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**Mary Fallin, Governor**  
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/Secretary of State  
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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 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS**

*[OAR Docket #17-698]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 3. Standards for Elementary, Middle Level,  
Secondary, and Career and Technology Schools

Part 7. Standard IV: Curriculum, Instruction, Assessment  
and Climate

210:35-3-61. Statement of the standard [AMENDED]

210:35-3-66. Curriculum [AMENDED]

210:35-3-67. Instruction [AMENDED]

210:35-3-68. Assessment [AMENDED]

Subchapter 5. Additional Standards for Elementary  
Schools

Part 7. Standard IV: Curriculum, Instruction, Assessment  
and Climate

210:35-5-31. Program of studies [AMENDED]

Subchapter 21. Alternative Instructional Delivery Systems

210:35-21-2. Alternative instructional delivery systems  
[AMENDED]

Subchapter 27. Proficiency Based Promotion

210:35-27-2. Proficiency based promotion and evaluations  
of student placement [AMENDED]

### **SUMMARY:**

The proposed rule action makes necessary updates to terminology in seven sections of the school accreditation standards. References throughout the accreditation rules to the superseded "Priority Academic Student Skills" (PASS) subject matter standards are updated to the current "Oklahoma Academic Standards". The administrative rule addressing proficiency based promotion and student placement is also being updated to remove requirements related to the discontinued Achieving Classroom Excellence (ACE) Act and end-of-instruction (EOI) exams.

### **AUTHORITY:**

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 3-104.4; 70 O.S. § 1210.523 (revoked)

### **COMMENT PERIOD:**

Written comments on the proposed rule(s) will be accepted from October 2, 2017 until 4:30 p.m. on Thursday, November 2, 2017.

Written comments in electronic form will be accepted during the open public comment period via email at [rules@sde.ok.gov](mailto:rules@sde.ok.gov) or by fax at (405) 522-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

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

### **PUBLIC HEARING:**

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

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

N/A

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

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

### **RULE IMPACT STATEMENT:**

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

### **CONTACT PERSON:**

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

## **Notices of Rulemaking Intent**

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

*[OAR Docket #17-698; filed 9-8-17]*

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# Emergency Adoptions

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

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

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

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

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

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

[OAR Docket #17-689]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 3. General Medical Program Information  
317:30-3-57. [AMENDED]  
Subchapter 5. Individual Providers and Specialties  
Part 5. Pharmacies  
317:30-5-72. [AMENDED]  
317:30-5-72.1. [AMENDED]  
317:30-5-77.2. [AMENDED]  
(Reference APA WF # 17-06)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

### ADOPTION:

August 24, 2017

### APPROVED BY GOVERNOR:

August 28, 2017

### EFFECTIVE:

Immediately upon Governor's approval or October 1, 2017, whichever is later.

### EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare, which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to file a balanced budget.

### GIST/ANALYSIS:

These emergency revisions are necessary to remove coverage of optional non-prescription drugs for adults. (Insulin, nicotine replacement products for smoking cessation, and family planning products are not optional.) Additionally, compounded prescriptions will require a prior authorization for allowable cost exceeding a pre-determined limit. Finally, revisions correct the number of prescriptions allowed for adults receiving services under the 1915(c) Home and Community-Based Services Waivers from two (2) to three (3), to reflect current coverage.

### CONTACT PERSON:

Tywanda Cox, 405-522-7153, Tywanda.Cox@okhca.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR OCTOBER 1, 2017, WHICHEVER IS LATER:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 3. GENERAL MEDICAL PROGRAM INFORMATION

#### 317:30-3-57. General SoonerCare coverage - categorically needy

The following are general SoonerCare coverage guidelines for the categorically needy:

- (1) Inpatient hospital services other than those provided in an institution for mental diseases.
  - (A) Adult coverage for inpatient hospital stays as described at OAC 317:30-5-41.
  - (B) Coverage for members under ~~24~~twenty-one (21) years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.
- (2) Emergency department services.
- (3) Dialysis in an outpatient hospital or free standing dialysis facility.
- (4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.
- (5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with OHCA.
- (6) Outpatient ~~Mental Health~~ mental health ~~services~~ services for medical and remedial care including

## Emergency Adoptions

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services provided on an outpatient basis by certified hospital based facilities that are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity ~~Clinic~~Clinic Services services.

