with any existing license plate format, OTC shall designate the mark to be utilized.

(e) **Proof of registration.** A former military vehicle which is not used for regular transportation is not required to display a license plate, but must carry proof of the annual registration in the vehicle at all times.

(~~e~~f) **Change in use of the vehicle.** If the former military vehicle is to be used for any other purpose than exhibition, club activities, or parades, a regular license plate must be obtained, at the appropriate rate.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 1. GENERAL PROVISIONS

710:60-5-2. Types of certificates

(a) **Title certificate color designation.** Oklahoma utilizes several different colors in designating vehicle types. The title types and corresponding certificate colors are as follows:

(1) Standard Title (Green)
(2) Salvage Title (Red)
(3) Rebuilt Title (Orange)
(4) Junked Title (Blue)
(5) Classic Title (Green)
(6) Remanufactured Title (No color designation at this time)
(7) Unrecovered Theft Title (Purple)
(8) Rebodied Vehicle Title (Yellow)

(b) **Title suffix designation.** ~~Letter~~On certificates of title issued prior to March 16, 2015, letter suffixes ~~are~~were utilized to designate the sequence of Oklahoma certificates of title issued to a specific vehicle. The original Oklahoma title issued ~~will have~~had no suffix following the designated title number. All subsequent Oklahoma titles, regardless of type, issued to that vehicle ~~will be~~were designated by a letter suffix. The letter "a" ~~will be~~was assigned as a suffix to the first Oklahoma title issued following the original title, "b" to the next title issued, etc. Effective March 16, 2015, every title certificate issued will reflect a unique title number. Only the most recent Oklahoma certificate of title issued is considered valid.

PART 7. TRANSFER OF TITLE

710:60-5-71. General provisions; assignments; liens; registration; notice of transfer

(a) **Transfer of title.** In most instances, an Oklahoma transfer title is issued upon receipt of a properly assigned and notarized Oklahoma title and proof of liability insurance. Assignments of Oklahoma certificates of title to, or by, out of state dealers located in non-notary states are not required to be notarized. No notarization is required on an assignment of ownership to an insurer resulting from the settlement of a total loss claim. Other instances where a transfer title may be issued are covered in the following subsections.

(b) **Use of assignment space provided on title document.** The first assignment space on an Oklahoma title is to be used by the owner on the face of the title to assign ownership. The subsequent reassignment spaces may be used by appropriately licensed Oklahoma dealers only. Retail implement dealers may reassign ownership on Oklahoma certificates of title for all terrain vehicles, utility vehicles and off-road motorcycles. Should an assigned Oklahoma certificate of title be presented in application for an Oklahoma title and that certificate reflects a previous ownership assignment that was never completed via issuance of an Oklahoma title, the Motor Vehicle Division may approve a certificate of title to be issued directly to the most recent assignee; provided both assignments are properly completed and all taxes, fees and delinquent penalties due in regard to the previous assignment are collected, in addition to those due on the most recent assignment.

(c) **Liens transfer.** Any active liens indicated on the face of an assigned Oklahoma title will be carried forward to the transfer title being issued unless a lien release is presented.

(d) **Current registration required; exceptions.** Registration must be current on a vehicle before a transfer title may be issued, unless the vehicle is in a salvage or junked status. Licensed used motor vehicle dealers are exempt from this requirement when transferring to other licensed dealers, provided the vehicle was currently registered, or in the registration expiration grace month, when it was assigned to

the first dealer. Salvage dealers are exempt from registration requirements when obtaining salvage or junked titles.

(e) **Actual sales price documentation.** The actual sales price is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The actual sales price is commonly referred to as the "purchase price". One of the following documents is required to establish the actual sales price:

(1) A purchase contract;

(2) A bill of sale;

(3) A "Declaration of Vehicle Purchase Price" (OTC Form 722-1); or

(4) Oklahoma title certificate, with a purchase price entry listing where indicated;

(5) A purchase contract or bill of sale offered only to establish purchase price pursuant to this subsection, and not to convey ownership, need not be notarized.

(f) **Notice of Transfer of Ownership of a Vehicle.** The seller or buyer of a motor vehicle may file a Notice of Transfer of Ownership of a Vehicle (OTC Form 773) to record the assignment of ownership in the Oklahoma Tax Commission Motor Vehicle Division computer system. The filing of Notices of Transfer is optional. The filing of the Notice of Transfer does not constitute a transfer of ownership and does not alleviate the buyer/new owner of the responsibility of properly and timely transferring title and paying all applicable taxes and fees. To be acceptable, notices must be submitted containing all required information. Incomplete forms will not be filed. There are two (2) acceptable types of notice:

(1) Seller or buyers may submit a **Notice of Transfer of Ownership of a Vehicle (OTC form 733)** and the appropriate statutory filing fee to the Oklahoma Tax Commission or a motor license agent.

(2) Effective January 2006, a removable tear-off tab, **Oklahoma Certificate of Title Tear-Off Notice of Transfer Tab,** was incorporated on Oklahoma vehicle title certificates. This tab, properly completed, is to be accepted and processed in the same manner as the Notice of Transfer of Ownership of a Vehicle Form (OTC form 733).

710:60-5-77. Transfer of title upon death

(a) **Intestacy; transfer to surviving spouse.** When a person dies intestate leaving a vehicle, that vehicle becomes the property of the surviving spouse, if any. If the decedent held title to more than one (1) vehicle, the surviving spouse may choose one (1) vehicle. If there are additional vehicles, or there is no surviving spouse, the vehicles may be distributed by the law of descent, upon submission of a properly completed **No Administrator Affidavit** (OTC Form 798) and the death certificate of the deceased vehicle owner. (See: 84 O.S. § 232),

(b) **Transfer by third party; required authorization.** An assigned title which has been assigned by some person other than the person shown on the face of the title must be accompanied by some form of authorization for assignment. This may be a Power of Attorney, Court Order or authorization by an Executor or an Administrator of an estate.

(1) **Transfer by power of attorney.** When transferring a title where assignment has been made by Power of Attorney, the Power of Attorney (POA) must be surrendered with the assigned title.

(A) An original copy must be presented. Faxes or photocopies are unacceptable.

(B) The POA must be notarized, if from a notary state

(C) If a general POA (not restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be presented to the motor license agent. The motor license agent may make a photocopy of the original for submission to OTC.

(D) If a specific POA (restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be surrendered and submitted to OTC.

(E) A POA may not be utilized if the grantor is deceased.

(2) **Transfer by court order.** When transferring a title when assignment is completed by the administrator or executrix of an estate, a Court Order must be presented authorizing the sale of the motor vehicle being transferred.

(c) **Estate valued at no more than $20,000.00** When a decedent has left a will, but the value of the estate does not exceed Twenty Thousand Dollars ($20,000.00), ~~no probate is required before transferring~~ ownership of any vehicle(s) bequeathed in the decedent's will~~. Ownership~~ may be transferred to the successor of interest by completing a Small Estate Affidavit. (See: 58 O.S. § 393). In addition to the Affidavit, the following must be submitted:

(1) A copy of the decedent's death certificate.

(2) A copy of the decedent's unprobated will, naming the applicant as beneficiary of the vehicle.

(3) Either the title certificate in the decedent's name, or evidence from the Tax Commission vehicle title files that such a title record exists.

PART 9. AFFIDAVITS FOR USE IN TITLES

710:60-5-91. Affidavit of assembly and ownership

(a) **When Affidavit of Assembly and Ownership is required.** An Affidavit of Assembly and Ownership is required:

(1) When major components from two or more vehicles or motorcycles are being incorporated into a single unit.

(2) In applying for an Oklahoma title for a kit car that comes with a Manufacturer's Statement of Origin and an invoice.

(3) When a combination of new components with original (notarized) Manufacturer's Statements of Origin and used components with bills of sale, invoices or receipts are used to make one vehicle or motorcycle.

(b) **Documentation required.** Documentation required to support application for Oklahoma title using an Affidavit of Assembly and Ownership includes:

(1) **A completed Affidavit of Assembly and Ownership (OTC Form 761 or 761MC).** The applicant must

complete the Affidavit of Assembly and Ownership (OTC Form 761 or 761MC) and supporting documentation. Title or notarized bills of sale for all major components included on the Affidavit must be submitted, listing the vehicle identification number (VIN) of the vehicle from which the part was removed.

(2) **A completed Application for Oklahoma Certificate of Title (OTC Form 701-6).** The applicant must complete the Application for Oklahoma Certificate of Title (OTC Form 701-6), as follows:

(A) The **year** to be listed on the certificate of title will be the year of the body or cab of the vehicle which is reconstructed.

(B) The **make** of the vehicle will be noted as: "~~AV~~ASVE", ~~followed by a two (2) character year designation and two (2) character make designation.~~

(C) The **model** of the vehicle will be the three (3) or (4)-letter code reflected on the Oklahoma Certificate of Title of the appropriate component vehicle.

(D) The **body type** of the vehicle will reflect the current body type of the vehicle. Example: 2DR

(E) The Total Purchase Price will be the combined purchase price for all components, less those parts on which sales tax was paid.

(F) Excise **taxes due** on the assembled vehicle will be determined as follows:

(i) Excise tax will not be collected if the title was in the registrant's name on each of the major components used to build the current vehicle.

(ii) Excise tax will be due upon transfer if the title was not in the registrant's name on each of the major components used to build the current vehicle.

(G) The **year** of an assembled motorcycle is the current year (completion date).

(H) The **make** of the Assembled Motorcycle will be "ASVE".

(I) The **model** will be "O".

(J) The **body** type will reflect "MC".

(c) **Approval required.** Any application for title using the Affidavit of Assembly and Ownership must be approved by the Motor Vehicle Division. Such approval relates only to the issuance of an Oklahoma title and registration to the assembled vehicle. No attestation or confirmation of the roadworthiness of the vehicle is expressed or implied by the Division's approval.

(d) **Inspection required.** Following approval of the application for title by the Motor Vehicle Division, the assembled vehicle or motorcycle must be inspected by a motor license agent to confirm the vehicle identification number (VIN).

(e) **Oklahoma assigned identification number required.** An Oklahoma assigned identification number, when required for an assembled vehicle or motorcycle, shall be assigned by the Motor Vehicle Division.

(f) **Active liens.** If an active lien is reflected on any vehicle identification number (VIN) of a component used to build a vehicle or motorcycle on which an Oklahoma assigned identification number has been, or will be, assigned, or on which an identification number from a major component has been, or will be, approved by the Commission to be assigned to the completed vehicle, the following will apply:

(1) The applicant must provide either a proper lien release(s), or written acknowledgement from the active lienholder(s) of their knowledge of the application for an assembled vehicle which will display a newly assigned VIN and their understanding that any other liens reflected on other components of the assembled vehicle will also be reflected on the vehicle record, listed in order of original perfection date.

(2) Upon receipt of the lienholder acknowledgement, the Motor Vehicle Division will issue a revised Lien Entry Form, reflecting the newly assigned vehicle identification number and will forward the forms and written notification of the new vehicle identification number (VIN) to any lienholder of record.

(g) **No active liens.** If no liens are active on any vehicle identification number (VIN) used to build the vehicle or motorcycle, the approved Oklahoma Tax Commission Application for Title (OTC Form 701-6), Assembly and Ownership Affidavit (OTC Form 761 or 761 MC), all original receipts and notarized bills of sale associated with the transaction may be submitted to an Oklahoma Motor License Agency for processing.

(h) **Issuance of title; tag and decal, if applicable.** At the time the Oklahoma Certificate of Title is issued, a current tag and decal will be issued also, if applicable. All plates and/or registration decals issued to any original vehicle or motorcycle used as a component for the rebuilt vehicle become invalid.

(i) **Major component.** For purposes of this Section, **"major component"** for a vehicle means a body, cab, frame, front end clip, or rear end clip. "Major component" for a motorcycle means a frame or front fork assembly.

710:60-5-95. Repossession affidavit (OTC Form 737)

(a) **Documentation required.** An applicant for a repossession title must submit:

(1) The actual or certified copy of the mortgage instrument;

(2) A completed Repossession Affidavit (OTC Form 737);

(3) A copy of the certified letter of notice to other lienholders, if applicable; and

(4) ~~Lien Release numbers three (3) and four (4)~~ A properly executed lien release.

(b) **Approval required.** All repossessions must be approved by the Motor Vehicle Division of the Oklahoma Tax Commission or a motor license agent.

(c) **Fees.** The mortgagee shall be required to pay statutory repossession and title fees. If the vehicle is not currently registered, the mortgagee shall be issued an initial license plate or decal bearing an expiration date of the month of repossession.

PART 11. LIENS

710:60-5-117. Releasing liens

(a) Perfected liens may ordinarily be released by submission of one (1) of the following to the Oklahoma Tax Commission Motor Vehicle Division or a motor license agent:

(1) Copy #4 (if unavailable, a **certified duplicate** copy of Copy #3 or #4, or an **original** or **certified** copy of Copy #1 is acceptable) of the six (6) part lien entry Form 21, with the release signed and dated.

(2) Any of the ~~four (4)~~ lien release receipts, original or certified copy, generated when the lien was perfected by the Oklahoma Tax Commission or a motor license agent, signed and dated.

(3) Should a standard lien release as outlined above be unavailable, the lien may be released by submission of a typed, notarized release statement from the secured party. The statement must include the notarized signature of a representative of the secured party, the name of the secured party, name of the debtor, and vehicle identification number/serial number of the vehicle.

(b) If the lender is out of business and no longer available, their lien may be released by the following procedure:

(1) A certified letter, restricted delivery, requesting a lien release and listing the year, make, and vehicle identification number is to be sent to the lender's address listed on the Motor Vehicle Division file.

(2) The administering agency of the lienholder (i.e., Oklahoma Used Motor Vehicle and Parts Commission if an Oklahoma used dealer; State Banking Department if a bank, savings and loan or credit union; Department of Consumer Credit if a finance company) is to be contacted and written confirmation requested that the lienholder is no longer in business at the address requested. If an out-of-state lienholder, that state's equivalent agency is to be contacted. If the response from the administering agency is that the lender was taken over by another business entity, that entity will have to be contacted for a release.

(3) The returned certified letter and post office receipts, the written confirmation from the administering agency, the Oklahoma certificate of title and applicable titling fee is to be submitted to the Oklahoma Tax Commission Motor Vehicle Division for review. If approved, a confirming affidavit will be returned to the vehicle owner for his/her review and signature. Upon return of that affidavit to the Division, a new Oklahoma certificate of title, without the lien reflected, will be issued.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-5. Licensed dealer exemptions

(a) **Determination of latest manufactured model vehicle.** For the purpose of determining an exemption for licensed dealers, the latest manufactured model vehicle is the newest year of vehicle available at the retail level. For this purpose, July 1 is the date that most vehicles for the next year go on sale. If a certain model comes out before that date, that model becomes the latest manufactured model for that specific line.

(b) **New dealers.** Any vehicle of the latest manufacturers model purchased by a franchised Oklahoma motor vehicle dealer which holds a franchise of the same line or make as the vehicle being registered is exempt from excise tax. This exemption does not apply if the vehicle is of a different make than the dealer's franchise. In that situation, "new vehicle" excise tax would be assessed. New dealers may register a vehicle for a period of four (4) months for personal use by an individual. A photocopy of the MSO ~~should~~shall be surrendered ~~at~~to the tag agency and a title record will be created ~~showing a hold status of "DM"~~ reflecting the applicable hold status with no excise tax due.

(c) **Used dealers.** Any vehicle owned and being offered for sale by a person currently licensed as a dealer in used vehicles is exempt from excise tax except on the latest manufactured model. If the vehicle is being titled from an MSO or is the latest manufactured model and has not been previously titled and excise tax paid in Oklahoma, excise tax is due and the "new vehicle" rate will be charged. The assignment must be made to the dealership's name only. However, a title with an assignment showing an individual's name "DBA" a dealership name will be accepted if the dealership is a partnership or is individually owned and the name on the assignment is a partner or the owner. Excise tax is ordinarily not exempt when transferring ownership from a licensed dealership to the individual owner of the dealership.

710:60-7-9. Retail implement dealer

Retail implement dealers, as statutorily defined in 47 O.S. § 581(15), are exempt from acquiring titles and being assessed excise tax when reassigning ownership on Oklahoma certificates of title for all terrain vehicles, utility vehicles and off-road motorcycles. When reassigning Oklahoma certificates of title under this allowance, the dealer's current Oklahoma sales tax permit number must be provided to the purchaser. The Commission will confirm the validity of the permit when processing an application for title by the purchaser.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 1. GENERAL REQUIREMENTS, DUTIES AND RESPONSIBILITIES OF MOTOR LICENSE AGENTS

710:60-9-14. Responsibility for agency shortages

(a) A motor license agent shall be responsible for paying any balance determined to be due as a result of a field audit conducted by the Commission.

(b) Upon demand for payment, the motor license agent must~~, within 15 days,~~ remit, within seven (7) business days, the full amount of any shortage determined to be due~~, or if unable to pay the full amount, the agent may make a written request to the Commission for consideration of an extension of time to~~

~~remit monies due. Such request shall include an explanation of the reason(s) for the shortage and the corrective actions initiated by the agent. Should the Commission accept a payment time extension, it shall be incumbent upon the agent to fully adhere to the terms of that agreement. Any failure on the agent's behalf to adhere to that agreement, or accrual of any additional balance due the Commission, may result in a demand for immediate payment of the entire outstanding balance.~~ Payment of the amounts due within the stated time frame does not preclude the Commission from discharging the motor license agent or taking any other action deemed appropriate.

(c) Any portion of a field audit balance determined to be attributable to the nonpayment of funds due the State shall be subject to the penalty enumerated in 47 O.S. § 1142.

PART 5. SPECIFIC RECORDKEEPING DUTIES

710:60-9-54. Ordering supplies and inventory control of accountable items

Agents should continually monitor their inventory of all OTC-supplied items and order all needed items on a timely basis. ~~When ordering by mail, OTC Form 701-27 is to be utilized and sent under separate cover directly to the Motor Vehicle Division~~. All orders are to be entered into the OTC computer MLA supply ordering system. If the order is to be picked up, the agent is to place the order no less than twenty-four (24) hours in advance of their requested designated pick up date and timeframe. At time of placing the order, the agent is to advise of their intention to pick it up and select the pick up date and timeframe from the options designated by OTC. If the agent is unable to retrieve the items on the selected date/timeframe, it is the agent's responsibility to timely contact OTC to reschedule. Absent ~~timely~~ rescheduling, ~~the~~ unclaimed ~~order~~ orders will be cancelled after ten (10) business days.

(1) **Verification of consignment order.** Upon receipt of consigned numbered items from the Commission, the agent is to verify all items listed on the consignment sheet have been received, pursuant to the provisions under paragraph (2) of this subsection. If received items do not correspond with the consignment sheet, the agent is to notify the Commission within ten (10) days of receipt of the consignment. The original copy of the consignment sheet, with any necessary adjustments noted, is to be signed by the agent and returned to the Motor Vehicle Division within ten (10) days of receipt of the consignment. The second copy of the consignment sheet is to be retained by the agent. Failure to advise the Commission of consignment discrepancies within ten (10) days of receipt of the consignment will result in the entire consignment being considered as received by the agent and the agent will be held accountable for all items therein, with the exception of the individual sealed box/container process outlined in (2)(B) of this Section.

(2) **Verification of contents of all containers.**

(A) If the manufacturer's seal on the box and/or package has been broken, the receiving agent is to open it and verify all items upon receipt of the consignment.

(B) If the manufacturer's seal has not been broken, it is not necessary to confirm the contents of the package upon receipt of the consignment - only that the contents listing on the outside of the package coincides with the consignment sheets. As the sealed individual boxes and/or packages of numbered items are opened prior to issuance, all numbered items should be checked to make sure all were received in the individual package or box. If the package contents do not correspond to the contents listing on the outside of the package, the agent is to notify the Commission within ten (10) days of opening the container. Failure to advise the Commission of individual items missing from the box/package within ten (10) days of the first item issued from that box/package will result in the entire contents of the box/package being considered as received by the agent and the agent will be held accountable for all items therein. When receiving inventory from another motor license agent, the items are to be verified against the system order. Once verified, the receiving agent is to change the order status to received and on hand.

(3) **Procedure for reporting discrepancies, missing items.** To report consignment discrepancies pursuant to the process outlined in this Section, a notarized affidavit of fact from the motor license agent is to be completed and submitted to the Motor Vehicle Division.

(4) **Procedure for mutilated or defective items.**

(A) **License plates.** Any license plate received that has a noticeable graphics error (i.e. discoloring, smearing, etc.) or is mis-numbered (i.e. out of sequence; duplicated number, etc.) is not to be issued, but returned to the Commission for inventory credit and cancellation.

(B) **Other items.** The remains of any registration decal that is of inferior quality (i.e. inadequate adhesive), or is torn or otherwise mutilated, must be returned to the Oklahoma Tax Commission for inventory credit and cancellation, accompanied by a statement of fact from the motor license agent.

(5) **Procedure for transferring accountable items to another agent.** When releasing accountable items to another agent, the releasing agent is to immediately notify the Motor Vehicle Division ~~by telephone~~Supply Section via a system notification message. The agent originally consigned the accountable items is responsible for numbered items transferred to another agent until such time as the Division is notified of the transfer.