(10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided to adults, not specifically addressed, are covered only when prior authorized by the agency's Medical Authorization Unit.

(11) Medically necessary screening mammography. Additional follow-up mammograms are covered when medically necessary.

(12) Nursing facility services (other than services in an institution for tuberculosis or mental diseases).

(13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for members under ~~24~~twenty-one (21) years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and require prior authorization. EPSDT/OHCA Child Health services are outlined in OAC 317:30-3-65.2 through 317:30-3-65.4.

(A) Child health screening examinations for eligible children by a medical or osteopathic physician, physician assistant, or advanced practice nurse practitioner.

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a provider.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services as outlined in OAC 317:30-3-65.8.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one (1) visual screening and glasses each ~~12~~twelve (12) months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected. Payment is limited to two (2) glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(G) Hearing services as outlined in OAC 317:30-3-65.9.

(H) Prescribed drugs.

(I) Outpatient ~~Psychological~~psychological services as outlined in OAC 317:30-5-275 through ~~OAC~~ 317:30-5-278.

(J) Inpatient ~~Psychotherapy~~psychotherapy services and psychological testing as outlined in OAC 317:30-5-95 through ~~OAC~~ 317:30-5-97.

(K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(L) Inpatient hospital services.

(M) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of SoonerCare.

(N) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for members ~~24~~twenty-one (21) years of age and older who are legally competent, not institutionalized and have signed the "Consent Form" at least ~~30~~thirty (30) days prior to procedure. Reversal of sterilization procedures for the purposes of conception is not covered. Reversal of sterilization procedures are covered when medically indicated and substantiating documentation is attached to the claim.

(15) Physicians' services whether furnished in the office, the member's home, a hospital, a nursing facility, ICF/IID, or elsewhere. For adults, payment is made for compensable hospital days described at OAC 317:30-5-41. Office visits for adults are limited to four (4) per month except when in connection with conditions as specified in OAC 317:30-5-9(b).

(16) Medical care and any other type of remedial care recognized under ~~State~~state law, furnished by licensed practitioners within the scope of their practice as defined by ~~State~~state law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services

(B) Optometrists' services

(C) Psychologists' services

(D) Certified Registered Nurse Anesthetists

(E) Certified Nurse Midwives

(F) Advanced Practice Nurses

(G) Anesthesiologist Assistants

(17) Free-standing ambulatory surgery centers.

(18) Prescribed drugs not to exceed a total of six (6) prescriptions with a limit of two (2) brand name prescriptions per month. Exceptions to the six (6) prescription limit are:

(A) unlimited medically necessary monthly prescriptions for:

(i) members under the age of ~~24~~twenty-one (21) years; and

(ii) residents of ~~Nursing — Facilities~~nursing facilities or ~~Intermediate Care Facilities for Individuals with Intellectual Disabilities~~intermediate care facilities for individuals with intellectual disabilities.