(6) **Agent liability for missing items.** Following an inventory audit, normally conducted in conjunction with a field audit, agents will be notified of any unaccounted for items and will be given the opportunity to provide any information/documentation they may have relating to the items. Any numbered item for which the motor license agent remains unable to account for will be charged to the agent's account as a missing item. The missing item rate

is based upon the average amount received throughout the state for that type of item during the period of time in which it became unaccountable, except for ~~tags~~license plates and certain forms which have a fixed fee established. If a numbered item which a motor license agent is previously unable to account for is found by the Oklahoma Tax Commission to have been issued, the agent will be charged the amount the taxpayer remitted to the motor license agent.

(7) **Reconciliation of statements of missing items to inventories.** All statements submitted to account for missing items must be signed by the agent and notarized by a notary public. All information submitted for consideration for credit is subject to approval by the Motor Vehicle Division. Upon receipt, the statements may be filed by the Division and subsequently reviewed at the time an inventory audit is completed. Agents are to keep a copy of all statements sent into this office for consideration of credit.

(8) **Preservation of accountable items.** Agents are to never destroy or dispose of accountable items~~.~~which~~They~~ must be properly reported as issued, reconsigned to another agent, or returned to the Motor Vehicle Division for credit and deletion from the agent's inventory.

(9) **Forms.** Forms supplied to agents by the Motor Vehicle Division are to be used only for the purposes for which they have been provided.

710:60-9-55. Missing items

A ~~Motor License Agent~~motor license agent shall ~~pay or account for all missing items no later than thirty (30) days after billing~~respond within fifteen (15) days of receipt of a missing item notification issued by the Commission with all documentation and information relating to the disposition of the item(s).

PART 7. SPECIFIC REPORTING DUTIES

710:60-9-70. Reporting duties of motor license agent [REVOKED]

~~(a) **Semimonthly reports.** A Motor License Agent shall prepare semimonthly reports to be received by the Oklahoma Tax Commission no later than ten (10) working days after the cutoff day of the report.~~

~~(b) **Manner of reporting.** All items issued, transactions completed and deposit information must be entered into the Oklahoma Tax Commission computer system on a daily basis.~~

710:60-9-72. Semimonthly reporting procedure

(a) **Semimonthly reports.** Each motor license agent must submit semimonthly reports to the Tax Commission to properly account for all funds, regardless of source, received by a motor license agent in the performance of the agent's duties.

(b) **Closing dates for report preparation.** Reports are to be ended on the fifteenth (15th) and the last day of each month. Report summary pages are to be generated from the computer system and included with the required report transaction documentation. Driver license transaction reporting guidelines are established by the Department of Public Safety. IRP (International Registration Plan) transaction reporting guidelines are established by the Corporation Commission.

(~~b~~c) **Transaction documents.** Semimonthly report transaction documentation is to be prepared and submitted to the Oklahoma Tax Commission in a manner outlined by the Motor Vehicle Division. The Division shall communicate any report preparation procedural changes to motor license agents in a timely manner.

(~~c~~d) **When reports due; penalties for late report.** All agents are to prepare semimonthly reports to be ~~received by~~filed with the Oklahoma Tax Commission no later than ~~ten (10) working days after the cutoff date of the report~~the first (1st) day of the month for the report ending on the fifteenth (15th) day of that month and the fifteenth (15th) day of the following month for the report ending on the last day of a month. When a report due date falls on a Saturday, Sunday, state holiday or federal holiday, the next business day becomes the due date for that report. If not ~~received~~postmarked ~~within that~~by the due date~~period~~, a penalty of 1% of the gross amount of the report shall be assessed. The penalty increases to 3% should the report not be ~~received~~postmarked within 5 days of the due date.

(e) **Sufficiency of semimonthly reports.** To comply with the reporting requirement, the reports filed with the Oklahoma Tax Commission must include system generated remittance pages and all supporting individual transaction documentation. Any such semimonthly report that does not include these minimum requirements shall not constitute the mandatory report. In the event a proper semimonthly report is not filed on or before the due dates, in accordance with (d) of this Section, the report shall be delinquent.

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-90. Deposit of monies

(a) **Funds due the Oklahoma Tax Commission.** A motor license agent shall deposit all monies which the agent is required to account for and pay over to the Commission in an Oklahoma Tax Commission Motor License Agency Account (~~designed~~designated for each agency) within one (1) banking day of collection ~~and prepare an advice of deposit which is to be submitted to the Oklahoma Tax Commission in the manner prescribed by the Commission~~. The motor license agent is to enter all required deposit information into the Oklahoma Tax Commission's deposit entry system by the end of the same business day the deposit is made to the bank. The monies belonging to the Oklahoma Tax Commission are not to be deposited to any account except the Oklahoma Tax Commission Motor License Agent Account.

(b) **Motor license agent fee retention.** The fees to be retained by the motor license agent as compensation shall not be deposited in the Oklahoma Tax Commission Motor License Agent Account. Should the motor license agent not have enough cash receipts to withhold the statutorily authorized

agent's fee for the transactions reflected in the deposit being made, the motor license agent may designate on the Oklahoma Tax Commission Motor License Agent Account deposit slip the amount necessary to make up the difference as "Less Cash Received". Only the amount necessary to allow for the retention of the statutorily authorized motor license agent's fees for the transactions reflected in the deposit being made may be deducted from the Oklahoma Tax Commission deposit.

710:60-9-91. Advice of deposits and depositing procedure

(a) **Agent to establish Oklahoma Tax Commission motor license agency account.** Every motor license agent shall establish an Oklahoma Tax Commission bank account in a bank or bank authorized to do a banking business in this state. At any time that collected receipts total One Hundred Dollars ($100.00) or more, all funds due the Oklahoma Tax Commission must be deposited into this account within one banking day of collection.

(b) **Agent to establish motor license agency operational account.** In addition, an operational account must be established in which all other funds received by a motor license agent in the performance of his or her duties shall be deposited and shall not be commingled with any other funds.

(c) ~~**Advice of deposit slips to be typewritten.** Advice of Deposit slips, padded in duplicate, are consigned to agents by the Oklahoma Tax Commission to be used for making deposits into the Oklahoma Tax Commission account. All slips must be typed, with the agent's number and date of collection listed.~~**Entry of deposit information.** The motor license agent is to record deposits made to their Oklahoma Tax Commission depository account by entering all required information into the Oklahoma Tax Commission's deposit entry system by the end of the same business day the deposit is made to the bank.

(d) ~~**Distribution of copies; record retention; update of computer data.** One copy, after being stamped or initialed by the bank, is to be submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. The agent is to retain a copy as a permanent record. It is suggested that the agent's copies be filed with the agent's copy of the semimonthly report to which they pertain. Agents are required to enter all Advice of Deposit information to the Oklahoma Tax Commission MLA deposit entry system immediately following deposit of the described funds.~~

~~(e)~~ **Reconciliation with semimonthly report.** All ~~Advice of Deposits~~deposits that apply to a particular semimonthly report ~~should~~shall be listed on that report's remittance slip~~. If the total of the Advice of Deposit slips does not equal the semimonthly report amount, a supplemental deposit in the amount of the shortage must be made within one banking day of the close of the report period. The amount of any supplemental deposit will not be significant since the total of the daily deposits for a report period should be very close, if not equal to, the report total.~~Any discrepancy between the deposit and report totals must be detailed by the agent on the report remittance slip.

(~~f~~e) **Checks.** Payment by check shall be accepted, unless the applicant is within a penalty period, in which case acceptance of a check by the agent is optional. All checks received must be made payable to the Oklahoma Tax Commission and must include either the driver license number or Department of Public Safety identification number of the remitter . ~~The agent is not required to accept payment by check when late registration penalties are due~~. Postdated checks cannot be accepted.

(~~g~~f) **Insufficient checks.** Should an agent's bank notify them of an insufficient check being deposited into the Oklahoma Tax Commission account, the agent must redeposit monies into the account to offset the debit. No Advice of Deposit is needed since the amount has already been included in a previous one.

(~~h~~g) **Change of bank.** If changing banks, the agent must request new banking papers from the Oklahoma Tax Commission. The new banking papers must be completed and returned to the Oklahoma Tax Commission before making any deposit in the new bank.

(~~i~~h) **Penalties for late deposits.** If funds due the Oklahoma Tax Commission are not deposited to the Oklahoma Tax Commission account within one banking business day of collection, a penalty of 1% of the deposited amount will be assessed. If the deposit is not made within five days of collection, the penalty increases to 3% of the deposit amount due.

(~~j~~i) **Penalties incurred not a part of agency operating expenses.** Any motor license agent who pays a penalty for failure to make timely payments may not allocate that payment as a part of operating expenses, but must use personal funds for payment of the penalty.

710:60-9-92. Procedure for use of remittance slip in making deposits, corrections, adjustments, and reconciliations

(a) **Use of Oklahoma Tax Commission computer-generated remittance slip.** The remittance slip is a four purpose form. It serves as an overall reconciliation statement on an agent's individual report against deposits applied to that report.

(1) **Deposits.** All deposits, debit card and credit card remittances that apply to a specific report should be listed and totaled where indicated on the remittance slip. Should the total deposits ~~purposely~~ not equal the report total, the filing agent is to indicate the amount long or short and ~~list~~detail the ~~reason~~reason(s) for the discrepancy in the section provided on the remittance slip.

(2) **Corrections.** A deposit correction entry may result from the depository account bank reconciliation performed by the Motor Vehicle Division.

(3) **Adjustments.** Monetary adjustments may be required in the Motor Vehicle Division audit process. Any audit adjustment will be explained in a notice to the agent. Audit notices should be reviewed upon receipt by the agent and questions or concerns directed to the Division.

(4) **Reconciliations.** The Division will complete a reconciliation of the remittance slip, summarizing total deposits versus total taxes and fees due the Commission for the period, and incorporating any Division adjustments. ~~An overall balance due agent or Commission for the report will be established and noted on the remittance slip.~~ The balance due agent or Commission listed on a

particular remittance slip is for that report only. ~~It is not a cumulative fiscal year total.~~

(b) **Procedures for common problem situations.**

(1) **Shortage resulting from failure to collect proper fees.** Upon receiving notification of a failure to collect the proper tax and/or fee amount, the agent should contact the taxpayer with an explanation and request for payment. Upon receipt of payment, the agent should deposit the money into the Oklahoma Tax Commission account, issue the appropriate transaction receipt to the taxpayer as proof of payment and notify the Division of the collection.

(2) **Shortage resulting from inadequate documentation.** Upon receiving notification of failure to provide proper supporting documentation for a reduced or special rate, the agent must either collect and send in the documentation for review and cancellation of the notification by the Division, or contact the taxpayer for the additional amount due. Credit will be given if the documentation justifies withdrawal of the assessment.

(3) **Requests for credit resulting from encoding errors or failures.** If an agent requests credit for additional fees reflected in error on semimonthly reports as a result of failure to encode a special code or exemption, consideration will be made upon receipt of a statement of fact from the taxpayer denoting fees actually paid to the tag agent.

710:60-9-94. Procedures for reporting and collecting ~~returned~~dishonored checks on OTC transactions

The following procedures should be followed in the event a check deposited by a motor license agent is returned unpaid.

(1) **Notice of ~~returned~~dishonored check.** The bank should notify the agent that they are holding an unpaid item. The agent must make two (2) attempts to redeem the check through the depository bank. Should the bank refuse to accept the dishonored check a second (2nd) time, it shall be treated as if two (2) attempts ~~had been~~were made. ~~The agent, in turn, has the option of picking up the check with cash or reducing the amount of his next deposit. The check should be picked up from the bank as soon as notification is received. Form 774-A is to be completed and immediately sent to the maker of the dishonored check.~~The agent shall retrieve the check immediately from the bank utilizing one of the following methods:

(A) The agent may utilize current funds due the OTC to reimburse the bank for the dishonored check and immediately forward the check and supporting documentation to the Commission for review and credit. If not received by the Commission within five (5) business days of retrieval, the OTC funds utilized will be considered delinquent and the delinquent depositing penalties outlined in 47 O.S. § 1142 shall apply.

(B) The agent may utilize personal funds to reimburse the bank for the dishonored check and attempt collection from the taxpayer for a period of thirty (30) days, as set forth below.

(2) **Procedure for collection of ~~returned~~dishonored check; applicable penalties; taxpayer liability.** An initial returned check fee of $25.00 is to be charged to the maker of a ~~returned~~dishonored check, after an attempt has been made to deposit the check twice. Should payment for the check be subsequently collected by any motor license agent, that agent may retain the $25.00 returned check fee. Any accrued penalty to date of collection is to be assessed. The taxpayer is notified to ~~immediately~~ remit payment immediately to the tag office. If the agent's collection attempts on a check retrieved from the depository bank with personal funds are unsuccessful, the agent shall send to the Oklahoma Tax Commission ~~The insufficient~~the dishonored check, agent's file copies of documents on which the check was issued, and a copy of the notification to the taxpayer ~~is to be sent to the Oklahoma Tax Commission~~within thirty (30) days of retrieval from the depository bank~~, if the agent cannot collect the check~~. Upon receipt of the required documentation, the Commission will issue credit to the agent's account in the full amount of the check. The security verification form is to be retained in the tag office along with photocopies of all documents issued. In the event the taxpayer returns all items issued by the motor license agent, the insufficient check is not to be returned to the taxpayer. Return of these items does not relieve the taxpayer of responsibility to remit the proper fees to the State of Oklahoma.

(3) **~~Procedure to obtain credit to agent's account~~Subsequent~~subsequent~~ tender of payment.** ~~The Tax Commission will then issue credit to the agent's account in the full amount of the transaction(s) for which the check was remitted~~. After the documents and ~~the insufficient~~dishonored check have been ~~sent in for credit,~~forwarded to the Motor Vehicle Division, the agent shall not accept payment ~~is not to be accepted~~ from the registrant without ~~calling~~contacting the ~~Motor Vehicle~~ Division for instructions. ~~The returned check and the copies of the documents on which the check was issued will be processed and forwarded to the Collections Division for collection.The statutes require that an agent accept a check one time. Statutes further stipulate that an agent is not required to take a check when the applicant is within a penalty period. Postdated checks are not to be accepted.~~

(4) **Tag or decal may be held.** The motor vehicle agent may hold a tag or decal until the taxpayer's check has cleared the bank.

(5) **~~Insufficient~~Dishonored checks to be forwarded to the Oklahoma Tax Commission; time limits.** Dishonored checks for which the agent utilizes OTC funds to retrieve from the depository bank are to be forwarded immediately to the Oklahoma Tax Commission. All ~~insufficient~~dishonored checks retained by the agent for attempted collection and for which payment is not received are to be sent ~~into~~to the Oklahoma Tax Commission no later than thirty (30) days after the date picked up from the bank. Further delays in processing may prevent collection.

(6) **Purchaser not responsible.** The purchaser of a vehicle shall not be required, as a condition for registration of the vehicle, to pay any tax, fee or penalty due resulting from a dishonored check submitted by the previous owner.

PART 11. AGENCY OPERATION

710:60-9-120. Summary of operational requirements

The following is a summary of operational requirements for agents and agencies:

(1) Agents are required to operate the agency forty (40) hours a week, of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours required of a specific agency may be reduced upon written approval from the Oklahoma Tax Commission.

(2) Agents are required to collect fees as outlined by state statute, and issue all documents (i.e. license plates, registration decals, title certificates) prescribed by the Oklahoma Tax Commission. Additionally, an agent must issue all titles and liens, boats and motors titles - registrations, etc., prescribed by the Oklahoma Tax Commission.

(3) Agents are required to deposit all monies required by the Commission into the designated Oklahoma Tax Commission bank account within one (1) banking day of collection, preparing an Advice of Deposit which is to be submitted to the Oklahoma Tax Commission in the manner prescribed by the Commission.

(4) Agents are required to prepare semimonthly reports to be received by the Oklahoma Tax Commission ~~no later than ten (10) working days after the cutoff day of the report~~within the time frame outlined in Section 710:60-9-55.

(5) Agents must perform all necessary inspections required by the Oklahoma Tax Commission motor license agents manual.

(6) Agents are required to provide a notary within their agency.

(7) Agents are required to insure that all transactions are processed and entered to the Oklahoma Tax Commission computer system on a daily basis.

(8) The Advice of Deposit shall be submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. Advice of Deposit information is to be entered to the Oklahoma Tax Commission MLA deposit entry system immediately following depositing of the funds.

(9) Agents are responsible for errors in tax computations and/or fee computations and collections as determined by the Commission.

(10) A motor license agent shall follow the process and procedures set forth in Section 710:60-9-94 for reporting and collecting dishonored checks on Tax Commission transactions. ~~reimburse the Oklahoma Tax Commission depository account for all dishonored checks which have been deposited to the account. The account is not to be charged. Dishonored checks that cannot be collected by the agent within thirty (30) days of retrieval from the depository bank are to be forwarded to the Oklahoma Tax Commission for credit and appropriate collection efforts~~.

(11) Agents are required to maintain files of all receipts and required reports issued by their office, including those of a former agent, if applicable, for at least two (2) years. Transaction receipts are to be maintained in ascending receipt number order.

(12) Agents must pay or account for all missing items identified by an inventory audit ~~no later than thirty (30) days after billing~~.

(13) Agents shall not issue license plates, registration decals, receipts, or any type of document until payment of all applicable taxes and fees has been received in full. Payment may be made by cash, money order, personal or company check, cashier's check, or by a nationally recognized credit or debit card. The Tax Commission shall determine which nationally recognized credit or debit cards will be required to be accepted by motor license agents, ensuring no loss of state revenue results from their use. All checks and money orders are to be made payable to the Oklahoma Tax Commission.

(14) Agents are required to maintain strict compliance with the Motor Vehicle Licensing and Registration Act and with the rules, regulations, fee schedule, and procedures as set forth in the Motor License Agents Manual of Procedure and instructional material periodically issued by the Tax Commission.

(15) Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Annual area schools conducted by the Commission are an important component in disseminating such instruction. Area school attendance is not mandatory, unless specifically mandated by the Commission, but is strongly encouraged.

(16) Agents are required to post the Public Notice Fee Chart, in addition to any other required public notices provided by the Tax Commission, in a conspicuous location in the agency.

(17) All customers' checks are to be made payable to: Oklahoma Tax Commission. One of the following identifying numbers must be listed on the face of the check: the remitter's driver license number, or a Department of Public Safety identification number.

(18) Motor license agents are authorized to perform additional duties as directed by the Tax Commission, in compliance with Oklahoma statutory guidelines.

[OAR Docket #16-539; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #16-540]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:
Subchapter 7. Duties and Liabilities
710:65-7-15 [AMENDED]
710:65-7-24 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 3. Agricultural Transactions
710:65-13-19 [AMENDED]
Part 5. Items Subject To Other Taxes
710:65-13-30 [AMENDED]
710:65-13-30.1 [NEW]
Part 25. Governmental Entities
710:65-13-130 [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-334 [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 15. "H"
710:65-19-143 [AMENDED]
AUTHORITY:
68 O.S. § 203, Oklahoma Tax Commission
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n/a
ANALYSIS:
Sections 710:65-7-15 & 710:13-334 have been amended to update the current name of the accrediting organization for purposes of the sales tax exemption afforded museums holding such accreditation. [68:1356(25)]

Section 710: 65-7-24 has been amended to remove outdated language.

Section 710:65-13-19 has been amended to clarify that the sales tax exemption afforded farmers possessing agricultural exemption permits for sales made at or from the farm extends to farmers markets and similar venues.[68:1358]

Section 710:65-13-30 has been amended to comply with the passage of SB 574 which exempts a 501(c)(3) charitable healthcare organization from sales tax on purchases of charitable games equipment. [68:1355(7)(c)]

New Section 710:65-13-30.1 has been added to outline Commission policy regarding the tax treatment of unmanned aerial vehicle sales. [68:1355]

Section 710:65-13-130 has been amended pursuant to a request by the U.S. State Department to include exemption cards issued to Taiwanese Diplomats as part of the provisions relating to sales tax exemption cards for foreign diplomats and other mission personnel. The parameters regarding the transferability of the referenced exemption cards are also outlined in the referenced section.

Section 710:19-143 has been amended to clarify the sales tax treatment of lease agreements for apartments located in hotels and other similar entities. [68:1354(7)]
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions

(a) **Sales to entities with other specific statutory exemptions.** In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this subsection:

(1) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and

(2) A signed statement that the purchase is **authorized by, and being made by,** the exempt entity, with funds of the exempt entity, and **not** by the individual; and,

(3) In the case of sales to **fire departments organized for unincorporated areas**, as defined in 18 O.S. § 592, certification on the face of the invoice or sales ticket is also required.

(4) In the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program, no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction.

(b) **Examples and applications.** Types of entities which may receive letters or cards, certifying or confirming a specific statutory exemption include:

(1) **Churches**; [See: 710:65-13-40]

(2) **Youth camps**, **supported or sponsored by** one or more **churches**, members of which serve as trustees of the organization; [See: 710:65-13-33]

(3) **Children's homes** where church members are trustees or where the home is on church-owned land or where 50% of the juveniles are court-adjudicated and the home receives less than 10% of its funding from state funds; [See: 710:65-13-33]

(4) **Council organizations** of the Boy Scouts and Girl Scouts of America or Camp Fire USA; [See: 710:65-13-341]

(5) **Public schools**; [See: 710:65-13-210]

(6) Oklahoma System of **Higher Education**; [See: 710:65-13-210]

(7) **Private schools** registered with the State Department of Education and private institutions of higher education accredited by the Oklahoma State Board of Regents for Higher Education; [See: 710:65-13-210]

(8) **Federal governmental** units, institutions, and instrumentalities; [See: 710:65-13-130]

(9) **Governmental entities** of the State of Oklahoma, including county and local units; [See: 710:65-13-130]

(10) City and county **trust authorities**; [See: 710:65-13-550]

(11) Federally chartered **credit unions**;

(12) **Rural water districts**;

(13) Facilities engaged in the remediation or processing to ameliorate **hazardous wastes**; [See: 710-65-13-80]
(14) **Disabled American Veterans** Department of Oklahoma and its subordinate chapters; [See: 710:65-13-336]
(15) **Museums** which are members of the American Alliance of Museums formally the American Museum Association; [See: 710:65-13-334]
(16) **Rural Electric Cooperatives**;
(17) Federally qualified **health care** facilities;
(18) **Health care** facilities receiving reimbursement from the Indigent Care Revolving Fund;
(19) **Community based health centers** providing primary care services at no cost to the patient;
(20) **Cultural organizations** established to sponsor and promote educational, charitable, and **cultural events for disadvantaged children**; [See: 710:65-13-335]
(21) Federally recognized **Indian Tribes**;
(22) Leases or lease-purchases of tangible personal property or services to **municipalities, counties, or school districts**; [See: 710:65-13-210]
(23) Sales of tangible personal property or services **to**, or **by**, a tax-exempt [26 U.S.C. § 501(c)(3)] organization, which is organized primarily to provide education and to conduct events related to **teacher training in robotics**, and affiliated with a comprehensive University within the Oklahoma System of Higher Education;
(24) Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a **national championship sports event**, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i);
(25) Volunteer fire departments organized pursuant to 18 O.S. § 592; [See: 710:65-13-340]
(26) Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; [See: 710:65-13-210]
(27) The non-profit organization which operates the Oklahoma City National Memorial and Museum; [See: 710:65-13-330]
(28) The first Fifteen Thousand Dollars ($15,000.00) of sales of tangible personal property sold for fund raising purposes to or by a youth athletic team which is part of an athletic organization exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(4); [See: 710:65-13-343]
(29) Tax exempt, nonprofit organizations which provide services during the day to homeless persons; [See: 710:65-13-344]
(30) Motion picture or television production companies for certain eligible productions; [See: 710:65-13-194]
(31) Child care centers providing on site universal pre-kindergarten education; [See: 710:65-13-220]
(32) Tax exempt organizations which are shelters for abused, neglected, or abandoned children; [See: 710:65-13-355]
(33) Tax exempt organizations providing funding for medical scholarships; [See: 710:65-13-357]
(34) Nonprofit local public or private school foundations; [See: 710:65-13-210(m)]
(35) Nonprofit foundations in support of NRA and other like organizations; [See: 710:65-13-359]
(36) Grassroots fundraising programs in support of NRA; [See: 710:65-13-360]
(37) Construction projects for organizations providing end of life care and hospice service. [See: 710:65-13-178]

710:65-7-24. Seller's relief from certain liability

Sellers and Certified Service Providers (CSPs) will be relieved from liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided in the ~~best practices~~ taxability matrix, available online at www.tax.ok.gov. If the taxability matrix is amended, sellers and CSPs are relieved from liability until the first day of the calendar month that is at least 30 days after notice of a change is submitted to the Streamlined Sales Tax Governing Board, provided the seller or CSP relied on the prior version of the taxability matrix.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 3. AGRICULTURAL TRANSACTIONS

710:65-13-19. Sales at or from the farm and sales at farmers markets

(a) The sale of agricultural products by the producer at or from the producer's agricultural property to the consumer or user, including transactions where those products are sold and shipped directly to the consumer or user, is not subject to sales tax. As used in this Section **"agricultural property"** means the location at which the agricultural products were grown or where the animals from which the agricultural products are derived were raised or milked.
(b) This exemption does not apply to sales by florists, nurserymen, or chicken hatcheries. Dairy products are exempt only if offered for sale by the owner of all of the cows from which the dairy products were produced. [**See:** 68 O.S. §1358(A)]
(c) Transactions exempted by this Section include sales of agricultural products produced in Oklahoma by farmers who sell their products directly to consumers at farmers markets, roadside stands, festivals/fairs or other similar venues. However, agents of agricultural producers and other third parties may not sell agricultural products exempt from sales tax pursuant to this Section.

PART 5. ITEMS SUBJECT TO OTHER TAXES

710:65-13-30. Exemption for the sale of tangible personal property subject to other taxes

(a) **Aircraft, boats, boat motors, and motor vehicles, including low-speed electrical vehicles.** Sales and use tax does not apply to the sale of airplanes, boats, boat motors, and motor vehicles, including low-speed electrical vehicles, which are subject to the "Oklahoma Aircraft Excise Tax Act" [**See:** 68 O.S. § 6002], the "Oklahoma Vessel and Motor Registration Act" [**See:** 63 O.S. § 4107], or the "Oklahoma Vehicle Excise Tax Act" [**See:** 68 O.S. § 2106]. These excise taxes are levied on all aircraft, small vessels, watercraft, sailboats, motors greater than ten (10) horsepower, motorboats, or motor vehicles, including low-speed electrical vehicles, and also the optional equipment and accessories attached at the time of the sale and included in the purchase price or manufacturer statement of origin.

(b) **Accessories, optional equipment, and parts.** Sales tax is due on accessories, optional equipment, or parts which are not attached and sold as part of the purchase price on the sale of aircraft, motors greater than ten (10) horsepower, vessels, motorboats, motor vehicles and low-speed electrical vehicles.

(c) **Boats motors.** The sale of boat motors in excess of ten (10) horsepower is subject to boat and motor excise tax. [**See:** 63 O.S. §§ 4003(B)(1), 4107] The sale of boat motors ten (10) horsepower or less is subject to sales/use tax. [**See:** 68 O.S. § 1355]

(d) **Leases of aircraft.** Leases of aircraft are not subject to sales tax if either the aircraft excise tax has been paid on the lease transaction or an exemption applies to the transfer from the lessor to the lessee, pursuant to 68 O.S.~~Supp.2000,~~ §§ 1355(9) and 6001(4).

(e) **Sales of crude petroleum, natural or casinghead gas, and other products.** *Sales of crude petroleum, natural or casinghead gas, and other products subject to gross production tax pursuant to 68 O.S. §1001 et seq. and 68 O.S. §1101 et seq. are not subject to sales tax. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas.* [See: 68 O.S. § 1355(3)]

(f) **Sales from coin-operated vending devices.** Sales from coin-operated vending devices on which the fee imposed by 68 O.S. §§1501-1512 has been paid are not subject to sales tax.

(g) **Leases of motor vehicles.** Leases of motor vehicles are exempt from sales tax provided that the lease is for a term of twelve (12) months or more and the vehicle excise tax levied by Section 2103 of Title 68 of the Oklahoma Statutes has been paid.

(h) **Sales of charity game equipment.** Sales of charity game equipment on which a tax is paid pursuant to the Oklahoma Charity Games Act, (3A O.S. § 401 et seq.), are not subject to sales tax. Additionally charity games equipment is exempt from sales tax when sold to the following entities: or which is sold to

(1) a veterans' organization exempt from taxation pursuant to the provisions of Section 501(c)(4),(7),(8),(10), or (19) of the Internal Revenue Code; or which is sold to

(2) a group home for mentally disabled individuals exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code are not subject to sales tax~~.~~; and

(3) charitable healthcare organizations exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

(i) **Sales of cigarettes and tobacco products.** Sales of cigarettes and tobacco products are exempt from sales tax in the following instances:

(1) Sales to a federally-recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of 68 O.S. § 346(C) or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid;

(2) Sales to a federally-recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied by 68 O.S. § 349 or 426 has been paid; or,

(3) From and after January 1, 2005, sales of cigarettes on which the tax levied in 68 O.S. § 301 et seq. or tobacco products on which the tax levied in 68 O.S. § 401 et seq. has been paid. [**See:** 68 O.S. § 1355(11)]

710:65-13-30.1. Unmanned aerial vehicles

Unmanned aerial vehicles including drones meeting the definition of aircraft pursuant to Section 6001 of Title 68 which are required to be registered with the Federal Aviation Administration (FAA) are subject to aircraft excise tax upon the transfer of legal ownership of any such aircraft or the use of any such aircraft within this state. If not subject to FAA registration requirements, the sale of the referenced items are subject to sales tax. In the case of a purchaser claiming exemption from sales tax because of a requirement that aircraft excise tax is due on the transaction, the vendor should obtain a statement, signed by the purchaser, or by a person who may legally bind the purchaser, that Oklahoma Aircraft Excise Tax will be paid on the purchase of the item in accordance with the provisions of 68 O.S. § 6003, and that if the excise tax is not so paid, the purchaser will be responsible for the sales tax due.

PART 25. GOVERNMENTAL ENTITIES

710:65-13-130. Sales to and by the government; taxable and exempt transactions

(a) **Sales "to" governmental entities.** Sales of tangible personal property or services to this State, its institutions or political subdivisions, and to the United States, including its agencies and instrumentalities are exempt from sales tax. Sales to other states' governments, political subdivisions, institutions, or agencies are not exempt, unless the state is one which borders Oklahoma and grants a like exemption from taxes on similar sales of items to Oklahoma or its political subdivisions.

(1) **Records required.** The books and records of the vendor must show that the purchase was billed to and paid by the government agency.

(2) **Sales to government employees.** Sales to individuals who are employees of this State, its institutions and subdivisions, or of the United States government, are not exempt from tax unless the sale is billed directly to the appropriate government agency or the purchase is by means of properly completed government purchase order or credit card. Sales made on credit cards bearing an employee's name and the name of the government agency for which the employee works will qualify for exemption only if the card is issued to the Federal Government, rather than to the individual, and is paid directly by the Federal Government. The credit cards that currently meet these criteria are those issued through the GSA SmartPay card program:

(A) **Fleet cards.** All Federal Government **fleet cards** are centrally-billed. This means that all charges are billed directly to the Federal Government and paid directly by the Federal Government. Charges made using an authorized **fleet card** are therefore, exempt from the levy of Oklahoma sales tax. Authorized **fleet cards** must meet all the requirements set out in this paragraph:

(i) The **fleet card** prefix (first 4 digits) must be 4486, 4614, 4716, 5565, 5568 or 8699;

(ii) The **fleet card** platform must be Voyager, MasterCard, Wright Express, or Visa; and

(iii) The Voyager **fleet card** must be issued by Citibank, or U.S. Bank; the MasterCard **fleet card** must be issued by Citibank, JP Morgan Chase or U.S. Bank; the Wright Express fleet card must be issued by Citibank.

(B) **Purchase cards.** All Federal Government **purchase cards** are centrally-billed. This means that all charges are billed directly to the Federal Government and paid directly by the Federal Government. Charges made using an authorized **purchase card** are therefore, exempt from the levy of Oklahoma sales tax. Authorized **purchase cards** must meet all the requirement set out in this paragraph:

(i) The **purchase card** prefix (first 4 digits) must be 4486, 4614, 4716, 5565 or 5568;

(ii) The **purchase card** platform must be Visa or MasterCard; and

(iii) The Visa **purchase card** must be issued by Citibank, JP Morgan Chase or U.S. Bank; The MasterCard **purchase card** must be issued by Citibank, JP Morgan Chase, or U.S. Bank;

(C) **Travel cards.** Federal Government **travel cards** may be centrally-billed or individually billed. Individually-billed charges are billed to and paid by the federal **employee**, and then reimbursed by the Federal Government. Individually-billed charges made using a **travel card** are **subject to** the levy of Oklahoma sales tax. Only centrally-billed charges made using an authorized **travel card**, because they are billed directly to and paid directly by the Federal Government, are exempt from the levy of Oklahoma sales tax. Authorized **travel cards** must meet all the requirements set out in this paragraph:

(i) The **travel card** prefix (1st four (4) digits) must by 4486, 4614, 5565 or 5568;

(ii) The sixth (6th) digit of the account numbering structure will denote whether the travel card is centrally-billed or individually-billed:

(I) A sixth digit of 0, 6, 7, 8, or 9 denotes that the **travel card** is centrally-billed;

(II) A sixth digit of 1, 2, 3, or 4 indicates that the **travel card** is individually-billed;

(iii) The **travel card** platform must be Visa or MasterCard; and

(iv) The **travel card**, whether Visa or MasterCard, must be issued by Citibank, U.S.Bank, or JP Morgan Chase.

(D) **Integrated cards.** Federal Government **integrated cards** may include **fleet**, **travel**, or **purchase card** functionality and offer the Federal Government a single card for all purchases. All **fleet and purchase type transactions** made on an **integrated card** are centrally-billed, and therefore exempt from the levy of Oklahoma sales tax, regardless of the sixth digit on the card. **Travel card** type functionality may be centrally-billed or individually-billed. Authorized **integrated cards** must meet all the requirements set out in this paragraph:

(i) The prefix (first four (4) digits) of an **integrated card** must be 4486, 4614, 4716, 5565 or 5568;

(ii) For travel functionality **only**, the sixth digit of the **integrated card** will denote whether the card is centrally or individually billed:

(I) A sixth digit of 0, 6, 7, 8, or 9 denotes that the **integrated card** being used for travel functionality is centrally-billed;

(II) A sixth digit of 1, 2, 3, or 4 indicates that the **integrated card** being used for travel functionality is individually-billed;

(iii) The **integrated card** platform must be Visa or MasterCard; and

(iv) The **integrated card**, whether Visa or MasterCard, must be issued by Citibank, U.S.Bank or JP Morgan Chase.

(3) **Sale to contractors.** Sales to contractors in connection with the performance of any contract with the United States government are not exempt unless the ownership and possession of the property purchased by the contractor or agent transfers immediately to the United States government. [**See:** 68 O.S. §§1356(1), 1356(2)]

(4) **Sales to foreign diplomats, consular mission and mission employees.** Foreign diplomats and consular missions and their personnel and eligible family members who have been issued a *Diplomatic Tax Exemption Card* by the United States Department of State, Office of Foreign Missions may make eligible purchases exempt from sales tax. Qualifying Diplomatic Tax Exemption Cards may also be issued by the American Institute

in Taiwan.~~The *Diplomatic Tax Exemption Card* is not transferable andeach~~Each category of tax exemption card bears an animal image indicating the purchases eligible for sales tax exemption by the cardholder as follows:

(A) **Owl image card** exempts the cardholder from sales tax on all official mission purchases.

(B) **Buffalo image card** exempts the cardholder from sales tax on all official mission purchases subject to the restrictions listed on the card. For example, the card may read: "Exempt from tax on purchases over $300; not valid for hotels."

(C) **Eagle image card** exempts the cardholder from sales tax on all personal purchases.

(D) **Deer image card** exempts the cardholder from sales tax on personal purchases, subject to the restrictions listed on the card. For example, the card may read: "Exempt from tax on purchases over $150; not exempt for hotels, restaurants, and services."

(5) **Transferability.** The Eagle and Deer exemption cards used for personal purchases are not transferable. The exempt use of the Owl and Buffalo cards is not restricted to the individual pictured on the card.

(6) **Exemption requirements.** To qualify for exemption, official mission purchases made with either an Owl or Buffalo Card must be invoiced to the cardholder and payments made with mission check or mission credit card. For personal purchases made pursuant to an Eagle or Deer Card to qualify for the exemption, they must be invoiced to the cardholder and payment may be in any form including cash, check, or credit card.

(b) **Sales by a lease or lease-purchase agreement with a municipality or county.** The sale of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district is exempt from sales tax.

(c) **Sales "by" governmental entities.** Except as specifically exempt by statute, the State of Oklahoma, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, shall collect, report and remit sales tax on taxable sales of tangible personal property and services. For example, sales of city maps, sales of gifts and souvenirs, sales of food from city operated concessions at stadiums, ballparks, auditoriums, etc., are subject to tax.

(d) **Purchases by contractors.** Except where specifically authorized by statute, purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for a governmental entity may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a governmental entity.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-334. Exemption for qualified museums

(a) **General provisions.** Museums or other entities accredited by the American Alliance of Museums formally the American Association of Museums are exempt from the levy of sales tax on their purchases of tangible personal property and services, and provided that the museum is in compliance with (d)(2) of this Section, on the sales of tickets for admission.

(b) **Certification required for purchases.** Certification, in which the name of the museum or other accredited entity is set out on the face of the invoice or sales receipt to be obtained and retained by the vendor, is required of persons making purchases on behalf of a qualifying museum or other accredited entity, in order to support the exemption pursuant to *OAC* 710:65-3-30 and 710:65-3-33.

(c) **Application procedure.** Application for the exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16A, contained in Packet E available from the Division at (405) 521-3160 or online at www.tax.ok.gov along with written confirmation that the applicant is currently accredited by the American Alliance of Museums formally the American Association of Museums.

(d) **Exemption limited to eligible, properly-documented transactions.**

(1) Only those purchases actually purchased by the museum or other accredited entity, invoiced to the museum or entity, and paid for by funds or check directly from the museum or other accredited entity, will qualify for the exemption on purchases.

(2) To qualify for the exemption on sales of admission tickets, the museum must separately state an amount equivalent to the tax which would otherwise have been required to be collected on the face of the admission ticket and must use the amount so stated and so collected solely for the purpose of servicing debt incurred by the museum in the construction, enlargement, or renovation of facilities used or to be used for the entertainment, edification, or cultural cultivation of persons admitted to the museum or facility. The museum or other accredited entity must maintain records adequate to show that the proper amount was collected in lieu of the tax and that those funds were used for purposes of servicing qualifying projects.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to museums and other accredited entities.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 15. "H"

710:65-19-143. Hotels, motels, apartments, etc.

(a) The gross receipts from the furnishing of rooms, except meeting rooms, by a hotel, apartment-hotel, cottage camp, or lodging house open to the public is subject to sales tax without regard to the length of guest stay. ~~Should a hotel operate apartments in connection with and as a part of their hotel business, the rentals on such apartments are subject to the tax. The tax will always apply so long as the place of business retains its identity as a hotel, apartment hotel, cottage camp or lodging house, without regard to the length of stay of the guest.~~Sales tax does not apply to rental agreements which are governed by the Oklahoma Residential Landlord and Tenant Act [41 O.S. §§101 et seq.].

(b) The revenue received from the forfeiture of a deposit is not revenue arising from the furnishing of a room and is therefore not subject to sales tax. However, revenue which is derived from a guaranteed room is subject to sales tax, even if the guest did not occupy the room.

(c) The gross proceeds received by hotels or other persons for local telephone calls are considered a part of the service of furnishing rooms and are, therefore, taxable. No deduction will be allowed for any expense in connection with such service such as switchboard rental, trunk line rental, etc.

(d) Supplies such as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, and other items available for guests' use are subject to sales or use tax at the time of purchase by the hotel or motel. Linens, furniture, pool equipment and supplies, and similar items are subject to sales or use tax at the time purchased by the hotel or motel.

(e) Sales tax is not due on food or drinks that are provided as a part of a packaged room rate by hotel or motel operators if the furnishing of the room is subject to tax under Section 1354 of Title 68 and if no separate charge is made for the food or drinks. Such food or drinks are considered to be sold at retail as part of the total charge for the room.

(f) With the exception of subsection (e) hotel or motel operators who are also vendors of meals are required to remit sales tax on the "sales value" of inventory withdrawn from stock that is used in providing complimentary meals to its customers. The proper sales tax basis to be used for sales of food and beverages for related services, and for various "complimentary" offerings, both in the context of rooms and of other services, is explained in more detail in OAC 710:65-1-2 and 710:65-19-109.

(g) A **"mini-bar"** means a closed container, either refrigerated or non-refrigerated, with access to the interior limited to a key, magnetic card, or similar device and controlled at all times by the holder of the license.

(h) A hotel beverage license shall authorize the holder to sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine and 12 ounce malt beverage containers which are distributed from a hotel room mini-bar. The total retail value of the sale of alcoholic beverages by the license-holder is subject to sales tax, pursuant to *OAC* 710:20-5-4.

[OAR Docket #16-540; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #16-541]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:90-1-3 [AMENDED]
AUTHORITY:
68 O.S. § 203, Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:90-1-3 has been amended to conform to the current practice regarding the registration process of withholding accounts.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-3. Registration of employers

(a) Every employer required to deduct and withhold tax as required under 68 O.S. §2355(B) and 68 O.S. § 2385.2 shall register with the Commission for purposes of withholding, reporting, and remitting such tax. An employer must register on the prescribed Commission Business Registration Form and shall furnish such information as required by said form to include the following:

(1) How the business is owned;

(2) Federal Employer Identification Number; ~~(If a Federal Employer Identification Number has been applied for but not received, indicate "applied for" in the space provided.)~~

(3) Business phone;

(4) Ownership information consisting of:

(A) Name of legal owner, social security number, if applicable, and mailing address;

(B) Name of partners or corporate officers, social security numbers, titles, and residential mailing address;

(5) Withholding Tax information:

(A) Is tax withheld;

(B) Date Withholding Tax was or is expected to commence;

(C) Is the amount withheld greater than $500.00 per quarter;

(6) Name of officer, partner, employee, or agent responsible for the remittance of Withholding Tax, social security number, title, and residential mailing address;

(7) Other information required to include but not limited to: Location information, previous owner information, etc.;

(8) Signature of sole owner, partner, officer or agent and the date thereof.