- (B) seven (7) medically necessary generic prescriptions per month in addition to the six (6) covered under the State Plan (including three (3) brand name prescriptions) are allowed for adults receiving services under the 1915(c) Home and Community Based Services Waivers. These additional medically necessary prescriptions beyond the ~~two~~three (3) brand name or thirteen (13) total prescriptions are covered with prior authorization.
- (19) Rental and/or purchase of durable medical equipment.
- (20) Adaptive equipment, when prior authorized, for members residing in private ICF/IID's.
- (21) Dental services for members residing in private ICF/IID's in accordance with the scope of dental services for members under age ~~21~~twenty-one (21).
- (22) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, external breast prostheses and support accessories, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.
- (23) Standard medical supplies.
- (24) Eyeglasses under EPSDT for members under age ~~21~~twenty-one (21). Payment is also made for glasses for children with congenital aphakia or following cataract removal. Payment is limited to two (2) glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.
- (25) Blood and blood fractions for members when administered on an outpatient basis.
- (26) Inpatient services for members age ~~65~~sixty-five (65) or older in institutions for mental diseases, limited to those members whose Medicare, Part A benefits are exhausted for this particular service and/or those members who are not eligible for Medicare services.
- (27) Nursing facility services, limited to members preauthorized and approved by OHCA for such care.
- (28) Inpatient psychiatric facility admissions for members under ~~21~~twenty-one (21) are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.
- (29) Transportation and subsistence (room and board) to and from providers of medical services to meet member's needs (ambulance or bus, etc.), to obtain medical treatment.
- (30) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for ~~60~~sixty (60) days after the pregnancy ends, beginning on the last date of pregnancy.
- (31) Nursing facility services for members under ~~21~~twenty-one (21) years of age.
- (32) Personal care in a member's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of a R.N.
- (33) Part A deductible and Part B Medicare Coinsurance and/or deductible.
- (34) Home and Community Based Waiver Services for the intellectually disabled.
- (35) Home health services limited to ~~36~~thirty-six (36) visits per year and standard supplies for ~~one (1)~~ month in a ~~12~~twelve (12) month period. The visits are limited to any combination of Registered Nurse and nurse aide visits, not to exceed ~~36~~thirty-six (36) per year.
- (36) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (A)-(D) of this paragraph:
- (A) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.
- (B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.
- (C) To be compensable under the SoonerCare program, all transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.
- (D) Finally, procedures considered experimental or investigational are not covered.
- (37) Home and community-based waiver services for intellectually disabled members who were determined to be inappropriately placed in a ~~NF~~nursing facility (Alternative Disposition Plan - ADP).
- (38) Case ~~Management~~management services for the chronically and/or severely mentally ill.
- (39) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.
- (40) Services delivered in Federally Qualified Health Centers. Payment is made on an encounter basis.
- (41) Early Intervention services for children ages ~~0-3~~zero (0) to three (3).
- (42) Residential Behavior Management in therapeutic foster care setting.
- (43) Birthing center services.
- (44) Case management services through the Oklahoma Department of Mental Health and Substance Abuse Services.
- (45) Home and Community-Based Waiver services for aged or physically disabled members.
- (46) Outpatient ambulatory services for members infected with tuberculosis.
- (47) Smoking and Tobacco Use Cessation Counseling for children and adults.
- (48) Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment is made on an encounter basis.
- (49) OHCA contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions. Disease state management treatments are based on protocols developed using evidence-based guidelines.

# Emergency Adoptions

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 5. PHARMACIES

#### 317:30-5-72. Categories of service eligibility

(a) **Coverage for adults.** Prescription drugs for categorically needy adults are covered as set forth in this subsection.

(1) With the exception of (2) and (3) of this subsection, categorically needy adults are eligible for a maximum of six (6) covered prescriptions per month with a limit of two (2) brand name prescriptions. A prior authorization may be granted for a third brand name if determined to be medically necessary by OHCA and if the member has not already utilized their six (6) covered prescriptions for the month.

(2) Subject to the limitations set forth in OAC 317:30-5-72.1, ~~OAC~~ 317:30-5-77.2, and ~~OAC~~ 317:30-5-77.3, exceptions to the six (6) medically necessary prescriptions per month limit are:

(A) unlimited monthly medically necessary prescriptions for categorically related individuals who are residents of ~~Nursing Facilities~~ nursing facilities or Intermediate Care Facilities for the ~~Mentally Retarded~~ Individuals with Intellectual Disabilities; and

(B) seven (7) additional medically necessary prescriptions which are generic products per month to the six (6) covered under the State Plan (including three (3) brand name prescriptions) are allowed for adults receiving services under the 1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the ~~two~~ three (3) brand name or thirteen (13) total prescriptions will be covered with prior authorization.