(b) All taxes withheld must be reported and paid when due.

[OAR Docket #16-541; filed 6-15-16]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #16-542]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Used Tire Recycling
710:95-5-9 [AMENDED]
Subchapter 22. Registration Requirements for Resident and Nonresident Contractors
710:95-22-2 [AMENDED]
AUTHORITY:
68 O.S. §§ 203 and 55005; Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
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August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:95-5-9 has been amended to correct inaccurate numbering.

Section 710:95-22-2 has been amended to implement Senate Bill 499 which adds an exception to the requirement for employer identification numbers by allowing an out-of-state business that conducts operations within the state for purposes of performing work or services related to a declared state disaster or emergency during the disaster response period to not possess certain identification numbers issued by the Oklahoma Tax Commission, Oklahoma Employment Security Commission, Internal Revenue Service and Social Security Administration.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 5. USED TIRE RECYCLING

710:95-5-9. Examples

(a) **Transactions to which fee is applicable.** The used tire recycling fee applies to the transactions and vehicles indicated in (1) through (8) of this subsection:

(1) Cars and light trucks.

(2) Motorcycles and mopeds.

(3) School buses and automobiles owned by schools.

(4) Tires sold to governmental agencies.

(5) Tires sold for farm tagged motor vehicles.

(6) Tires sold for commercial trucks, truck-tractor (semi-trucks), and trailers.

(7) First registration in Oklahoma of automobiles, motorcycles, mopeds, or trucks, including farm tagged motor vehicles and commercial motor vehicles which are not registered under the International Registration Plan.

(8) Tires sold for implements of husbandry and agricultural equipment.

(b) **Transactions to which fee is not applicable.** The used tire recycling fee does not apply to the transactions and vehicles indicated in (1) through ~~(11)~~(10) of this subsection:

(1) Airplanes.

(2) Bicycles.

(3) Riding lawn mowers.

(4) Wheelbarrows.

(5) Push mowers.

(6) Forklifts.

(7) Tires sold for backhoe, grader, and other construction machinery.

(8) First registration in Oklahoma of vehicles registered under the International Registration Plan.

(9) All-terrain vehicles.

(10) Off-road motorcycles.

SUBCHAPTER 22. REGISTRATION REQUIREMENTS FOR RESIDENT AND NONRESIDENT CONTRACTORS

710:95-22-2. Requirement for contractors to possess certain employer identification numbers

(a) **Requirement for employer identification numbers.** Resident and nonresident contractors must have in their possession employer identifications numbers issued to them by the Oklahoma Tax Commission, Oklahoma Employment Security Commission, Internal Revenue Service and Social Security Administration. [**See**: 68 O.S. § 1701.1]

(b) **Exceptions.** The requirement set forth in subsection (a) of this Section does not apply under the following circumstances:

(1) A contract for an entire project requiring services of less than three (3) employees.

(2) A resident contractor constructing a single family dwelling when the total cost of the project is less than the average sales price of a single family dwelling in this state as set each year by the National Association of Home Builders.

(3) An out-of-state business that conducts operations within the state for purposes of performing work or services related to a declared state disaster or emergency during the disaster response period. [**See**: 68 O.S. § 55005]

[OAR Docket #16-542; filed 6-15-16]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #16-444]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
715:1-1-8. Payment of salaries and claims [AMENDED]
715:1-1-13. Change of address, name or district [AMENDED]
AUTHORITY:
70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees of Teachers' Retirement System
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
715:1-1-8 is being amended to update internal staff titles that may authorize payment of claims.
715:1-1-13 is being amended to allow name or address change requests to be submitted online electronically through the OTRS Client Portal.
CONTACT PERSON:
Julie Ezell, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

715:1-1-8. Payment of salaries and claims

(a) The Executive Director is authorized to approve and pay all payrolls for the regular personnel and extra help of TRS, as provided in the budget approved by the Board of Trustees. The Executive Director ~~and the Secretary Treasurer~~, Chief Financial Officer, and Certified Procurement Officer must comply with the law in making purchases of supplies, printing materials and equipment. ~~Claims for all traveling expenses, utility bills, communications, bond premiums, rentals, payments of death claims to beneficiaries or estates, tax-sheltered annuity claims, and maintenance and repair of machines, when properly audited and approved by the Secretary Treasurer or the Executive Director, may be paid before approval by the Board of Trustees.~~ In the event of the absence of the ~~Secretary Treasurer or the~~ Executive Director, the ~~Assistant Executive Director~~Chief Financial Officer may also sign for approval of claims.

(b) The retired member payroll shall be paid when approved by the ~~Secretary Treasurer~~Chief Financial Officer and the Executive Director, or in the event of an absence, the ~~Assistant Executive Director~~General Counsel may approve for one. The Board of Trustees shall then make final approval at the next regular meeting following the date on which the checks were mailed to retired members.

715:1-1-13. Change of address, name or district

When a member moves to a new address, or if there is a change of surname, TRS should be notified of such change in writing or via the OTRS Client Portal. Please include the new name, the former name and the Social Security number or Client ID number. This procedure also applies to retired members whose checks are directly deposited to their banking accounts. Also, when an employee moves from one school district to another, it is important that TRS be notified of this change at once. Personal Data Form TRS 1-A may be secured for this purpose from the fiscal officer of the member's employer.

[OAR Docket #16-444; filed 6-14-16]

TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #16-445]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Service Eligibility
715:10-3-1. Requirements for creditable service [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-1. Oklahoma service credit after July 1, 1943 [AMENDED]
715:10-5-4. Cost to purchase Oklahoma service [NEW]
715:10-5-4.1. Payment of Contribution Deficit for Education Employees Service Incentive Plan [AMENDED]
715:10-5-9. Re-establishing withdrawn service [AMENDED]
715:10-5-11. Military service limited to maximum of five years [NEW]
Subchapter 7. Membership Vesting and Termination
715:10-7-1. Vesting of membership in TRS [AMENDED]
Subchapter 9. Survivor Benefits
715:10-9-6. Probate Waivers [NEW]
Subchapter 11. Withdrawal from Membership and Refund of Deposits
715:10-11-2. Withdrawal of optional membership while still employed [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-1. Regular annual compensation requirements [NEW]
715:10-13-10. Annual report of employment [AMENDED]
715:10-13-13. Contributions while receiving payments from Workers' Compensation [AMENDED]
Subchapter 15. Service Retirement
715:10-15-3. Date of retirement; making application [AMENDED]
715:10-15-7.2 Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP") [AMENDED]
715:10-15-10. Retirement plans [AMENDED]
715:10-15-10.2. Partial lump-sum payments [AMENDED]
715:10-15-11. Designation of beneficiaries for retirement options [AMENDED]
715:10-15-16. Review by Medical Board [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-12. Earnings report by remitting agencies [AMENDED]
715:10-17-13. Election to return to qualifying employment [AMENDED]
Subchapter 25. Qualified Domestic Order [NEW]
715:10-25-1. Definition [NEW]
715:10-25-2. Filing a qualified domestic order [NEW]
715:10-25-3. Contents of qualified domestic order [NEW]
715:10-25-4. Payment to alternate payee [NEW]
715:10-25-5. Termination of a qualified domestic order [NEW]
AUTHORITY:
70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees of Teachers' Retirement System
SUBMISSION OF PRPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
715:10-3-1 is being amended to provide more structure on how service credit is calculated and provide for rounding of service credit awarded. The rule will still grant service based upon employment pursuant to full-time equivalent. The basic formula is the number of days that member works during the contract year divided by the number of days a full-year employment contract in that position requires. The rule will also provide for rounding of service credit to the nearest tenth (for example .98 year service credit would round to 1.0 year and .84 service credit would round down to .80 year). The rule also specifically provides how part-time service credit is calculated based upon employment compared to a full-time equivalent (same calculation above multiplied by .5). Provides a calculation/definition for 'creditable service' as discussed in 70 O.S. § 17-116.2.

715:10-5-4 is being amended provide information, guidance, and procedures on how the cost to purchase Oklahoma service is calculated such as billing deadlines, mortality tables, etc. as is provided for in 70 O.S. §§17-116.2, 17-116.8;

715:10-5-4.1 is being amended to provide that all EESIP payments must be completed at least ninety days prior to retirement in relation to the calculation discussed in 70 O.S. § 17-116.2C;

715:10-5-1 is being amended to fix a clerical error involving extra punctuation;

715:10-5-9 is being amended to require all payments for withdrawn service to be completed at least ninety days prior to retirement. Withdrawals are permitted under 70 O.S. § 17-105;

715:10-5-11 is being amended to provide a procedure for the purchase of military service as is provided in 70 O.S. §§ 17-116.2, 17-116.8;

715:10-7-1 is being amended to provide that the five years required for vesting requires a member to have five years of service credit, as discussed in 70 O.S. § 17-105;

715:10-9-6 is being amended to provide procedure for the submission of a probate waiver for small estates as is provided for in 70 O.S. § 17-105;

715:10-11-2 is being amended to make it clearer that a forfeiture of benefits when an optional member withdraws does not forfeit any future benefits the member may become entitled to;

715:10-13-1 is being amended to provide examples of what payments meet the definition of regular annual compensation pursuant to 70 O.S. § 17-101;

715:10-13-10 is begin amended to provide for a deadline for the filing of the End of Year Employment Report

715:10-13-13 is being amended to allow employers to continue remitting contributions on an employee's full regular annual compensation during a period when an employee is receiving Workers' Compensation;

715:10-15-3 is being amended to make it clear that the Intent to Retire must be returned to OTRS no less than 60 days prior to the date of retirement;

715:10-15-7.2 is being amended to provide that an employee who participates in EESIP, and then becomes employed by a non-participating EESIP employer, does not lose their EESIP wear-away performed prior to employment by a non-participating employer pursuant to 70 O.S. § 17-116.2C;

715:10-15-10 is being amended to clarify that certain retirement options allow the naming of a joint annuitant. Retirement options are provided for in 70 O.S. § 17-105;

715:10-15-10.2 is being amended to provide a procedure for the payment of partial lump sum options as discussed in 70 O.S. § 17-105.2;

715:10-15-11 is being amended to provide guidance as to the designation of beneficiary in case of divorce;

715:10-15-16 is being amended to provide that a member granted temporary disability cannot apply for permanent disability until they are within one month of the expiration of the temporary disability. Disability retirement is provided for in 70 O.S. § 17-105;

715:10-17-12 is being amended to provide a deadline for the submission of the Employer Year End Report;

715:10-17-13 is being amended to provide clarity regarding the return to active contributing status after retirement;

715:10-25-1 through 715:10-25-5 are being amended to provide a procedure and guidance regarding the submission of Qualified Domestic Orders as it provided in 70 O.S. § 17-109.
CONTACT PERSON:
Julie Ezell, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-4746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 3. SERVICE ELIGIBILITY

715:10-3-1. Requirements for creditable service

(a) All members of Teachers' Retirement System must be employed a specified amount of time as related to their educational employment position, and earn a minimum salary, before creditable service will be awarded. A school\employment year typically falls between July 1 and June 30 of any year. No service performed as a unpaid volunteer shall be counted as service credit. For service performed on or after July 1, 2013, creditable service will be awarded based upon the information provided by each employer certifying full-time equivalent for each position, subject to approval by TRS. No member shall receive one (1) year of service credit for less than 960 hours of employment. (This does not mean that a member working 960 hours is automatically entitled to receive one (1) year of creditable service.) No more than one (1) year of creditable service shall be awarded for all service in any one (1) school year. For service performed on or after July 1, 2013, fractional service will be awarded for less than full-time employment performed during the contract year. ~~(Note: Please refer to Client Handbook for explanation of creditable service qualifications. The Client Handbook, which is periodically modified, can be found at www.ok.gov/TRS).~~

(b) For service performed on or after July 1, 2016, service credit will be the result of the days the employee worked during the employment year divided by the number of days the full-time equivalent for that position would be required to work during the entire employment year. A member employed in a position where the full-time equivalent is required to work at least 6 hours per day, 30 hours per week, and 8 months per year shall be considered a full-time employee. A member employed less than 6 hours per day, 30 hours per week, or 8 consecutive months in a year shall be considered a part-time employee.

(c) For service performed on or after July 1, 2016, service credit awarded will be the result of the days the employee worked during the employment year divided by the number of days the full-time equivalent for that position would be required to work during the entire employment year. For a part-time employee the resulting value from this calculation will be multiplied by .5 to arrive at the service credit awarded.

(d) For service credit of less than 1.0, all service credit shall be rounded to the nearest tenths (4 hundredths and lower will round down, and 5 hundredths and higher will round up).

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-1. Oklahoma service credit after July 1, 1943

Members may purchase credit for years of employment from July 1, 1943, to date of membership in the public schools of Oklahoma on which contributions were not remitted. One (1) full year (twelve calendar months) as a contributing member of TRS must be completed before a member may make such purchases. All purchased service must meet Teachers' Retirement System minimum requirements for eligibility, in effect at the time of purchase, and be properly documented before purchase is allowed. Payment shall not be allowed for any employment during a school year that was less than one-half (1/2) time, and no credit is allowed for periods of employment when a member participated in an alternate retirement plan as provided for by the Alternate Retirement Plan for Comprehensive Universities Act.~~.~~ All payments for past service must be made while an active contributing member of the Teachers' Retirement System or within sixty (60) days of termination of employment in the public schools of Oklahoma. Payment for service credit must be completed prior to the effective date of retirement and cannot be purchased by any person after the death of the member. (See OAC 715:10-5-4 for cost and method of payment).

715:10-5-4. Cost to purchase Oklahoma service

The purchase price for each year of Oklahoma service, unless otherwise specified, shall be based on the actuarial cost of the incremental projected benefits being purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions adopted by the Board of Trustees to be utilized in the actuarial valuation report for the Fiscal Year beginning each July 1. New actuarial assumptions approved by the Board subsequent to January 1, 1991, shall be incorporated into such tables with an effective date of the next January 1st.

(2) The actuarial value shall be based upon the member's age, full-time equivalent salary and contribution level at the time of purchase (or the annual salary of the previous year, if greater), together with the earliest age for retirement with maximum benefits and actuarially assumed salary at time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be determined as the age at last birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be based upon mortality tables adopted by the Board of Trustees.

(5) The actuarial cost shall not be less than the contributions required of the member at a rate commensurate with the salary earned as a regular full-time employee the last preceding school year prior to the purchase. Individuals employed on a less than full-time basis shall have their salary adjusted upward, in a prorata manner, to the amount that would be earned if employed full-time.

(6) Payment may be made in a lump sum for all eligible years of service or in installments equal to establishing one (1) year of creditable service.

(7) A billing statement will be issued at the request of the member. The due date of payment shall be the date prior to the member's next birthday or June 30th, whichever occurs first.

(8) A member may request payment of past service credits billed in accordance with provisions of 70 O.S., Section 17-116.8, as amended, to be amortized in monthly installments of not more than sixty (60) months. A payment schedule may be established allowing the member to make monthly payments directly to Teachers' Retirement or through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to Teachers' Retirement. Payments remitted by an employer for its employees must be kept separate from the employer's regular retirement contributions and tax sheltered annuity deposits. Effective January 1, 2002, installment payments made through employer payroll deductions qualify for special tax treatment. (See OAC 715:10-5-35.)

(9) The installment payment schedule provided for in this section must be in equal monthly increments of twelve-month periods not to exceed sixty (60) months. The member shall be responsible for maintaining the payment schedule. Payments are due on the first day of each month. A monthly installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in paragraph (11) of this section.

(10) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings each year. The current interest rate is eight percent (8%).

(11) If the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or his beneficiary will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated in whole years for only the principal amount paid. Any payment balance that is not used in crediting whole years will be refunded to the member.

(12) Credit will not be awarded for partial years of service unless the member's employment record is such that one-half (1/2) year of credit is included in the original service to be purchased.

(13) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in paragraph (11) of this section. All payments must be completed ninety (90) days prior to the effective retirement date of the member.

715:10-5-4.1. Payment of Contribution Deficit for Education Employees Service Incentive Plan

(a) A member whose Regular Annual Compensation, as defined in 70 O. S. § 17-101, was greater than $40,000 during the school years 1987-88 through 1994-95, must make an additional contribution based on his or her Regular Annual Compensation in excess of $40,000 to qualify for the provisions of OAC 715:10-15-7.2. A member who chooses not to make the additional contribution payment will not qualify for the EESIP formula.

(b) The payment required for any school year between 1987-88 and 1994-95 is the contribution rate in effect for each year applied to the difference between the member's total Regular Annual Compensation and the amount contributed by or on behalf of the member during the school year. This may include compensation in excess of $25,000, when the member elected not to contribute on earnings between $25,000 and $40,000 for these school years or when the school failed to contribute on the member's total compensation up to $40,000 for any school year during this period. In addition to the contribution balance, compound interest of ten percent (10%) per annum will be included in the balance due for each year. The interest rate will be applied from June 30 of the school year to the date payment is made to the Teachers' Retirement System.

(c) To qualify for the movement of the first two (2) years of service credits performed before July 1, 1995, the member must make any payment due for the 1993-94 and 1994-95 school years. To qualify for the next two (2) years of service performed prior to July 1, 1995, the member must make any payment due for the 1991-92 and 1992-93 school years. Payment for additional years of service performed prior to July 1, 1995, will be required in descending order back to the 1987-88 school year.

(d) Payment must be made in accordance with existing Internal Revenue Service regulations in effect at the time of payment. TRS will accept after-tax contributions and pre-tax direct or indirect rollovers and transfers from 401(a), 401(k), 403(b), 457 and IRA plans, when allowed by IRS regulations, and installment payment arrangements as provided under OAC 715:10-5-35. Payments may be a combination of any of the available payment methods. (Also see OAC 715:10-5-32. Roll-overs from other qualified plans or conduit IRAs.)

(e) Any payment balance(s) required for a member to qualify for the EESIP formula must be completed at least ~~thirty (30)~~ninety (90) days before the member's retirement date.

(f) TRS staff will calculate each member's contribution deficit for any year(s) based on payroll records as reported by the employing school. When existing payroll records are not sufficient to accurately determine the member's contribution deficit, TRS has the right to request additional information from the member and/or the employing school. If additional records are required, it is the member's responsibility to obtain or cause records to be forwarded to TRS from the employing school.

(g) If a member retires on or after July 1, 2006, and before June 30, 2007, the member will be required to pay 50% of the total contribution deficit balance.
(h) If a member retires on or after July 1, 2007, and before June 30, 2008, the member will be required to pay 75% of the total contribution deficit balance.
(i) If the member retires on or after July 1, 2008, the member will be required to pay 100% of the total contribution deficit balance.
(j) TRS will accept EESIP contribution deficit payment(s) from the member at any time prior to the member's retirement. However, if at retirement it is determined that an additional balance is due, the member will be required to make the additional payment, including interest, before his or her first retirement benefit payment is due. If it is determined the member has paid more than the required balance, any difference will be refunded to the member, but no interest will be paid by TRS on the deposits, regardless of the length of time such deposits have been held by the Teachers' Retirement System.

715:10-5-9. Re-establishing withdrawn service

After returning to employment in the public schools of Oklahoma a member may redeposit a withdrawn account to re-establish service previously withdrawn from the system. For purposes of this section the following shall apply:

(1) A "classified" and "non-classified" member (except as noted in paragraph 2 of this section) who has returned to public education employment and has established one full year (twelve calendar months) of creditable Oklahoma service, is eligible to redeposit withdrawn contributions. A redeposit of withdrawn contributions must include all applicable interest, which shall be computed at a simple interest rate of ten percent (10%) per annum from the date of the withdrawal to the date repayment is made.

(2) Non-classified members who voluntarily withdrew from membership in TRS, between July 1, 1984 and June 30, 1990, without terminating employment in the public schools of Oklahoma, are not eligible to redeposit or purchase past service for any period of employment between the date of the membership period covered by the withdrawn account and the date of return to membership in TRS.

(3) Non-classified members who voluntarily cease monthly contributions to TRS while continuing to be employed in an eligible position shall be considered to have withdrawn from membership.

(4) Requests for redeposits should be made to the Teachers' Retirement System in writing. The request must include the name in which the service was rendered, the Social Security number and the number of years withdrawn.

(5) Documentation of this service is on file in the Teachers' Retirement System office and will be verified by the staff. Service that cannot be documented by researching microfilm records of the member's prior service account or the monthly remittance reports from the employing school must be purchased under the rule for establishing service prior to membership.

(6) Repayments of withdrawn accounts may be made by active contributing members of TRS in a single lump sum, which includes the withdrawn contributions and all applicable interest, or in installment payments. Such installment payments may be paid in 12-month increments, but shall be completed within 60 months. Installment payments shall include interest based upon actuarial assumptions adopted by the TRS Board of Trustees. Such installment payments shall be completed before the member's effective retirement date. No proration is allowed for partial payments. If payments terminate prior to completion of the installment agreement, the amount paid by the member shall be refunded without interest.

(7) Redepositing of withdrawn accounts must be completed, and payment made to TRS~~, within sixty (60) days of termination of employment in the public schools of Oklahoma, but one (1) month~~ninety (90) days prior to the effective date of a member's official retirement date.

(8) No person may make a redeposit to a member's account after the death of the member.

715:10-5-11. Military service limited to maximum of five years

Credit for military service may be purchased and is limited to a maximum of five (5) years. This includes service both before and after July 1, 1943. No credit may be given for any year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Oklahoma. The member must have two (2) years of creditable Oklahoma service after the years of military service credit for each year to be purchased. Out-of-state service credit cannot be counted as employment in obtaining military service credit. The purchase of military service must be completed, and payment made to TRS, no later than 90 days prior to the effective date of a member's official retirement date.

SUBCHAPTER 7. MEMBERSHIP VESTING AND TERMINATION

715:10-7-1. Vesting of membership in TRS

Members who have accumulated five (5) or more years of creditable service in the public schools of Oklahoma, on which retirement contributions have been remitted, and whose account had not closed prior to July 1, 2003, in accordance with 70 O.S. § 17-103(6) or OAC 715:10-7-3, shall be granted an indefinite extension of membership in TRS. Such membership is vested and shall remain open until the member retires or the contributions are voluntarily withdrawn. Military and out-of-state service shall not be included in the five (5) years required for vesting. Any year of service obtained by the use of accumulated unused sick leave cannot be included in the five (5) years required for vesting. Any member who joins TRS after July 1, 1991, shall be required to have five (5) full years of ~~membership~~service credit awarded pursuant to OAC 715:10-3-1 et. seq. as a contributing member of the System.

For members who join after July 1, 1991, Oklahoma service purchased after membership will not be counted for "vesting" purposes.

SUBCHAPTER 9. SURVIVOR BENEFITS

715:10-9-6. Probate Waivers

(a) In the event a member dies, leaving no living beneficiary or having designated his estate as beneficiary, the System shall require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. However, this requirement may be waived by the System for any benefits or unpaid contributions in the amount of $5,000.00 or less, upon presentation of:

(1) the member's valid Last Will and Testament

(2) an Affidavit of Heirship naming all heirs to the member's estate which must state:

(A) that the value of the deceased member's entire estate is subject to probate, and that the estate wherever located, less liens and encumbrances, does not exceed the amount permitted by law, including the payment of benefits or unpaid contributions from the System;

(B) a description of the personal property claimed (including the death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate; and

(C) a claim by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System.

(3) a Hold Harmless Agreement signed by all heirs;

(4) a Corroborating Affidavit from someone other than an heir who is familiar with the deceased member; and

(5) proof of payment of expenses of last sickness, death and burial, including all medical, hospital and funeral expenses.

(b) The Executive Director of the Teachers' Retirement System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. If there is any question as to the validity of any document herein required, the judicial appointment requirement shall not be waived.

(c) After paying any death benefits or unpaid contributions to any claiming heirs as provided by this section, the Teachers' Retirement System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System is not required to inquire into the truth of any matter specified in this section or into the payment of any estate tax liability.

SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS

715:10-11-2. Withdrawal of optional membership while still employed

A non-classified optional member may voluntarily terminate TRS membership while continuing employment in the public schools of Oklahoma, if:

(1) Proper application is made to TRS. Withdrawal may be made no earlier than two (2) months after date of application and no earlier than the receipt by TRS of the final deposit to the member's account.

(2) The financial officer of the employing school certifies the member's election to stop contributions and the date the member's last contributions will be remitted to TRS.

(3) Any member who withdraws under the conditions listed here may rejoin the Teachers' Retirement System, under the provision of OAC 715:10-1-4(8). A member who terminates membership under this section cannot redeposit contributions withdrawn under this section at a later date, even if the individual returns to membership in TRS. The member will also forfeit any right to purchase service performed from the date of termination of membership under this section and prior to the re-entry date, and will forfeit any unused sick leave accumulated from the date of termination of membership under this section and prior to the re-entry date.

(4) A member's contributions cannot be terminated, by either the member or the employer, without termination of TRS membership. Any member who ceases contributions while still employed in an optional position shall be deemed to have become an ineligible member of TRS, and will have forfeited all rights to retirement benefits provided by TRS~~.~~ for the service prior to the date the member ceased contributions.

(5) An employer may prevent its employees from withdrawing, under this rule, if the employer has a negotiated labor agreement, or formalized IRS plan, prohibiting such terminations and withdrawals.

(6) After-tax contributions can be refunded to an optional member prior to separation from service. Pre-tax contributions cannot be refunded until the member terminates employment or turns 62. Following termination of employment, TRS should be contacted for the proper form to be completed for return of pre-tax contributions. Upon completion of the verification form by the school and the mandatory four-month waiting period, payment of the balance of the account will be made at the same time as regular withdrawals.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-1. Regular annual compensation requirements

Each member of the Teachers' Retirement System is required to make contributions to the Retirement Fund. Monthly contributions are a set percent of "regular annual compensation". Regular annual compensation is defined as wages plus

fringe benefits, excluding the flexible benefit allowance provided by Section 26-105 of Title 70 of the Oklahoma Statutes, and shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70 of the Oklahoma Statutes. Wages and fringe benefits for retirement purposes are defined as normal periodic payment for service the right to which accrues on a regular basis in proportion to the service performed. Such periodic payments shall include staff development or other periodic payments to qualifying members. Fringe benefits shall include employer-paid group health and disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the United States Internal Revenue Code. A qualified member is any eligible employee who is currently contributing to the System. Excluded from regular annual compensation are: employer contributions to a deferred compensation plan that is not provided to all qualified members of the employer, expense reimbursement payments; office, vehicle, housing or other maintenance allowances; the flexible benefit allowance provided pursuant to Section 26-105 of Title 70 of the Oklahoma Statutes; payment for unused vacation and sick leave; any payment made for reason of termination or retirement; maintenance or other nonmonetary compensation; payment received as an independent contractor or consultant; any benefit payments not made pursuant to a valid employment agreement; stipends that are not given across the board to all employees; payment received for obtaining national board certification; and compensation received from the Teacher Shortage Employment Incentive Program. Contributions can only be remitted on actual wages and fringe benefits. No individual can contribute on unearned or non-existent compensation. Under no circumstances can members pay retirement contributions on more than they actually earn.

715:10-13-10. Annual report of employment

At the close of each fiscal year but prior to November 1, the payroll office of each employer shall file a report with Teachers' Retirement System that certifies the number of hours worked that year by each less-than- fulltime employee. The report shall also include the names and total number of hours worked by any employee receiving Teachers' Retirement System retirement benefits. This report shall be known as the Employment Year End Report.

715:10-13-13. Contributions while receiving payments from Workers' Compensation

Any member who is an active contributing member and receives temporary total disability benefits during the period of absence from a public school due to a work-related injury or illness and qualifies for payment pursuant to the Workers' Compensation Act shall receive credit for said period of absence, if contributions were not remitted on the member's regular annual compensation while the member is receiving temporary total or partial disability benefits, subject to the following requirements:

(1) the member was employed by the public school immediately prior to and during the period of absence,

(2) the member must notify the System in writing not later than four (4) months after the member's return to his or her job duties with the public school, or termination of the temporary total disability benefits, whichever is earlier, of the member's desire to receive service credit for the period of absence,

(3) the public school employer must certify to the System in writing the dates during which temporary total disability benefit payments were paid to the member, and

(4) the member and the public school employer shall each pay the respective contributions required for the period of absence without interest within sixty (60) days of billing by the System, or with interest at a rate consistent with the actuarial assumed earnings rate adopted by the Board of Trustees (currently 8% per annum), compounded annually if paid after said sixty (60) days. Employee and employer contributions will be based on the member's regular annual compensation the member would have earned had the injury or illness not occurred.

(5) All balances due must be paid in full at least 30 days prior to~~ retirement or~~ termination of employment~~.~~ or ninety (90) days prior to the effective date of a member's official retirement date.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-3. Date of retirement; making application

The earliest effective date of retirement for any eligible member is the first day of the month following the one in which employment ceases, with the first annuity payment due the last day of that month.

(1) It is the member's responsibility to notify, by filing a retirement contract as outlined in paragraphs 4 and 5 of this section, the TRS Board of Trustees of the date on which retirement is to begin.

(2) Payments for all years of service, for which a member wants to receive credit, must be made no less than 90 days prior to the date of retirement.

(3) State law does not permit TRS to make retroactive retirement payments. Members should ensure that their creditable service record is up-to-date and accurate before they retire.

(4) After submitting all pre-retirement required documentation, the member will receive an Intent to Retire. This form must be returned to TRS no less than sixty (60) days prior to the effective date of retirement. Upon receipt of the completed Intent to Retire ~~The~~the member will receive a final contract for retirement.~~upon completing and returning to TRS an Intent to Retire.This form should be returned to TRS no less than sixty (60) days prior to the expected retirement date. The member shall select the retirement option on the Intent to Retire.~~

(5) The Final Contract for Retirement, properly executed before a notary, is required by statutes to be filed with TRS no less than thirty (30) days before the date of

retirement. Therefore, the final contract for retirement must be completed and on file with TRS by the first day of the month immediately preceding the retirement date. The first retirement benefit payment will be made on the first day of the month following the effective date of retirement.
(6) For example, a retirement contract must be on file by May 1, for a retirement date of June 1, in order to process the first retirement benefit payment on July 1.

715:10-15-7.2. Retirement formula for members retiring under provisions of the Education Employees Service Incentive Plan ("EESIP")

(a) Legislation enacted during the Special Session of the 2006 Legislature modified the standard retirement formula for TRS members employed by remitting entities other than comprehensive and regional four-year universities. A member must have been employed by a participating remitting entity for at least one full school year (twelve months) immediately prior to termination of employment or retirement to qualify for this section.
(b) A TRS member who was employed prior to July 1, 1995, may have service credits performed prior to July 1, 1995, calculated in the member's retirement formula used for service performed after July 1, 1995, when the member's average salary at retirement is greater than $40,000, and the member works beyond the year in which he or she reaches normal retirement age. (The terms "average salary" and "normal retirement age" are defined in 70 O. S. § 17-101.)
(c) A ~~retiring~~ member who works one year beyond the school year in which he or she reaches normal retirement age, and who is employed by a participating employer, may move two (2) years of service performed prior to July 1, 1995, to the retirement formula used to calculate service performed after July 1, 1995. For each additional year the member works beyond normal retirement age employed by a participating employer, he or she may move two (2) additional years of service credit performed prior to July 1, 1995.
(d) For members who retire on or after July 1, 2006, and before June 30, 2007, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is $60,000. During this one-year period, a member whose average salary at retirement is greater than $60,000 shall have benefits calculated in three steps: 2% x $40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x $60,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.])
(e) For members who retire on or after July 1, 2007, and before June 30, 2008, the maximum average salary that can be used to calculate the benefit for service credits that qualify to be moved under this section is $80,000. During this one-year period, a member whose average salary at retirement is greater than $80,000 shall have benefits calculated in three steps: 2% x $40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; 2% x $80,000 for service performed prior to July 1, 1995, that qualifies as moved service; and 2% x the member's average salary for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.])
(f) For members who retire on or after July 1, 2008, the average salary used to calculate the benefit for service credits that qualify to be moved under this section is the member's average salary at retirement. The member's retirement benefit will be calculated as follows: 2% x $40,000 for service performed prior to July 1, 1995, that does not qualify as moved service; and 2% x the member's average salary for service performed prior to July 1, 1995, that qualifies as moved service and for service performed on or after July 1, 1995. (Note: The retirement date for each retiring member is always the first day of the month. [See OAC 715:10-15-4.])
(g) A member whose Regular Annual Compensation was greater than $40,000 during the school years 1987-88 through 1994-95 must make an additional contribution to qualify for movement of service provided for in this section. [See OAC 715:10-5-4.1. Payment of contribution deficit for Education Employees Service Incentive Plan]
(h) A member reaches Normal Retirement Age during the school year he or she reaches age 62, or when the member's age and total service equal 80 or more for those members those official TRS membership date is prior to July 1, 1992, and when the member's age and total service equal 90 or more for those members whose official TRS membership date is on or after July 1, 1992.
(i) For this section, credit a member may receive for having 120 or more days of unused sick leave at retirement will be used in determining the school year in which a member reaches Normal Retirement Age.
(j) For this section, a member who reaches Normal Retirement Age by the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of that school year. A member who reaches Normal Retirement Age after the tenth of July of any school year will be considered to have reached Normal Retirement Age at the beginning of the next school year in which the member is employed.
(k) To qualify for a year of service beyond Normal Retirement Age, OAC 715:10-3-2 and OAC 715:10-3-3 will be used to determine credited service. However, a fractional year of service performed after reaching Normal Retirement Age cannot be combined with a fractional year of service performed prior to reaching Normal Retirement Age to qualify for a year of service credit under this section. Fractional years of service worked after reaching Normal Retirement Age can be combined to create a full year of credited service. If a member participates in ESSIP and wears away at least two (2) years of capped service but has employment at a non-participating entity (comprehensive and regional four-year universities) after reaching Normal Retirement Age, service credit will be awarded for the employment for the non-participating entity, but the salary the member earned at the non-participating entity will not be applied to those years of service which

qualify for the Education Employees Service Incentive Plan (EESIP).

(l) The provisions of subsections e and f of this section become effective only if additional employer contributions are funded as required by ~~Enrolled House Bill 1179xx~~ 70 O.S. § 17-116.2C.

715:10-15-10. Retirement plans

A member may elect to receive a monthly life annuity under one of the following plans:

(1) The Maximum Retirement Plan provides the greatest monthly lifetime benefit that each individual member's years of creditable service and average salary permit. The maximum retirement plan is the monthly entitlement calculated using the standard retirement formula set by statutes. In the event the total retirement payments made prior to the death of a retired member are less than the member's accumulated contributions (with any interest credited to the account prior to July 1, 1968), the difference shall be paid to the member's designated beneficiary or to the member's estate if no designated beneficiary survives the member.

(2) Retirement Option 1 provides a slightly reduced lifetime benefit. The monthly entitlement is the difference between the annuity portion of the maximum retirement plan and the annuity portion of an Option 1 retirement plan subtracted from the Maximum retirement plan. If the retired member dies before receiving in the annuity portion of the monthly payments an amount equal to the member's deposits (with any interest credited to the account prior to July 1, 1968), the remaining balance shall be paid in a lump sum to the member's designated beneficiary or to the member's estate if no beneficiary survives the member. (The member's deposits are "protected" for the member's beneficiary for a longer period of time than under the maximum retirement plan, hence, the monthly benefit is less than the Maximum benefit.)

(3) Retirement Option 2 provides a reduced monthly benefit payable to the member for life. At the death of the retired member, the same monthly benefit payable to the member, shall continue to the member's ~~beneficiary~~joint annuitant, if living. This option is known as a "100% joint survivor annuity." The reduction in the monthly benefit is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The ages of the member and ~~beneficiary~~joint annuitant are an important factor in computing this benefit. The ~~beneficiary~~ joint annuitant for the Option 2 retirement plan may be the member's spouse or another person. If the designated ~~beneficiary~~joint annuitant is not the member's spouse, IRS Regulations require that the adjusted member/beneficiary age difference cannot be more than ten (10) years. The adjusted member/~~beneficiary~~ joint annuitant age difference is determined by first calculating the excess of the age of the member over the age of the beneficiary based on their ages on the date of retirement. If the member is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the member is younger than age 70 based on the member's age on the date of retirement. If the adjusted member/~~beneficiary~~ joint annuitant age difference is greater than ten (10) years, the Option 2 retirement plan is not available. In the event the member's ~~beneficiary~~joint annuitant dies at any time after the member's retirement date but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases the member would have received, had the member not selected the Option 2 retirement plan. The ~~beneficiary~~joint annuitant designation cannot be changed under any circumstance after the date of retirement. The reduction in the monthly payment is much greater than under all other retirement options because two people are protected for the life of both individuals.

(4) Retirement Option 3 provides a reduced monthly benefit payable to the member for life. At the death of the retired member, one-half (or 50%) of the monthly benefit payable to the member, shall continue to the member's ~~beneficiary~~joint annuitant, if living. This option is known as a "50% joint survivor annuity." The reduction in the monthly benefit is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The age of the ~~beneficiary~~ joint annuitant is an important factor in computing this benefit. The ~~beneficiary~~joint annuitant for the Option 3 retirement plan may be any person. In the event the member's ~~beneficiary~~ dies at any time after the member's retirement date but before the death of the member, the member shall return to the retirement benefit, including any post-retirement benefit increases, the member would have received had the member not selected the Option 3 retirement plan. The ~~beneficiary~~ joint annuitant cannot be changed under any circumstance after the date of retirement. The reduction in the monthly payment, while not as great as in the Option 2 plan, still requires a substantial reduction because two people are protected for the life of both individuals.

(5) Retirement Option 4 provides a reduced monthly benefit payable to the member for life. In the event the retired member dies within one hundred twenty (120) continuous months from the date of retirement, the balance of the payments is continued to the designated beneficiary until a total of one hundred twenty (120) months have been completed. The actual reduction is based on actuarial tables developed for this purpose and approved by the Board of Trustees. The beneficiary must be designated at the time of retirement. The Option 4 retirement plan is not available for a member whose retirement date is on or after the member reaches age 93. However, if the designated beneficiary is the member's spouse, the Option 4 retirement plan may be selected if the 120-month period does not extend beyond the joint life and last survivor expectancy of the member and the member's spouse. If the beneficiary dies before the total number of "guaranteed" months have been completed, the remaining payments shall be computed at the rate of interest used in determining the original guarantee. The funds remaining shall be

paid to the administrators, executors or assigns of the last surviving payee.

715:10-15-10.2. Partial lump-sum payments

~~The requirements for partial lump-sum payments shall be administered as directed in Title 70, Oklahoma Statutes, Section 17-105.2 [70 O.S. 17-105.2].~~

Any member of the Teachers' Retirement System with 30 or more years of service credit may elect to receive a partial lump-sum payment in exchange for a reduced annuity. The application for a partial lump-sum payment will be added to the retiring member's final contract for retirement on a form prescribed by the Board of Trustees. A beneficiary of a deceased active member is not eligible to select a partial lump-sum payment.

(1) A member may elect to receive a partial lump-sum payment in an amount equal to the unreduced retirement benefit (Maximum Retirement Allowance) which would have been paid over a period of 12, 24 or 36 months, had the lump-sum option not been selected. Once the payout amount is selected, a reduced Maximum Retirement Allowance is then calculated using factors based upon the member's age at retirement and the payout option (12, 24, or 36 months) selected. This reduced Maximum Retirement Allowance then serves as the basis upon which other optional payment alternatives will be calculated pursuant to 70 O.S. § 17-105 and OAC 715:10-15-10.

(2) The partial lump-sum payment shall be paid in a single check separate from the regular monthly retirement ninety (90) days after the date of the retiring member's first monthly benefit payment. The partial lump-sum payment cannot be returned to the Retirement System once it has been received by the member.

(3) The partial lump-sum payment shall be subject to federal income tax in accordance with Internal Revenue Code or applicable Internal Revenue Service regulations. In accordance with IRS regulations, the member may elect to roll over the partial lump-sum payment into an eligible individual retirement account (IRA) or other eligible retirement plan, including the Oklahoma Teachers' Retirement System's 403b Tax Sheltered Annuity Plan if you already have an established account prior to expected retirement date.

(4) The total amount of the partial lump-sum payment shall be deducted from the member's account balance consisting of the employee contributions plus interest posted to the member's account prior to July 1, 1968, for the purpose of determining unused contributions remaining in the account.

(5) The partial lump-sum payment will be based on the service credit and average compensation, including projected compensation, at the time of retirement, but may be issued before final compensation and contributions are received and posted to the member's account. TRS reserves the right to correct any overpayment or underpayment discovered after final compensation and contribution postings have been received. Should the member have been overpaid, TRS will collect such overpayment from the member, based on an adjustment to the member's monthly benefit. Should the member have been underpaid, TRS will adjust future monthly benefit payments to compensate the member for the amount of the underpayment.

(6) A retiree, having received a partial lump-sum payment, who is reemployed and returns to membership contributing status pursuant to OAC 715:10-17-13, shall have his or her subsequent retirement benefit calculated taking into consideration that a partial lump-sum payment has been received.

(7) Should the retiring member die after the effective date of retirement, but before the partial lump-sum payment is made, the payment will be made to the beneficiary(ies) designated by the retiring member on the final contract for retirement, unless the member filed a separate beneficiary form specifically designating a third party as the beneficiary of the partial lump-sum payment.

(8) If the retiring member is married at the time of retirement, the member's spouse must sign the member's partial lump-sum application form acknowledging the retiring member's intent to receive a partial lump sum payment.

715:10-15-11. Designation of beneficiaries for retirement options

A designation of beneficiary must be made when the retirement contract is completed. A member who selects the Maximum or Option 1 retirement plan may name more than one beneficiary. Beneficiaries named for the Maximum and Option 1 retirement plan may be changed by the member at any time. A member desiring to change or update a beneficiary designation should request TRS Form 90. The beneficiary for the Option 2 or Option 3 retirement plan cannot be changed even if the beneficiary dies before the member, providing, however, the retired member may designate an alternate beneficiary to receive the $5,000 death benefit, when the spouse predeceases the member. The member who elects the Option 4 retirement plan must name a beneficiary, who can be any living person. The beneficiary does not have to be a spouse or dependent. In the case of a divorce the retirement contract remains in force and the member's joint annuitant (ex-spouse) will receive the member's monthly benefit after the member's death (if named as a joint annuitant) unless a Court, acting through a Qualified Domestic Relations Order, directs otherwise.