(3) Drugs exempt from the prescription limit include: Antineoplastics, anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions that require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, low-phenylalanine formula and amino acid bars for persons with a diagnosis of PKU, certain carrier or diluent solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis. For purposes of this Section, exclusion from the prescription limit means claims filed for any of these prescriptions will not count toward the prescriptions allowed per month.

(4) When a brand drug is preferred over its generic equivalent due to lower net cost, that drug shall not count toward the brand limit; however, it will count toward the monthly prescription limit.

(b) **Coverage for children.** Prescription drugs for SoonerCare eligible individuals under ~~24~~ twenty-one (21) years of age are not limited in number per month, but may be subject to prior authorization, quantity limits or other restrictions.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are also eligible for the Medicare Part D prescription drug benefit. Coordination of benefits between Medicare Part B and Medicare Part D is the responsibility of the pharmacy provider. The SoonerCare pharmacy benefit does not include any products which are available through either Part B or Part D of Medicare.

(d) **Individuals eligible for a prescription drug benefit through a Prescription Drug Plan (PDP) or Medicare Advantage - Prescription Drug (MA-PD) plan as described in the Medicare Modernization Act (MMA) of 2003.** Individuals who qualify for enrollment in a PDP or MA-PD are specifically excluded from coverage under the SoonerCare pharmacy benefit. This exclusion applies to these individuals in any situation which results in a loss of Federal Financial Participation for the SoonerCare program. This exclusion shall not apply to items covered at OAC 317:30-5-72.1(2) unless those items are required to be covered by the prescription drug provider in the MMA or subsequent federal action.

#### 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 investigational, 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~~ FDA.

(2) The drug categories listed in (A) through (D) 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~~ symptomatic 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~~fifty (50);
- (ii) fluoride preparations are covered for persons under ~~16~~sixteen (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~~twenty-one (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) 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;~~
- (ii) certain smoking cessation products;
- (iii) family planning products;
- (iv) OTC products may be covered for children 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.

(D) 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.

### 317:30-5-77.2. Prior authorization

(a) **Definition.** The term prior authorization in pharmacy means an approval for payment by OHCA to the pharmacy before a prescription is dispensed by the pharmacy. An updated list of all products requiring prior authorization is available at the agency's website.

(b) **Process.** Because of the required interaction between a prescribing provider (such as a physician) and a pharmacist to receive a prior authorization, OHCA allows a pharmacist up to ~~30~~thirty (30) calendar days from the point of sale notification to provide the data necessary for OHCA to make a decision regarding prior authorization. Should a pharmacist fill a prescription prior to the actual authorization he/she takes a business risk that payment for filling the prescription will be denied. In the case that information regarding the prior authorization is not provided within the ~~30~~thirty (30) days, claims will be denied.

(c) **Documentation.** Prior Authorization petitions with clinical exceptions must be mailed or faxed to the Medication Authorization Unit of OHCA's contracted prior authorization processor. Other authorization petitions, claims processing questions and questions pertaining to DUR alerts must be addressed by contacting the Pharmacy help desk. Authorization petitions with complete information are reviewed and a response returned to the dispensing pharmacy within ~~24~~twenty-four (24) hours. Petitions and other claim forms are available on the OHCA public website.

(d) **Emergencies.** In an emergency situation the Health Care Authority will authorize a ~~72~~seventy-two (72) hour supply of medications to a member. The authorization for a ~~72~~seventy-two (72) hour emergency supply of medications does not count against the SoonerCare limit described in OAC 317:30-5-72(a)(1).

(e) **Utilization and scope.** There are three reasons for the use of prior authorization: utilization controls, scope controls and product based controls. Product based prior authorization is covered in OAC 317:30-5-77.3. The Drug Utilization Review Board recommends the approved clinical criteria and any restrictions or limitations.

(1) **Utilization controls.** Prior authorizations that fall under this category generally apply to the quantity of medication or duration of therapy approved.

(2) **Scope controls.** Scope controls are used to ensure a drug is used for an approved indication and is clinically appropriate, medically necessary and cost effective.