715:10-15-16. Review by Medical Board

Upon receipt of the application for disability retirement, the Medical Board of the Teachers' Retirement System will review the application at its next monthly meeting. The Medical Board may recommend to the Board of Trustees a member for permanent disability retirement or for a temporary disability retirement when in its opinion the prognosis of the disability is of a temporary nature. Temporary disability retirement benefits may be provided for six (6) to twelve (12) months, subject to re-examination by the Medical Board at the end of the prescribed period. If a member is granted temporary disability the member may apply for permanent disability, or

reapply for temporary disability, only within one (1) month of the expiration of the temporary disability. The member will be notified in writing of the recommendation of the Medical Board. If disability benefits are not recommended by the Medical Board, the reason will be provided to the member. The member may then submit additional medical evidence for further review or request an administrative hearing pursuant to the Administrative Procedures Act, 75 O.S. Section 250 et seq., and OAC 715:1-1-10 within sixty (60) days of notification of the Medical Board's adverse recommendation.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-12. Earnings report by remitting agencies

Prior to March 15 of each year, each employer covered by the provisions of TRS shall submit a report showing the total earnings received by each individual, member and non-member of TRS, during the previous calendar year. The report provided by the employer shall be a copy of the ~~magnetic media~~ report prepared and submitted to IRS to report W-2 Tax Statements and other taxable income reportable to IRS and the Social Security Administration. ~~In lieu of the magnetic media report above, a magnetic media report may be created having~~ The report will be electronically transmitted to TRS via the Employer Portal and will contain the name, social security number, address and the total earnings paid from all sources from January 1 to December 31 of the year and shall be in the format specified by TRS.

715:10-17-13. Election to return to qualifying employment

Any retired member who returns to employment in the public schools of Oklahoma and is employed half-time or more as defined in OAC 715:10-3-2 and OAC 715:10-3-3 may return to post-retirement employment or active contributing status~~membership contributing status~~ under the following conditions:

(1) Active Contributing Status. The retired member must file an irrevocable election to discontinue retirement benefits for the period of such employment. The return to membership contributing status must coincide with the beginning of a school year or the member must refund all benefit payments received from the beginning of the school year in which employment begins and make employee contributions on any compensation earned from the beginning of the school year to the date of the election to return to contributing status.

(2) The election form must be completed by the employing school and signed by the retired member and an official who has authority to employ or pay regular employees of the school. In addition, a new Personal Data Form 1-A shall be completed and submitted to TRS to return a member to work status.

(3) The form must include the nature of the position held and the beginning date of employment.

(4) Retirement payments shall be discontinued in accordance with OAC 715:10-17-14. Retirement payments shall not be resumed during the summer months between consecutive years of this type of employment.

(5) The retired member and the employing public school shall remit employee and employer contributions in the same manner as active contributing employees.

(6) The retired member shall accumulate service credit in the same manner as active contributing employees of the system.

(7) Upon termination of employment, the retired member's monthly retirement benefits will resume with an adjustment to reflect credit for the additional employment as follows:

(A) The initial benefit calculated at the time of retirement will not be affected by the additional employment.

(B) Service credits will be accumulated and credited to the member's record in accordance with Subchapter 3 of this Chapter.

(C) A supplemental benefit for the year(s) of additional service will be calculated using the standard retirement benefit formula and the retirement plan selected by the retiree when the member first retired (See OAC 715:10-15-7 and 715:10-15-7.1).

(D) The average salary used in calculating the supplement benefit will be the average of the salaries earned during this period of employment. In the event the member is employed for less than the number of years required to determine the appropriate average salary, the average will be determined by the number of years employed. Annual salaries will be based on contributions made and determined on a school year basis.

(8) If the retired member is employed for a period less than six months, or for a period of time which does not qualify for additional service credit, the employee contributions remitted by the employee or by the employer on the retired member's behalf will be refunded to the member without interest. Employer contributions as provided by OAC 715:10-13-3 will not be refunded.

(9) The employer shall provide written notice to the Teachers' Retirement System when the retired member's employment is terminated. The member cannot resume benefit payments under this rule and remain employed. The member must comply with the sixty (60)-day non-employment rule that applies to a member who elects regular retirement. Retirement payments will be resumed effective the first of the following month, provided employment terminates on or before the 15th of the month, otherwise benefits will be resumed the first of the next succeeding month. Any supplemental benefit determined pursuant to this section shall commence at the same time.

(10) If the retired member dies while engaging in half-time or more employment as provided in this section, the retired member's beneficiaries will receive any survivor benefits specified in the terms of the retirement contract elected by the member, the $18,000 death benefit

provided by OAC 715:10-9-2, if applicable, and a return of employee contributions, plus interest accumulated during the current employment, as defined in OAC 715:10-9-1. The beneficiaries of the deceased retired member will not be entitled to both the $18,000 death benefit and the $5,000 death benefit defined in OAC 715:10-9-4.

(11) If a retired member does not file an election to discontinue monthly benefits while employed by the public schools of Oklahoma, he or she waives the accrual of service credit and the right to any supplemental benefit from service in the position. The retired member will, however, be subject to the earnings limits outlined in Title 70, Oklahoma Statutes, Section 17-116.10 [70 O.S. 17-116.10]. ~~except to the extent that the value of the accrual of additional service credit and the supplemental benefit would exceed the actuarial value of the benefits received under this Chapter and that were continued or begun pursuant to an election under this section. In such a case, a supplemental benefit equal only to the difference in value will be payable upon subsequent retirement.~~

(12) Retired members returning to half-time or more employment under this subchapter and section shall not be considered "active members" for purposes of purchasing or transferring any form of prior service credit of whatever nature.

(13) A retiree having received a partial lump-sum payment, who is re-employed and returns to membership contributing status pursuant to OAC 715:10-17-13, shall have his or her subsequent retirement benefit calculated taking into consideration that a partial lump-sum payment has been received.

SUBCHAPTER 25. QUALIFIED DOMESTIC ORDER

715:10-25-1. Definition

The term "qualified domestic order" means an order issued by a district court of the State of Oklahoma pursuant to the domestic relations laws of this state which relates to the provision of marital property rights to a spouse or former spouse of a member and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive a portion of the benefits payable with respect to a member of the Teachers' Retirement System.

715:10-25-2. Filing a qualified domestic order

A member of Teachers' Retirement, his or her legal representative, a member's former spouse, or his or her legal representative may file a qualified domestic order with the Teachers' Retirement System. In not less than thirty (30) days of such filing, Teachers' Retirement will acknowledge receipt and notify all parties listed in the order that the order has been accepted or that clarification of the order must be provided to Teachers' Retirement. All qualified domestic orders filed with the Teachers' Retirement System of Oklahoma must be in accordance with Oklahoma Statutes and must conform to the provisions of 70 O.S., Section 17-109, as amended. TRS Form 110.46 OTRS Qualified Domestic Order is available upon request and its use is recommended.

715:10-25-3. Contents of qualified domestic order

For a qualified domestic order to be accepted and binding on the Teachers' Retirement System the order meet the following requirements:

(1) The order must clearly specify the following:

(A) the name and last-known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order,

(B) the amount or percentage of the member's benefits to be paid by Teachers' Retirement to the alternate payee,

(C) the number of payments or period to which such order applies,

(D) the characterization of the benefit as to marital property rights, and whether the benefit ceases upon the death or remarriage of the alternate payee, and

(E) each plan to which such order applies.

(2) The order meets the requirements of this section only if such order:

(A) does not require Teachers' Retirement to provide any type or form of benefit, or any option not otherwise provided under the state law as related to the Retirement System,

(B) does not require Teachers' Retirement to provide increased benefits,

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the Retirement System as a valid order prior to the effective date of this subchapter, and

(D) does not require payment of benefits to an alternate payee prior to the actual retirement date of the related member or prior to the date the member elects to receive a lump sum distribution of his or her retirement account.

715:10-25-4. Payment to alternate payee

Payments to an alternate payee will be made in a like manner and at the same time payment is made to the member. Payment will be either a lump sum distribution of the contributions and interest due the member upon termination of service or death, or monthly benefit payments under the retirement options available to the member at the time he or she applies for retirement benefits. The alternate payee shall not be allowed to choose a method of payment that is different from the method chosen by the member. The alternate payee may not receive payment of any kind prior to the member making application and becoming eligible for payment of benefits. Federal and Oklahoma state income taxes will be withheld from the payment to an alternate payee in accordance with applicable federal and state statutes.

715:10-25-5. Termination of a qualified domestic order

A qualified domestic order will terminate when Teachers' Retirement has fully met the provisions of the order. The obligation of the Teachers' Retirement System to pay an alternate payee pursuant to a qualified domestic order shall cease upon the death of the related member. In the event a qualified domestic order requires the benefits payable to an alternate payee to terminate upon the remarriage of the alternate payee, the Retirement System shall terminate said benefit only upon the receipt of a certified copy of a marriage license, or a copy of a certified order issued by the court that originally issued said qualified domestic order declaring the remarriage of said alternate payee. The order may be cancelled or modified by the court that originally issued the order.

[OAR Docket #16-445; filed 6-14-16]

TITLE 748. OKLAHOMA UNIFORM BUILDING CODE COMMISSION
CHAPTER 17. EDUCATION AND TRAINING

[OAR Docket #16-416]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Regional Training [NEW]
748:17-1-1. Purpose [NEW]
748:17-1-2. Definitions [NEW]
748:17-1-3. Regional continuing education courses [NEW]
748:17-1-4. Regional training held or sponsored by the OUBCC [NEW]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 17, 2015
COMMENT PERIOD:
January 19, 2016 through February 18, 2016
PUBLIC HEARING:
February 23, 2016
ADOPTION:
February 23, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 2, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
September 1, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of these permanent rules is to continue implementation of 59 O.S. §§1000.20 - 1000.29 (the "Act") originally enacted by SB1182, effective June 2, 2009, creating the Oklahoma Uniform Building Code Commission. Subsequently, SB417, effective August 5, 2014, was adopted that added Section 1000.23 (D), which among other things established a requirement to provide regional training for the purpose of training the county and municipal inspectors in the Uniform Building Codes. These permanent rules adopt guidelines for conducting regional training for residential and commercial building inspectors, held or sponsored by the OUBCC on the residential and commercial building construction codes adopted by the OUBCC for implementation in the State of Oklahoma. 748:17-1-1 sets forth the purpose for regional training.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501, Billy.Pope@oubcc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

SUBCHAPTER 1. REGIONAL TRAINING

748:17-1-1. Purpose

This Subchapter establishes procedures under which the Oklahoma Uniform Building Code Commission (the "OUBCC") will offer or provide Regional Training for the purpose of continuing education opportunities to Residential Building Code Inspectors, Commercial Building Code Inspectors, and state and local governmental code enforcement personnel, as authorized in 59 O.S. §1000.23(D).

748:17-1-2. Definitions

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

"Act" means the Oklahoma Uniform Building Code Commission Act, 59 O.S.2011 & Supp. 2014, §1000.20-1000.29, as amended.

"Association" means any private organization, association or group.

"Attendee" means any person participating from time to time in Regional Training for Residential Building Code Inspectors, Commercial Building Code Inspectors, and state and local governmental code enforcement personnel.

"Authority Having Jurisdiction" means an organization, office, or individual responsible for enforcing the requirements of the State Adopted Building Codes, including the prior authorization for approval of any equipment, materials, installations or procedures used in all or part of the construction of a new, or the alteration or renovation of an existing building or structure, including integral finishes, fixtures and building systems therein.

"Commercial Building Code Inspector" means any person who, on behalf of an Authority Having Jurisdiction, inspects any building related construction or appurtenances for new and existing buildings, facilities and systems that are within the scope of the State Adopted Building Codes as amended and revised by the OUBCC except for the International Code Council, Inc.® (ICC), International Residential Code® (IRC®).

"Inspections" means the examination of plumbing, electrical, mechanical, structural, and other aspects of building and construction, for the purpose of enforcing compliance with applicable state adopted building codes or standards.

"Regional Training" means continuing education training in the State for Residential Building Code Inspectors, Commercial Building Code Inspectors, and state and local governmental code enforcement personnel, where the State of Oklahoma may be divided into such districts or units as the OUBCC deems desirable for efficiency, and which districts or units may be revised by the OUBCC as it finds necessary or expedient.

"Residential Building Code Inspector" means any person who, on behalf of an Authority Having Jurisdiction, inspects any building related construction or appurtenances for residential one- and two-family dwellings and townhouses within the scope of the International Code Council Inc.®, International Residential Code® (IRC®) as amended and revised by the OUBCC.

"State Adopted Building Codes" means any legally applicable building code currently in force and effect in the State of Oklahoma or a governing jurisdiction until superseded by a code adopted by the OUBCC.

748:17-1-3. Regional continuing education courses

Pursuant to §1000.23(D) of the Act, the OUBCC shall offer or provide Regional Training opportunities for Attendees, on such subjects, in such quantity or number, and in such manner as the OUBCC deems necessary or expedient.

748:17-1-4. Regional Training held or sponsored by the OUBCC

(a) All Regional Training held either by the OUBCC itself or sponsored by the OUBCC in cooperation with an Association shall be offered at no cost to the attendee.

(b) In connection with any Regional Training held by the OUBCC itself or sponsored by the OUBCC in cooperation with an Association, there may be optional charges and the attendee can choose to pay for items that may include, but are not limited to, workbooks, light refreshments, coffee breaks, and meals. Such optional charges, if any, shall be offered and provided at the cost paid by the OUBCC or an Association to supply the item(s).

(c) All attendees in Regional Training held by the OUBCC itself or sponsored by the OUBCC in cooperation with an Association must sign in to document their attendance in the Regional Training on a form provided by the OUBCC.

(d) To the extent reasonably possible, the OUBCC shall at all times cooperate with an attendee seeking approval for qualifying of continuing education credits from the Construction Industries Board or from any other agency or entity for all Residential Building Code Inspectors, Commercial Building Code Inspectors or, upon request, for the purpose of securing any other qualifying continuing education credit from any other agency or entity.

(e) Upon an attendee's successful completion of a Regional Training, a certificate shall be issued to each attendee to certify such course completion signed by the course instructor or trainer and the OUBCC's Chief Executive Officer or his or her designee.

[OAR Docket #16-416; filed 6-13-16]

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

[OAR Docket #16-407]

RULEMAKING ACTION:
PERMANENT final Adoption
RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-3. Designated trout areas [AMENDED]
800:10-5-6. Lakes, reservoirs, rivers and streams [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 5-401, 6-302; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 5, 2015
COMMENT PERIOD:
December 1, 2015 through January 8, 2016
PUBLIC HEARING:
January 5, 2016
ADOPTION:
February 1, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 3, 2016
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These proposed rules will delete and/or modify special rules on portions of the lower Mountain Fork River trout fishery, allow bass harvest on American Horse Lake, establish statewide bag and size limits for hybrid striped bass, allow bowfishing in the Heyburn Lake tailwater and simplify fishing rules on certain Oklahoma City waters.
CONTACT PERSON:
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from public waters unless regulated by specific municipal ordinance or specified in regulations listed below: Lakes and Reservoirs with no length limit on largemouth and smallmouth bass - Lake Murray, all waters in the Wichita National Wildlife Refuge.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(4) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 14 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Great Salt Plains Reservoir and tailwater where the size limit does not apply, the Arkansas River from Keystone Dam downstream to the Oklahoma state line including all major tributaries upstream to impoundment and R.S. Kerr, Webbers Falls, W.D. Mayo reservoirs as legally defined in Title 800 where all walleye, sauger and saugeye less than 16 inches must be returned to the water unharmed immediately, and at Atoka Bluestem, Bluestem, Carl Blackwell, Healdton, Ponca City, Shell, Sooner, and Thunderbird Reservoirs and the respective tailwaters where all walleye, sauger, and saugeye less than 18 inches total length must be returned to the water unharmed immediately.

(5) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(6) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream below Broken Bow dam from the first Highway Bridge below the Spillway~~Lost Creek water control structure~~ downstream to the second Highway Bridge below the Spillway, ~~first Highway 259 Scenic bridge,~~ including the Evening Hole ~~and the Lost Creek~~ stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(7) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(8) All smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from all rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from the Glover River from the confluence with the Little River upstream to the 'Forks of the Glover River'. Possession of smallmouth bass less than fourteen (14) inches in total length on all streams and rivers is prohibited.

(9) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(10) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except in "Close To Home" fishing water~~,~~and Doc Hollis Lake ~~and at American Horse Lake~~ where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer and rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the limit is six (6) black bass aggregate of which only one may be a smallmouth bass, which must be fourteen (14) inches or longer.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). Five (5) flathead catfish.

(3) Thirty-seven (37) crappie (Pomoxis sp.) except at Blue River Public Fishing and Hunting Area where

the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream ~~from the Lost Creek water control structure~~below Broken Bow dam from the first Highway Bridge below the Spillway downstream to the ~~first Highway 259 Scenic bridge,~~second Highway Bridge below the Spillway, including the Evening Hole ~~and the Lost Creek~~ stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately $\frac{1}{2}$ mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) Six (6) walleye, sauger and/or saugeye, or six (6) in aggregate.

(7) Five (5) striped bass except as designated in 800:10-1-5(8).

(8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir.

(9) Twenty (20) striped bass hybrids of which only five (5) may be twenty (20) inches or longer, except as designated in 800:10-1-5(8) and (10).

(10) Five (5) striped bass and/or striped bass hybrids, in aggregate, of which only two (2) may be 20 inches or longer in Arcadia Lake and Skiatook Lake.

(11) Twenty-five (25) white bass in Lake Texoma.

(12) One (1) paddlefish (Polyodon spathula) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released.

(A) Individual annual harvest limit- An individual harvest limit for paddlefish may be set or amended annually by the Wildlife Conservation Commission and will be listed in the Oklahoma Department of Wildlife Conservation Fishing Guide. Special area (or management unit) paddlefish harvest caps, a general statewide paddlefish harvest cap, and the total number of paddlefish permits issued may be set or amended annually by the Wildlife Conservation Commission for use in determining the individual annual harvest limit. Once an individual angler has reached their annual harvest limit, continued catch and release is permitted.

(B) Paddlefish permit- It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit in the harvest record area provided. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden. This permit shall be valid for paddlefish catch and release fishing in all waters of the state and at any time unless otherwise prohibited.

(C) Harvest Tagging- Paddlefish caught and placed on a stringer or otherwise held in possession must be plainly labeled (tagged) immediately with the angler's paddlefish permit number. Paddlefish taken into possession cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other anglers. Each cleaned paddlefish, or its meat, eggs, or carcass, must be kept separate from all other cleaned paddlefish or its parts. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Anglers must cease snagging for the day when they have taken their daily limit of paddlefish into possession.

(D) Reporting- Harvest of paddlefish must be reported by the harvesting angler to Oklahoma Department of Wildlife within 24 hours of harvest. Instructions for reporting harvest will be provided in the Oklahoma Department of Wildlife Fishing Guide and on the Oklahoma Department of Wildlife website.

(13) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(14) One (1) alligator gar (Atractosteus spatula) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release

of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.

(15) One (1) of any fish species classified as those of Special Concern Category I or Category II (as identified in 800:25-19-6). Such harvest must be reported to ODWC.

(16) All tiger muskie (Esox masquinongy x Esox lucius) caught must be returned to the water unharmed immediately after being taken (no harvest allowed).

(17) Other fish do not have bag or possession limits. Notwithstanding the foregoing fish bag limits, any bag limits for fish can be superseded and set by Commission resolution as authorized by Section 6-302(B) of Title 29 of the Oklahoma Statutes.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird, ~~and~~ Hudson (Markham Ferry), and Heyburn shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(3) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(4) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(5) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(6) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.

(7) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(8) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

(9) The taking of paddlefish by bow and arrow is prohibited on the Red River from Denison Dam downstream to the stateline year round.

(10) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(11) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(12) Bowfishing for tiger muskie at Lake Carl Etling is prohibited.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) Wister tailwater is closed to snagging from below the dam down to the power-line at the confluence of the old and new river channels.

(3) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are closed.

(iii) That portion of the Grand River occurring from the Markham Ferry Dam (Lake Hudson Dam) downstream to the Highway 412 bridge from 10 p.m. to 6 a.m. year-round.

(G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(I) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

(J) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(4) When snagging for paddlefish the hook must have the barbs removed or completely closed. Only one (1) rod and reel is permitted per angler when snagging.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish and blue, channel, and flathead catfish; only during daylight hours throughout the year.

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam

downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(F) Wister tailwaters is closed to noodling from below the dam down to the power-line at the confluence of the old and new river channels.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, Ponca and Carl Blackwell and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downsteam to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Netting (noncommercial) is closed statewide.

(g) **Collecting Bait for personal use.** Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eights (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half ($\frac{1}{2}$) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half ($\frac{1}{2}$) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam. Trout season is year-round.

(5) Medicine Creek from Gondola Lake dam downstream to the State Highway 49 bridge, where trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter ($1\frac{1}{4}$) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Perry CCC Lake trout season is from November 1 through March 31 of the following year; season is annual.

(b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.

(4) The following areas are restricted to fishing tackle made by fly-tying or artificial lures made of wood, metal, glass, feathers, hair, synthetic fibers or hard plastic and barbless hooks only. The use of any substance in combination with restricted fishing tackle is prohibited:

(A) The lower Mountain Fork River trout stream below Broken Bow dam from the ~~Lost Creek water control structure downstream to the first Highway 259 Scenic bridge,~~ first Highway Bridge below the Spillway to the second Highway Bridge below the Spillway including the Evening Hole ~~and the Lost Creek~~ stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek.

(B) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.

(C) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately 1/2 mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

(5) All trout retained in possession must be kept separate from other anglers' fish on a stringer or in a creel that is clearly marked with that anglers name and license number.

800:10-5-6. Lakes, reservoirs, rivers and streams

(a) **Lake Carl Albert.** The following special rules govern public use on Lake Carl Albert:

(1) Outboard motors used shall not exceed ten (10) h.p.

(2) Maximum speed limit for boats shall be six (6)m.p.h.

(3) Waterfowl hunting shall be permitted in season; all other hunting shall be prohibited on the area.

(4) Swimming shall be prohibited on the area.

(5) Waterskiing and trotlines, throwlines, netting, noodling, yo-yo's and jug fishing are prohibited.

(6) Camping shall be limited to three (3) days.

(b) **Pickens Lake.** The following special rules govern public use on Pickens Lake in Fountainhead State Park:

(1) Fishing shall be permitted throughout the year.

(2) All fishing shall be pole and line or rod and reel only (2 poles per person).

(3) Fishing shall be restricted to only Oklahoma residents in the following categories:

(A) All persons 65 years of age or older.

(B) All persons having disability of 60% or more.

(C) Legally blind persons.

(D) Any person who has not yet attained the age of 16 years.

(E) Any persons accompanying persons in categories above.

(c) **Sooner Reservoir.** The following special rules govern public fishing at Sooner River:

(1) Fishing by juglines, trotlines, limblines, throwlines, snagging, spearfishing, gigging, grabhooks and scuba diving is prohibited.

(2) Fishing by boats, wading or all flotation devices is prohibited within the buoy-marked area of the intake channel, discharge channel and spillway embankment.

(3) Fishing from the dam, the fenced area below the dam and the north bank of the intake channel is prohibited.

(4) The use of Tilapia as bait and/or the stocking of Tilapia is prohibited.

(d) **Lake Lone Chimney.** The following special rules govern public use at Lake Lone Chimney:

(1) No overnight camping is permitted until recreational facilities are developed.

(2) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed of six (6) miles per hour or less and may not be left on the water or the lake area longer than the limit on camping.

(3) Water skiing and swimming are prohibited.

(4) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic andinorganic material.

(5) Commercial concessions and private development on Tri-County Authority property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited.

(6) Dogs must be kept on a leash at all times, except when used to hunt during legal waterfowl hunting season.

(7) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, three-wheelers, etc., except on maintained roads, designated parking areas and designated camping areas. It shall be unlawful to operate any vehicle in a reckless manner or operate any vehicle in a manner to create a public nuisance or to destroy or damage public property. Operators must be licensed drivers.

(8) Cutting or defacing of trees and vegetation shall be prohibited. Removal of vegetation, soil, rocks, water or minerals is prohibited except under written permission by the Tri-County Authority Board of Directors.

(9) Disorderly conduct, vandalism, theft and damage to Tri-County Authority property is prohibited.

(10) The lake shall be closed from 10:00 p.m. to 5:00 a.m., except for fishing and hunting activities.

(11) No person may fish with more than two (2) poles or rods.

(12) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns and the taking of fish by noodling and taking of bait minnows by any method are prohibited.

(13) All hunting or discharging of firearms, except for legal waterfowl hunting, is prohibited.

(e) **Taft Lake.** The following special rules govern public use at Taft Lake:

(1) Camping is permitted, but limited to three (3) days. Camping is permitted only in designated camping areas.

(2) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the lake area longer than the limit on camping.

(3) Water skiing and swimming are prohibited.

(4) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(5) Commercial concessions and private development on State property are prohibited. Soliciting, advertising

or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(6) Dogs must be kept on a leash at all times.

(7) Boat houses, ramps, docks and other facilities may not be constructed.

(8) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, etc., except on maintained roads (unless designated as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone". Operators must be licensed drivers.

(9) Cutting or defacing of trees and vegetation shall be prohibited. Removal of vegetation, soil, rocks, water or minerals is prohibited.

(10) Vandalism, theft, and damage to State Property is prohibited.

(11) No person shall use threatening, abusive, or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated.

(12) After 10:00 p.m. and until 5:00 a.m., all areas will be restricted to fishing and fishing related activities only.

(13) Fishing is permitted under regular fishing rules and regulations of the Department and State Statutes.

(14) No person may fish with more than two (2) poles or rods.

(15) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of fish by noodling or bow fishing and taking of bait minnows by any method is prohibited.

(16) Firearms, bows and trapping shall not be allowed on the area.

(f) **Kid's Fish Out Pond (Fountainhead State Park).** Fishing shall be restricted to persons in the following categories:

(1) All persons 64 years of age or older.

(2) Any person who has not yet attained the age of 16 years.

(3) All persons having 60% or more disability, or legally blind, or physically impaired and one companion accompanying same.

(g) **Adair Recreation Area Lake.** Fishing is restricted to rod and reel fishing only and only one rod and reel per person.

(h) **~~Lakes~~Lake Hefner, Lake Overholser (including tailwaters downstream to NW 10th St. bridge), ~~and~~Lake Draper and the Oklahoma River (NW 10th St to NE 10th St).** Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed.

(i) **"Close To Home"** fishing waters. Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed.

(j) **Lakes and reservoirs.** Use of and/or placement into lakes and reservoirs of the waters of this state any container, including but not limited to drums, cans, tubs, boxes or barrels which attract, entice, or lure fish into an open cavity within the container is prohibited.

(k) **Lake Texoma.** The special Lake Texoma annual fishing license shall be eleven dollars ($11.00). License shall be issued in accordance with Sections 4-201and 4-202, Title 29 of the Oklahoma Statutes.

(l) **Rivers and streams.** The take, possession or transport of more than twenty-five (25) nongame bait fish, excluding shad; is prohibited from all rivers and streams.

(m) **Scenic Rivers.** The use or possession of cast nets is prohibited on all Oklahoma Scenic Rivers including the Barren Fork River in its entirety to the Arkansas state line.

[OAR Docket #16-407; filed 6-13-16]

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

[OAR Docket #16-408]

RULEMAKING ACTION:
PERMANENT final Adoption

RULES:
Subchapter 1. Hunting/Trapping on Oklahoma Tourism and Recreation Lands
800:25-1-6. Waterfowl hunting on Foss State Park~~Lake Recreation Area~~ [AMENDED]
800:25-1-7. Dove and rabbit hunting on Foss State Park [NEW]
Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-81. Altus-Lugert WMA [AMENDED]
800:25-7-83. Beaver River WMA [AMENDED]
800:25-7-83.1. Beaver River WMA - McFarland Unit [AMENDED]
800:25-7-84. Black Kettle WMA [AMENDED]
800:25-7-86.1. Camp Gruber ~~Maneuver~~ Training Center ~~(CGMTC)~~(CGTC) [AMENDED]
800:25-7-90. Cherokee PHA [AMENDED]
800:25-7-92.1. Cimarron Bluff Wildlife Management Area [AMENDED]
800:25-7-92.2. Cimarron Hills Wildlife Management Area [AMENDED]
800:25-7-94.1. Cooper WMA [AMENDED]
800:25-7-95. Ellis County WMA [AMENDED]
800:25-7-101. Fort Supply WMA [AMENDED]
800:25-7-115. Kaw WMA [AMENDED]
800:25-7-130. Optima WMA [AMENDED]
800:25-7-134. Packsaddle WMA [AMENDED]
800:25-7-137. Rita Blanca WMA [AMENDED]
800:25-7-140. Sandy Sanders WMA [AMENDED]
800:25-7-153. Washita NWR [AMENDED]

AUTHORITY:
Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 5, 2015

COMMENT PERIOD:
December 1, 2015 through January 8, 2016

PUBLIC HEARING:
January 5, 2016

ADOPTION:
February 1, 2016

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 3, 2016

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016

FINAL ADOPTION:
June 9, 2016.
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-86.1. Camp Gruber ~~Maneuver~~ Training Center ~~(CGMTC)~~(CGTC) [AMENDED]
Gubernatorial approval:
August 17, 2015
Register publication:
33 Ok Reg 97
Docket number:
15-813
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amendments are to correct the name of Foss State Park and open rabbit and dove seasons. Close spring turkey hunting at 7pm on several wildlife management areas (WMA) in western Oklahoma to reduce disturbance around roost sites. Change pheasant and quail seasons on Beaver WMA (McFarland Unit) from controlled hunts to same as statewide season dates. Open deer primitive antlerless days on Cherokee PHA to same as statewide season dates. Change trapping on Kaw WMA to waters sets, live box traps and enclosed trigger traps. Open Washita NWR spring turkey and deer gun to controlled hunts. Correct the name of Camp Gruber Training Center and allow additional hunting access per recently signed MOU.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. HUNTING/TRAPPING ON OKLAHOMA TOURISM AND RECREATION LANDS

800:25-1-6. Waterfowl hunting on Foss State Park ~~Lake Recreation Area~~

(a) **Dates.** Waterfowl hunting on Foss State Park ~~Lake Recreation Area~~ is open during waterfowl seasons occurring between September 1 and through the end of waterfowl hunting season.
(b) **Open areas.** Areas open to hunting are to be determined annually and published in annual hunting season brochures.

800:25-1-7. Dove and rabbit hunting on Foss State Park

The following hunting seasons apply to Foss State Park, all shotgun hunting restricted to federally approved non-toxic shot and areas open to hunting are to be determined annually and published in the Oklahoma Hunting Guide:
(1) Dove: September 15 - October 31.
(2) Rabbit: October 1 - February 15.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-81. Altus-Lugert WMA

The following hunting and trapping seasons apply to the Altus-Lugert WMA. Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns.
(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie Chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, 1 tom limit.
(5) Turkey-Spring: Same as statewide dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except closed the last seven days and closed to antlerless hunting. Shotgun only.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-83. Beaver River WMA

The following hunting and trapping seasons apply to the Beaver River WMA:
(1) Quail: Same as statewide dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive: Same as statewide season dates, except closed to mule deer antlerless hunting.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

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

The following hunting and trapping seasons apply to the McFarland Unit on Beaver River WMA: That portion of the McFarland Unit lying in Section 1 & 12, T4N, R23E and Section 7, T4N, R24E are restricted to archery and shotgun with pellets only.

(1) Quail: ~~Controlled Hunts Only.~~Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
(2) Pheasant: ~~Controlled Hunts Only.~~Same as statewide season dates and bag limit, except closed during the first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive: Controlled Hunts Only.
(15) Deer - gun: Controlled Hunts Only.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-84. Black Kettle WMA

The following hunting and trapping seasons apply to the Black Kettle WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, one bird either-sex, shotgun only.
(5) Turkey-Spring: Same as statewide season dates, 2 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except closed last seven days.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-86.1. Camp Gruber ~~Maneuver~~ Training Center ~~(CGMTC)~~(CGTC)

The following area regulations and hunting and trapping seasons apply to designated open areas on ~~Camp Gruber MTC~~CGTC.

(1) All hunter(s)/trapper(s), regardless of age or military status, entering CGTC must possess the following:

(A) A hunting/trapping license or proof of exemption appropriate for the season being hunted/trapped as stated in the Oklahoma Hunting Regulation Guide booklet, published by ODWC.

(B) A valid Unexploded Ordinance (UXO) permit from CGTC.

(C) Hunter Education certification as required and outlined in the current Oklahoma Hunting Regulation Guide booklet.

(2) All other recreational users (anglers, horseback riders, etc.) entering CGTC for any reason are required to have in their possession a valid UXO permit.

(3) The following designated hunting seasons will apply to all hunting areas (#1, #2, #3, #5) on CGTC.

(A) The three-day youth deer gun season in October.

(B) The nine-day primitive firearms (muzzleloader) deer season, beginning the fourth Saturday in October and continuing for nine consecutive days.

(C) The sixteen-day deer gun season, beginning the Saturday before Thanksgiving and continuing for sixteen consecutive days.

(D) December 11 through Martin Luther King Day of each year, for all open hunting/trapping seasons listed for CGTC in the Oklahoma Hunting Regulation Guide booklet.

(E) April 15 through May 6 for spring turkey hunting.

(4) No later than 8:00 A.M. the day before the start of each designated hunting season, the gates west of Highway 10 (gates 5, 43, 44, 45, 46, 48 and 49), Hill Top gate (gate 12), Black Hollow gate (gate 16), Wild Horse Road gate (gate 17), Pumpkin Center Road gate (gate 23), and south Highway 10 gate (gate 38) will be opened and they will close at midnight on the last day of each designated hunting season.

(5) Hunter/trapper use and access to hunting areas will also be allowed outside the designated hunting seasons whenever specific hunting areas are available and the use and access can be granted without impairment to the military mission.

(6) Hunting areas west of Highway 10 (#4, #6) will remain open year-round for all open hunting/trapping seasons listed for CGTC in the Oklahoma Hunting Regulation Guide booklet, unless required for military training and coordinated with ODWC a minimum of 30 days in advance.

(7) Camping on CGTC will be allowed only in Hunter's Camp 2 and only during the designated hunting seasons.

(A) Controlled public access routes to the camping area will be through Hill Top Road (gate 12), and Wild Horse Road (gate 17). These gates will be open by 8:00 A.M. the day before the start of the designated hunting seasons and will close at midnight on the last day of each designated hunting season.

(B) Open fire(s) will be allowed in the designated camping area only. CGTC may restrict the use of fire(s) in the camping area during dry conditions or if the CGTC is under a county or state burn ban.

(C) Quiet shall be maintained in the camping area between the hours of 11 P.M. and 7 A.M. and all dogs or other pets must be kept on a leash or otherwise confined while in the camping area.

(D) Fishing will be allowed in the ponds at Hunter's Camp 2 during the designated hunting seasons with a fishing license or proof of exemption as stated in the Oklahoma Fishing Regulation Guide booklet, published by ODWC.

(8) All motorized vehicles must stay on the maintained road network. No all-terrain vehicles (ATVs) are allowed on the CGTC, except for those individuals who possess an ODWC Non-ambulatory permit. Permit holders operating an ATV are required to wear a reflective vest, DOT approved motorcycle helmet, eye protection (meets or exceeds ASNI 287.1 standards), long sleeve shirt, pants, over the ankle footwear, and full fingered gloves or mittens. Speeds on all ATV's will not exceed 25 MPH. Additionally, all motor vehicle and non-ambulatory vehicle permit holders must abide by all rules and regulations applicable to the permit as listed in the Oklahoma Hunting Guide Regulation booklet. Only those hunting areas and/or roads that are determined suitable and specifically designated for such will be open, intended users will inquire with Range Operations in building 740 for a map of designated areas/roads.

(~~1~~9) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(~~2~~10) Pheasant: Closed season.

(~~3~~11) Prairie chicken: Closed season.

(~~4~~12) Turkey-Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Closed season.

(~~5~~13) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(~~6~~14) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(~~7~~15) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~8~~16) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~9~~17) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~10~~18) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~11~~19) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~12~~20) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~13~~21) Deer-archery: Same as statewide season dates.
(~~14~~22) Deer-primitive firearms: Same as statewide season dates~~, except open to antlerless hunting the first and second weekends only~~.
(~~15~~23) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.
(~~16~~24) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(~~17~~25) Pursuit with hounds: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
(~~18~~26) Predator/furbearer calling: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
(~~19~~27) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-90. Cherokee PHA

The following hunting and trapping seasons apply to the Cherokee PHA:

(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit on the PHA and GMA combined.
(6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(7) Rabbit: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season.
(8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through deer gun season.
(9) Dove: Same as statewide season dates except closed from the opening day of deer archery season through deer gun season.
(10) Rail and gallinule: Same as statewide dates except closed from the opening day of deer archery season through deer gun season.
(11) Common snipe: Same as statewide dates, except closed from the opening day of deer archery season through the deer gun season.
(12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates~~, except open to antlerless hunting the first and second weekends only~~.
(15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(17) Pursuit with hounds: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
(19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-92.1. Cimarron Bluff Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Bluff WMA:

(1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
(2) Pheasant: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, except closed during the first nine days of deer gun season. One (1) bird either-sex.
(B) Gun: Same as statewide season dates, except closed during deer muzzleloader season. One (1) bird either-sex, shotgun only.
(5) Turkey-Spring: Same as statewide season dates, One (1) tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(9) Dove: Same as statewide season dates, except closed during deer muzzleloader season.
(10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season.
(11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(13) Deer-archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
(14) Deer-primitive firearms: Controlled Hunts Only.
(15) Deer-gun: Controlled Hunts Only.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

800:25-7-92.2. Cimarron Hills Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Hills WMA:
(1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
(2) Pheasant: Open the Monday following the close of deer gun season through February 15. Hunting hours close at 12:00 noon daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed during the first nine days of deer gun season. One (1) bird either sex.
(B) Gun: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either sex, shotgun only.
(5) Turkey - Spring: Same as statewide season dates, One (1) tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(9) Dove: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
(14) Deer - primitive firearms: Controlled Hunts Only.
(15) Deer - gun: Controlled Hunts Only.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

800:25-7-94.1. Cooper WMA

The following hunting and trapping seasons apply to the Cooper WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season and hunting hours close at 4:30 PM daily.
(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates except closed during first nine days of deer gun season.
(14) Deer-primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
(15) Deer-gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-95. Ellis County WMA

The following hunting and trapping seasons apply to the Ellis County WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, either-sex.
(5) Turkey-Spring: Same as statewide season dates, 2 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except closed last seven days and closed to antlerless deer hunting.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-101. Fort Supply WMA

The following hunting and trapping seasons apply to Fort Supply WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season. Hunting hours close at 4:30 PM daily.
(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
(14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
(15) Deer - gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of gun season.

800:25-7-115. Kaw WMA

The following hunting and trapping seasons apply to the Kaw WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season.

(2) Pheasant: Same as statewide season dates and bag limits, except closed during first nine days of deer gun season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, 1 tom limit.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates, except closed during last seven days of deer gun season.
(16) Trapping: ~~Same as statewide season dates.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-130. Optima WMA

The following hunting and trapping seasons apply to the Optima WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates except closed during first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, One tom only, shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: closed season.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
(14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
(15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-134. Packsaddle WMA

The following hunting and trapping seasons apply to the Packsaddle WMA.
(1) Quail: Same as statewide season dates except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates; one tom limit.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates,
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates except closed opening day of archery season through

deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-137. Rita Blanca WMA

The following hunting and trapping seasons apply to the Rita Blanca WMA:

(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates.

(B) Gun: Same as statewide season dates, one tom only, shotgun only.

(5) Turkey - Spring: Same as statewide season dates; one tom limit. Hunting hours close at 7:00 p.m. daily.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.

(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless hunting.

(16) Antelope:

(A) Archery: Same as statewide season dates.

(B) Gun: Controlled hunt only.

(17) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(18) Pursuit with hounds: Same as statewide season dates-, except closed during deer gun season.

(19) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.

(20) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-140. Sandy Sanders WMA

The following hunting and trapping seasons apply to the Sandy Sanders WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, 1 tom limit.

(B) Gun: Closed season.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit. Hunting hours close at 7:00 p.m. daily.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Closed season.

(12) Woodcock: Closed season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.

(18) Predator/burbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-153. Washita NWR

The following hunting and trapping seasons apply to the Washita NWR: All shotgun hunting restricted to federally approved nontoxic shot.

(1) Quail: Same as statewide season dates.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Closed season.

(B) Gun: Closed season.

(5) Turkey - Spring: ~~Closed season.~~Controlled hunts only.

(6) Squirrel: Closed season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of the deer gun season. Contact refuge for special restrictions.

(8) Crow: Closed season.

(9) Dove: Closed season.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Closed season.

(12) Woodcock: Closed season.

(13) Deer - archery: Closed season.

(14) Deer - primitive firearms: Closed season.
(15) Deer - gun: ~~Closed season.~~Controlled hunts only.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Closed season.
(19) Waterfowl: Controlled Hunts. Bonus hunt permit required. Consult bonus hunt regulations.

[OAR Docket #16-408; filed 6-13-16]

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

[OAR Docket #16-409]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-16. Shooting ranges [AMENDED]
Subchapter 3. Mineral Exploration and Production
800:30-3-2. General provisions [AMENDED]
800:30-3-3. Site development [AMENDED]
800:30-3-5. Regulations for producing wells [AMENDED]
800:30-3-6. Regulations for non-producing wells [AMENDED]
800:30-3-7. Damage and use charges [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 3-304 and 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 5, 2015
COMMENT PERIOD:
December 1, 2015 through January 8, 2016
PUBLIC HEARING:
January 5, 2016
ADOPTION:
February 1, 2016
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 3, 2106
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 9, 2016
FINAL ADOPTION:
June 9, 2016.
EFFECTIVE:
August 25, 2016
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments are to clarify rules for using shooting ranges on Wildlife Management Areas and to update mineral exploration rules because of changing technology in the oil and gas industry.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 2145 N.E. 36th Street, Oklahoma City, OK 73111. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-16. Shooting ranges

(a) On all Department owned or managed lands, the discharge of firearms for purposes other than while hunting is restricted to the specific target or shooting ranges provided for public use.