(A) Medications which have been approved by the FDA for multiple indications may be subject to a scope-based prior authorization when at least one of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Prior authorizations for these drugs may be structured as step therapy or a tiered approach as recommended by the Drug Utilization Review Board and approved by the OHCA Board of Directors.

(B) Prior authorization may be required to assure compliance with FDA approved and/or medically accepted indications, dosage, duration of therapy,

# Emergency Adoptions

quantity, or other appropriate use criteria including pharmacoeconomic consideration.

(C) Prior authorization may be required for certain non-standard dosage forms of medications when the drug is available in standard dosage forms.

(D) Prior authorization may be required for certain compounded prescriptions if the allowable cost exceeds a predetermined limit as published on the agency's website.

[OAR Docket #17-689; filed 9-6-17]

**SECTION 253(F), WITH A LATER EFFECTIVE DATE OF NOVEMBER 1, 2017:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 5. ELIGIBILITY

**317:30-3-88. Medical identification card [REVOKED]**  
(a) ~~Providers should carefully check the permanent plastic identification card utilizing the REVS system or a commercial swipe card system to verify that the patient is eligible.~~

[OAR Docket #17-688; filed 9-6-17]

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

[OAR Docket #17-688]

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

[OAR Docket #17-690]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies

Part 5. Eligibility

317:30-3-88. [REVOKED]

(Reference APA WF # 17-05A)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

### ADOPTION:

August 24, 2017

### APPROVED BY GOVERNOR:

August 28, 2017

### EFFECTIVE:

Effective November 1, 2017

### EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The agency requests emergency approval of rule revisions to minimize cost to the agency associated with the printing and issuing of plastic medical identification cards.

### GIST/ANALYSIS:

These emergency rule revisions are to ensure the cost effectiveness of the SoonerCare program administrative processes associated with the printing and mailing of plastic member medical identification cards. The proposed revisions allow the agency to keep deliverability methods up to current technology standards, including the technology standards used by other payers; as a result, the agency can ensure better online access to account and other information for our members. Members now have access to print their medical identification card from their online member account, or non-online enrollment members can visit their local county Oklahoma Department of Human Services office to obtain a printed card. Providers can verify the member's eligibility online via the Eligibility Verification System.

### CONTACT PERSON:

Tywanda Cox, 405-522-7153, Tywanda.Cox@okhca.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S.,**

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 21. Outpatient Behavioral Health Agency Services

317:30-5-241.6. [AMENDED]

(Reference APA WF # 17-09)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Article 10, Section 23 of the Oklahoma Constitution

### ADOPTION:

August 24, 2017

### APPROVED BY GOVERNOR:

August 28, 2017

### EFFECTIVE:

Immediately upon Governor's approval or September 1, 2017, whichever is later.

### EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare, which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to file a balanced budget.

### GIST/ANALYSIS:

These emergency revisions are necessary to establish yearly limits on the amount of basic case management/resource coordination that is reimbursable by SoonerCare on a fee-for-service basis. The current limit of twenty-five (25) units per member per month basic case management/resource coordination will be reduced to sixteen (16) units per member per year. A process for authorizing up to twenty-five (25) units per member per month will be used for individuals who demonstrate the medical need for additional units.

### CONTACT PERSON:

Tywanda Cox, 405-522-7153, Tywanda.Cox@okhca.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR SEPTEMBER 1, 2017, WHICHEVER IS LATER:

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES**

**317:30-5-241.6. Behavioral Health Case Management**

Payment is made for behavioral health case management services as set forth in this Section. The limitations set forth in this Section do not apply to case management provided in programs and service delivery models which are not reimbursed for case management on a fee-for-service basis.

(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 twenty-one (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 authorized for the target group based on established 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 seventy-two (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 seventy-two (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

## Emergency Adoptions

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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 thirty (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 ~~twenty-five (25)~~sixteen (16) units per member per ~~month~~year. Additional units may be authorized up to 25 units per member per month if medical necessity criteria are met.

(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 member 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 eight (8) and ten (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 two (2) years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMHSAS six (6) hours ICM training, and twenty-four (24) hour availability is required. ICM/WFCM is limited to fifty-four (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;
- (B) managing finances;
- (C) providing specific services such as shopping or paying bills;
- (D) delivering bus tickets, food stamps, money, etc.;
- (E) counseling, rehabilitative services, psychiatric assessment, or discharge planning;
- (F) filling out forms, applications, etc., on behalf of the member when the member is not present;
- (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; or
  - (E) members receiving services in the Health Home 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.

*[OAR Docket #17-690; filed 9-6-17]*

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

*[OAR Docket #17-691]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**

- Subchapter 7. Medical Services
- Part 5. Determination of Eligibility for Medical Services  
317:35-7-40. [AMENDED]
- Subchapter 9. ICF/IID, HCBW/IID, and Individuals Age 65 or Older in Mental Health Hospitals
- Part 9. Certification, Redetermination and Notification  
317:35-9-75. [AMENDED]
- Subchapter 15. Personal Care Services  
317:35-15-7. [AMENDED]
- Subchapter 17. Advantage Waiver Services  
317:35-17-12. [AMENDED]
- Subchapter 19. Nursing Facility Services  
317:35-19-22. [AMENDED]
- (Reference APA WF # 17-05B)**

**AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

**ADOPTION:**

August 24, 2017

**APPROVED BY GOVERNOR:**

August 28, 2017

**EFFECTIVE:**

Effective November 1, 2017

**EXPIRATION:**

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The agency requests emergency approval of rule revisions to minimize cost to the agency associated with the printing and issuing of plastic medical identification cards.

# Emergency Adoptions

## GIST/ANALYSIS:

These emergency rule revisions are to ensure the cost effectiveness of the SoonerCare program administrative measures associated with the printing and mailing of plastic member medical identification cards. These proposed revisions allow the agency to keep deliverability methods up to current technology standards, including the technology standards used by other payers; as a result, the agency can ensure better online access to account and other information for our members. Members now have access to print their medical identification card from their online member account, or non-online enrollment members can visit their local county Oklahoma Department of Human Services office to obtain a printed card. Providers can verify the member's eligibility online via the Eligibility Verification System. Additionally, revisions update language to reflect how the OKDHS notifies members of eligibility and ineligibility determinations for medical services by mailing out computer-generated notification forms. Finally, the policy revisions update the language for the medical and financial certification processes for the OKDHS ADvantage program.

## CONTACT PERSON:

Tywanda Cox, 405-522-7153, Tywanda.Cox@okhca.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF NOVEMBER 1, 2017:**

## SUBCHAPTER 7. MEDICAL SERVICES

### PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

#### 317:35-7-40. Eligibility as Qualified Medicare Beneficiary Plus

~~(a)~~ An individual determined to be categorically related to aged, blind or disabled is eligible for Medical Services as a Qualified Medicare Beneficiary Plus (QMBP) if he/she meets the conditions of eligibility shown in paragraphs (1)-(3) of this subsection. For persons age ~~65~~sixty-five (65) and older in mental health hospitals, refer to OAC 317:35-9-7.

(1) The individual's/couple's income and resources do not exceed the standards as shown on DHS Appendix C-1, Schedule VI, of which the income standard is based on ~~100%~~one-hundred (100) percent of the Federal Poverty Level.

(2) Countable income and resources are determined using the same rules followed in determining eligibility for individuals categorically related to ~~Aid to the Aged, Blind or Disabled~~, except that a \$20 general income disregard is applied to either earned or unearned income, but not both. For couples, only one \$20 general income disregard is given.

(3) The individual meets all other eligibility conditions for ~~Medicaid~~SoonerCare.