(1) Shooting ranges are open year-round, unless specified otherwise in the Oklahoma Hunting Guide or signs at the range.
(2) Shooting hours are official sunrise to official sunset, daily.
(3) Any person using the shooting range under the age of 16 must be immediately supervised by an adult (18 years old or older).
(4) All firearms shooting single projectiles or any pellets larger than conventional BB (.180" dia.) must be shot at approved berms and target areas only. Air-borne clay targets may be shot using pellets no larger than conventional BB (.180" dia.).
(5) All rifle, pistol, shotgun, and muzzleloader targets will consist of paper or clay targets only.
(6) All paper targets must be removed before leaving the shooting area.
(7) Centerfire rifles and pistols .50 caliber and larger are prohibited.
(8) Fully automatic firearms and suppressors are prohibited.
(9) Fireworks, explosive devices, exploding targets, tracer and incendiary rounds are prohibited.
(10) Eye and ear protection shall be worn while shooting.
(11) Shooters, and accompanying adult, must possess a valid Oklahoma hunting license, or combination hunting/fishing license unless exempt.

(b) Exemptions to (a) of this Section may only be granted by the Director of the Oklahoma Department of Wildlife Conservation upon prior submission of a written application setting forth the location, date, nature and purpose of such activity.

SUBCHAPTER 3. MINERAL EXPLORATION AND PRODUCTION

800:30-3-2. General provisions

At least ~~30~~45 days prior to entering to drill or moving any equipment onto Department property the operator will:

(1) Deposit with the Department, a performance surety bond of Fifty Thousand Dollars ($50,000) from a surety company licensed to do business in this state. Only one bond will be required from each operator if the operator

has ten or fewer wells on Department property. If the operator has more than ten wells on Department property, an additional Five Thousand Dollars ($5,000) bonding per well will be required. This bond will be conditioned on the observances and compliance with the terms of the surface agreement. This bond will be maintained at Fifty Thousand Dollars ($50,000) and it shall remain in effect as long as the operator is drilling or operating a well on Department lands, or until released by the Department in writing.

(~~1~~2) Provide the Department a copy of the approved notice of intent to drill (Corporation Commission Form 1000), an estimate of drilling time and an area plat map generally showing the proposed locations and dimension of the:

(A) Roads.

(B) Drilling Pad.

~~(C) Reserve Pit.~~

(~~D~~C) Service Area (including pumps, flowlines, separator, meter house, pulsation bottle, compressor, storage tanks and water tanks).

(D) Estimate of damage area, including cut and fill around the location.

~~(2) Provide the Department a list of the names, addresses and telephone numbers of responsible personnel involved with the drilling, subsequent operation and restoration.~~

(3) Obtain approval from the Oklahoma Archeological Survey Office (OASO) and State Historic Preservation Office (SHPO). Written approval from the OASO and SHPO must be provided to the Department before any type of soil disturbance is allowed.

(4) Enter into a written surface contract agreement on forms as provided by the ~~Commission with the~~ Department,~~of Wildlife,~~ [52 O.S., Section 318.2 - 318.9], sign a letter of stipulation and remit payment for damage and usage. Predetermined surface damages shall be paid to the Department under the surface contract agreement prior to beginning of any work activity. If additional damage and usage is determined by the Department after completion of proposed project, additional charges will be imposed. Activity that impacts merchantable timber will be considered as part of damages.

(5) Provide the Department a list of the names, addresses and telephone numbers of responsible personnel involved with the drilling, subsequent operation and restoration.

~~(5) Each Operator will deposit with the Department, a performance surety bond of Ten Thousand Dollars ($10,000) from a surety company licensed to do business in this state. Only one bond will be required from each operator if the operator has ten or fewer wells on Department property. If the operator has more than ten wells on Department property, an additional One Thousand Dollars ($1,000) bonding per well will be required. This bond will be conditioned on the observances and compliance with the terms of the surface agreement. This bond will be maintained at Ten Thousand Dollars ($10,000) and it shall remain in effect as long as the operator is drilling or operating a well on Department lands, or until released by the Department in writing.~~

(6) At no time will personnel involved in oil and gas activities (except authorized security personnel) be permitted to carry firearms or other hunting,~~ or~~ trapping,~~ equipment~~ or fishing tackle or equipment onto an area unless the equipment is appropriate to a season open on the area at the time and the individual(s) would otherwise be authorized to hunt/fish and in possession of the appropriate license(s) or proof(s) of exemption appropriate for the season as stated in the Oklahoma Hunting/Fishing Regulation Guide booklet, published by ODWC. Well sites and/or lease roads may not be used as access points for recreational activity(ies) on wildlife management areas unless they are open to the public.

~~(7) In addition to the damage costs in (a), the full value of any merchantable timber (as determined by the Department) removed from roads, drilling pads and pit sites shall also be paid by the operator.~~

(~~8~~7) Oil and gas activities will be avoided in or near any previously identified fragile or unique areas. However, fragile or unique areas will not preclude utilization if damage to said fragile or unique areas can be prevented. Examples of fragile and unique areas include but are not limited to:

(A) Red-cockaded woodpecker colonies.

(B) Potential red-cockaded woodpecker restoration sites.

(C) Fragile environments such as natural lakes and bogs.

(D) Turkey roosts.

(E) Wetlands.

(F) Wintering bald eagle roost.

(G) Populations of endangered plants.

(H) Prairie chicken leks.

(I) Highly erodible soils.

(J) Prairie dog colonies.

(K) Bald eagle nests.

(I) Nesting birds.

(~~9~~8) Exploration may proceed if directional drilling from adjacent areas is feasible. On Department owned leases, such areas shall be identified prior to leasing and any area with substantial quantities of such habitats will not be leased for drilling.

(~~10~~9) All oil and gas construction, development and/or well reworking and servicing is extremely undesirable during high public access periods, unless otherwise approved by the Department. Routine checking or trucking will be strongly discouraged during the time from two hours before sunset to two hours after sunrise.

(~~11~~10) Oil and gas exploration and development activities will not prevent hunters and anglers from using wildlife resources or from freely pursuing their activities in the Wildlife Management Area.

(11) Flaring requirement - Flaring devices shall have a shielding device attached in such manner that the light created by the burning gases produced from a well on Oklahoma Department of Wildlife Conservation lands is not

visible at a distance greater than 200 feet at night to reduce potential negative impacts on nocturnal insects and any avian and mammalian nocturnal flying animals that may forage upon insects drawn to light.

(12) Operators working in lesser prairie chicken range will mitigate and follow conservation measures accordingly through the lesser Prairie-Chicken Range-wide Conservation Plan through the Western Association of Fish and Wildlife Agencies and the Foundation for Western Association of Fish and Wildlife Agencies.

(13) Locations that are within 1,000 feet of any residence, campground, or Department facility will take noise reducing measures so noise level does not exceed 42 dBA.

(~~12~~14) Special Provisions for oil or gas exploration or production on Department lands having commercial or municipal fresh water production including the Garber-Wellington Aquifer drainage basin/recharge area particularly T7N, R1E, Secs. 15-22, 25-35, Cleveland County, Oklahoma.

(A) No oil, gas or disposal well shall be drilled, operated, or maintained, nor shall any operation in connection therewith be carried on or conducted within three hundred (300) feet of any producing freshwater well.

(B) Domestic and public water supply wells located within a radius of one-half (1/2) mile of any oil/gas, enhanced recovery, injection, or disposal well shall be tested prior to beginning drilling, injection, or disposal and thereafter annually for the presence of deleterious substances. Such testing is the responsibility of the permittee and, at the permittee's expense, to be conducted by a person approved by the Department and Domestic or Public Water Supply well owner. The Department and water well owners shall be notified forty-eight (48) hours in advance of such testing and may be present therefore. Test results shall be filed with the Department and water well owner's upon completion.

(C) Casing.

(i) Suitable and sufficient surface casing or a stage collar shall be installed to a depth of at least two hundred (200) feet below treatable water strata encountered in the well, and the annular space behind the casing shall be filled with cement from the base of the surface casing, or from the stage collar, to the surface of the ground, by either pump and plug method or by the displacement method. No further drilling shall be accomplished until the cement has set for at last eight (8) hours. No braden head cement job shall be performed between the surface casing and any other casing string except by special order of the Corporation Commission.

(ii) Production casing of a size not less than four and one-half (4 $\frac{1}{2}$) inches outside diameter, in good condition, shall be set no higher than the top of the producing formation and cemented with a sufficient amount of cement to obtain a minimum of five hundred (500) feet of annular fill-up above the casing.

(iii) The casing shall be tested before drilling the cement plug, at a minimum pressure of one thousand (1,000) pounds per square inch held for one (1) hour. Whenever the pressure drops five (5) percent within the hour, the casing will be deemed inadequate and shall be repaired and retested until the requirements hereof are met.

(iv) Permittee shall provide documentation to the Department showing the results of the casing pressure test. The test results shall be filed with the Department upon completion of such test. The Department shall be notified in advance of the casing pressure test to enable a Department Representative to be present.

(v) Rupture in surface casing: In the event a rupture, break or opening occurs in the surface production casing, the permittee or the operator or drilling contractor shall take immediate action to repair it, and shall report the incident to the Department promptly.

(15) If at any time the operator of a well or a pipeline changes the Department will be notified immediately and the new operator shall sign a new agreement and shall observe and fulfill all requirements and stipulations of this agreement, and shall furnish a copy of new bonds to replace the existing bonds.

800:30-3-3. Site development

(a) **Roads.** Existing management area roads will be used for mineral exploration and production whenever possible and desirable to the Department. If additional roads must be constructed by the operator, they shall:

(1) Follow the natural land contour if reasonable and possible.

(2) Be a maximum of 40' in width; dimensions and location MUST be approved by the Department prior to construction. Operator will be charged only for width of road that is actually constructed.

(3) Possess a base sufficient to support vehicles and equipment using it. "Base" guidelines will be predetermined by the Department. In addition, road maintenance materials at the rate of 2,000 cubic yards or ton equivalent per mile, will be provided to the Department, on site, prior to road construction and will be used for annual road maintenance. Size and location of material shall be determined by the Department.

(4) Be sufficiently ditched with culverts, water bars, and turnoffs that will provide adequate drainage and prevent erosion.

(5) After completion of drilling, all roads not a part of the management area system will be gated, locked and, if necessary, bermed to exclude all unauthorized personnel. Locks and nonreproducible keys may be provided by the Department at cost. Such measures shall not be necessary when the operator's roads are secured by existing Department gates.

(6) Have cattleguards installed as determined by the Department. Include a 16 ft. pipe gate placed adjacent to each cattleguard to allow passage of livestock as determined necessary by the Department.

(b) **Drilling pads.**

(1) Drilling pad shall not exceed 300 feet x 300 feet. Deviations are negotiable when justified by special conditions such as well depth and necessary equipment.

(2) When directed by the Department, drilling pad must be enclosed within a berm to prevent escape of any deleterious substance from the drilling operation. Also a diversion ditch upslope of the well site shall be constructed prior to the commencement of drilling and shall be adequate to divert surface drainage water from the location if so directed by the Department.

~~(c) **Reserve pit.**~~

~~(1) Closed system steel mud or circulating pits shall be used. Such pits and contents shall be removed from the premises and the drilling site within fifteen (15) days after completion of the well.~~

~~(2) All waste oil, salt water, liquid with oil content, gasoline or other oil derivatives or by products, sand, sludge or other waste produced in connection with the drilling, testing, cleaning, swabbing, reworking or operating of any oil, gas or disposal well shall be captured and retained in steel tanks or vessels and transported from the premises to a disposal facility.~~

~~(3) No person shall permit such substances to escape from the premises owned, leased or controlled by the persons conducting such operations by seepage, overflow or otherwise, nor flow across the surface of the ground or upon any public way, into any storm or sanitary sewer, drainage ditch, upon any gutter or paving or into any galloway, stream or tributary.~~

(c) No soil farming of any type will be allowed on Department owned lands.

800:30-3-5. Regulations for producing wells

(a) Within thirty days after completion of the well, the operator will provide the Department a copy of the completion notice (Corporation Commission Form 1002A) and/or Plugging Report (Corporation Commission Form 1003).

(b) A service area of 150 feet x 150 feet will be allowed around the well head unless special conditions justify a larger area and are approved by the Department.

(1) The remainder of the area will be covered with topsoil and restored by tilling, fertilizing (at rate and formula recommended by the nearest NRCS office), and seeding with a seed mixture rate, and time as recommended by the Department.

(2) Where livestock grazing occurs, the service area ~~will~~may be required to be fenced with four strands of barb wire on steel posts. If the well is located within 300 feet of a residence, camping area, shooting range, or other high use area, the service area and tank batteries ~~will~~may be required to be enclosed with a six foot chain link fence.

(3) All pumps, storage tanks and other containers containing potential pollutants will be surrounded by a berm or metal retainment wall of sufficient height to contain 1 $\frac{1}{2}$ times the entire volume of the largest container inside. These berms must be graveled or fertilized and seeded as authorized by the Department.

(4) Any valves and equipment that could cause pollution to the surrounding area will be secured to prevent discharge. All leaks from tanks, lines, pipes and stuffing boxes must be stopped immediately upon detection or notification and repaired as soon as possible.

(5) All permanent equipment must be powered electrically or equipped with "hospital zone" or buried muffler systems that are maintained in good working condition so noise level does not exceed 42 dBA. Noise reducing measures may include but are not necessarily limited to hush boxes, sound curtains and mufflers.

(6) All equipment in the service area must be kept painted and maintained regularly. An earthtone paint color as authorized by the Department must be used.

(7) Pipelines outside of the immediate service area must be buried at least 36 inches below the surface unless prohibited by rocks as authorized by the Department.

(8) The service area shall be kept clean of trash, debris, empty barrels, old pipes and any other equipment or materials not being used and shall be stabilized according to the Department recommendations. Spilled salt water and hydrocarbons shall be promptly cleaned up and removed from the areas as prescribed by the Corporation Commission and the Department.

(9) Unused topsoil in stockpile shall be fertilized and seeded to preserve it.

(10) Vents and exhaust systems, such as on heater treaters, shall have screens placed on them to prevent birds and/or bats from entering.

(11) Signs will be installed and maintained at the well site. These signs shall include: name, address, and telephone number of operator, plus the well name and legal location.

(12) Prescribed burning is a vital part of the land management on wildlife management areas. All permanent above ground facilities, including valves, will be engineered, constructed and maintained to withstand prescribed fire. All permanent above ground facilities must meet these standards:

(A) On well sites, vegetation will not be present within a 25 ft. radius of equipment. In the 25-50 ft. radius outside of equipment, vegetation will be kept below 4" in height during the growing season defined as May through September, and below 2" in the dormant season defined as October through April. No woody vegetation will be present within 75 feet of above ground equipment.

(B) On above ground equipment off of the well site, including flow lines and electrical lines, no vegetation will be present within 1 ft. of any above ground equipment. In the 1-5 ft. radius around above ground equipment, vegetation will be kept below 4" in height during the growing season defined as May through

September, and below 2" in the dormant season defined as October through April.

(c) **Reserve Pits.** ~~In no instance will pits be allowed to remain more than 12 months after completion notice date. Remaining contents of reserve pits, including liner, will be removed from the site completely. In instances where test results show that the pit content is only fresh water, disposal will be as prescribed by the Corporation Commission and the Department. Where pit content contains a substance deleterious to vegetation or wildlife, pit restoration must be accomplished within 60 days of completion date.~~

~~(1) Reserve pit will be backfilled with material from its embankments, and the remaining embankment may be used to elevate the service area.~~

~~(2) Pit area will be covered with topsoil from the topsoil stockpile and fertilized and revegetated as described in (b), (1) above.~~No reserve pit will be constructed on Department lands. A Closed system shall be used in lieu of a pit.

(d) **Roads.** Roads constructed by or used by the operator, including culverts ditches, turnouts, water bars, gates and cattle guards will be maintained at operator's expense.

(1) All locks and keys issued by the Department will be at cost and the operator will provide the area biologist a list of names of persons with keys.

(2) Operator is required to maintain access road(s) and wildlife management area road(s) that are used by the operator, their employees, or anyone working for the operator or anyone hauling oil, gas, salt water, or equipment to or from the well. Roads will need to be graded at least once a year with ditches, turnouts and culverts repaired and gravel added as needed or requested by the Department.

~~(2) Operator will repair any excessive damage to area roads at his expense.~~

~~(3) Operators may be required to, as determined by the Department, pay a portion of the annual maintenance of wildlife area roads used by the operator, his employees, or anyone working for the operator or anyone hauling oil, gas, salt water, or equipment to or from the well.~~

(~~4~~3) Roads not needed for access to the producing well and not part of the wildlife area road system will be restored to approximate original contour, reterraced, covered with topsoil, and revegetated as described in (b), (1) above at operator's expense. And, when necessary, materials may be relocated as directed by the Department.

800:30-3-6. Regulations for non-producing wells

(a) If a well is declared dry or abandoned, the operator will plug the well as required by the Corporation Commission and will supply the Department a copy of the plugging record (Corporation Commission Form 1003) within 30 days from the plugging date.

(b) Restoration of the drilling area~~,~~ and roads ~~and reserve pit~~ will be accomplished within 180 days of plugging date.

(1) Drilling pad fill material will be removed within 2 feet of original contour and the area will be covered with topsoil and revegetated as described in Section 800:30-3-5 (b), (1) above.

(2) ~~Reserve pit and roads~~Roads will be restored as described in Section 800:30-3-5 (c) and (d).

800:30-3-7. Damage and use charges

~~Basic~~Minimum damage and use charges for mineral exploration and production are as follows:

(1) Monitoring Fee: $1,000.00. The monitoring fee is per project (surface location, pipeline, road and electric).The biologist oversees the project from start to finish from working with the operator to find a location or route agreeable to the Operator and the Department to project completion and removal of equipment and compliance.

(~~1~~2) Oil or gas well location ~~and reserve pit~~:

(~~a~~A) ~~$7,000.00~~$10,000.00 per acre for well location site.

(~~b~~B) ~~$10,000.00 per acre for reserve pit site.~~$15,000 per acre of cut from highly erodible soil.

(~~2~~3) Pipelines:

(A) ~~$3,500.00 per acre right of way~~$100.00 per rod for buried pipeline for gas or freshwater. No lines will be buried less than 36 inches below ground level.

(B) ~~$85.00~~$100.00 per rod for right-of-way if buried gas line is to be of any Hi-Tech Poly Propylene materials. No lines will be buried less than 36 inches below ground level.

(C) ~~$10,000.00 per acre right of way~~$100.00 per rod for buried pipeline for oil or salt water.

(D) Pipelines placed upon the surface will not be allowed, except temporary fresh water lines during drilling or well servicing - ~~$500.00~~$1,000.00 per mile. Above ground Hi-Tech Poly Propylene gas lines may be temporarily used to test a well and to bring it into full production. These temporary above ground Poly Propylene lines may be used to test or flow a well for no more than 60 days. Rates for above ground lines are ~~$500.00~~$1,000.00 per mile.

(~~3~~4) Power lines:

(A) ~~$7,000.00~~$10,000.00 per acre for above ground electric lines if approved.

(B) $3,500.00 per acre for buried electric lines.

(~~4~~5) Seismograph:

(A) $15.00 per acre for all Seismograph activity, including but not limited to the following methods: Shot Hole, Mini-Hole, Hydropulse, and Vibrosies. Charges based on quarter section legals.

(B) On lands where the Department owns mineral interest, a Mineral Bonus will be assessed. The Mineral Bonus will be based on a two year average for that county, provided by the Commissioners of the Land Office.

(~~5~~6) Tank batteries, lact unit, separators:

(A) ~~$7,000.00~~$10,000.00 per acre if location is different from well.

(B) $500.00 per acre if at same location as well.

(~~6~~7) Use of water out of ponds, lakes or existing wells if approved~~: $150.00 per day.~~Water will be charged at the market value.

(~~7~~8) Drilling water well if approved: $1,000.00.

(~~8~~9) Roadways:

(A) ~~$7,000.00~~$10,000.00 per acre if new road. .

(B) Pipelines and electric lines proposed in new or existing roadways will be subject to ~~pipeline~~ corresponding damage and use charges.

~~(9) Monitoring Fee: $1,000.00~~

(10) Tree damage or removal:

(A) Trees at 1<4" dbh size will be valued at $0.50 each

(B) Trees at 4<6" dbh size will be valued at $1.00 each

(C) Trees at 6<0" dbh size will be valued at $4.00 each

(D) Trees at >10" dbh size will be valued at $25.00 each

(E) Trees at Den tree size will be valued at $125.00 each

(~~10~~11) If any oil or gas activity damages Department crops, wildlife or improvements, such damage will be taken into consideration and will be in addition to the minimum charges listed above in 1-~~9~~10 of this Subsection.

(~~11~~12) Crop damage: Any oil or gas activity resulting in damages to a Department agriculture or grazing lease must be negotiated separately with the lessee. All negotiations must be completed prior to beginning any work activity. The Department will provide the name and a contact number for any lessees involved.

(~~12~~13) Oil and Gas Leases: Actual cost for advertising fees will be billed to the requesting entity.

[OAR Docket #16-409; filed 6-13-16]

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

1:2016-28.

EXECUTIVE ORDER 2016-28

I, Todd Lamb, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 5:00 p.m. on Tuesday, July 19, 2016, until 5:00 p.m. on Friday, July 22, 2016, for the victims in the attack upon the Baton Rouge Police Department on July 17, 2016.

This Executive Order shall be forwarded to the Division of Capital Assets Management, which shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 19th day of July, 2016.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Todd Lamb

ATTEST:
Chris Benge
Secretary of State

[OAR Docket #16-720; filed 7-19-16]