~~(b) Medical identification cards are issued to all individuals determined eligible for QMBP coverage.~~

## SUBCHAPTER 9. ICF/IID, HCBW/IID, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

### PART 9. CERTIFICATION, REDETERMINATION AND NOTIFICATION

#### 317:35-9-75. Certification for long-term medical care through ~~ICF/MR~~ICF/IID, ~~HCBW/MR~~HCBW/IID services and to persons age 65 and older in a mental health hospital

(a) **Application date.** If the applicant is found eligible for ~~Medicaid~~SoonerCare, certification may be made retroactive for any service provided on or after the first day of the third month prior to the month of application and for future months. The first month of the certification period must be the first month that medical service was provided and the recipient was determined eligible. ~~An applicant approved for long-term medical care under Medicaid as categorically needy is mailed a permanent Medical Identification Card.~~

(b) **Certification period for long-term medical care.** A certification period of ~~12~~twelve (12) months is assigned for an individual who is approved for long-term care.

## SUBCHAPTER 15. PERSONAL CARE SERVICES

#### 317:35-15-7. Certification for Personal Care

(a) **Personal Care certification period.** The first month of the Personal Care certification period must be the first month the member was determined eligible for Personal Care, both financially and medically. When eligibility or ineligibility for Personal Care is established, the local office updates the computer-generated form and the appropriate notice is mailed to the member.

~~(1) As soon as eligibility or ineligibility for Personal Care is established, the local office updates the computer form and the appropriate notice is computer-generated. Notice information is retained on the notice file for county use.~~

~~(2) An applicant approved for Personal Care under SoonerCare as categorically needy is mailed a Medical Identification Card.~~

(b) **Financial certification period for Personal Care Services.** The financial certification period for Personal Care services is ~~12~~twelve (12) months. Redetermination of eligibility is completed according to the categorical relationship.

(c) **Medical certification period for Personal Care services.** A medical certification period of not more than ~~36~~thirty-six (36) months is assigned for an individual who is approved for Personal Care. The certification period for Personal Care is based on the UCAFUniform Comprehensive Tool (UCAT) evaluation and clinical judgment of the OKDHSOklahoma Department of Human Services (DHS) area nurse or designee.

**SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES**

**317:35-17-12. Certification for ADvantage program services**

(a) **Application date.** ~~If~~When the applicant is ~~found~~determined eligible for ~~SoonerCare~~ADvantage, ~~his/her~~his/her certification ~~may be~~is effective the date of ~~application~~that medical and financial eligibility was determined. ~~The first month of the certification period must be the first month the member was determined eligible for ADvantage, both financially and medically.~~When eligibility or ineligibility for ADvantage program services is established, the worker updates the authorization and the computer-generated notice is mailed to the member and ADvantage Administration (AA).

(1) ~~As soon as eligibility or ineligibility for ADvantage program services is established, the worker updates the computer form and the appropriate notice is computer generated to the member and the ADvantage Administration (AA). Notice information is retained on the notice file for county use.~~

(2) ~~An applicant approved for ADvantage program services is mailed a Medical Identification Card.~~

(b) **Financial certification period for ADvantage program services.** ~~The financial certification period for the ADvantage program services is 12twelve (12) months. Although "medical eligibility number of months" on the computer input record will show 99 months, redetermination of eligibility is completed according to the categorical relationship.~~

(c) **Medical Certification period for ADvantage program services.** ~~The medical certification period for ADvantage program services is up to 12 months. Redetermination of medical eligibility is completed by OKDHS in coordination with the annual reauthorization of the member's service plan. An independent redetermination of medical eligibility is completed by the OKDHS Nurse when, depending upon the needs of the member, the medical certification is determined to be less than 12 months, or, at any time documentation supports a reasonable expectation that the member may not continue to meet medical eligibility criteria.~~

(d) **Medical certification period.** The medical certification period is twelve (12) months. Redetermination of medical eligibility by an Oklahoma Department of Human Services (DHS) nurse is:

(1) completed annually in coordination with the annual reauthorization of the member's patient-centered service plan.

(2) completed when documentation is received that supports a reasonable expectation the member may not continue to meet medical eligibility criteria.

**SUBCHAPTER 19. NURSING FACILITY SERVICES**

**317:35-19-22. Certification for ~~NF~~nursing facility (NF)**

(a) **Application date.** The date of the application for NF care is most important in determining the date of eligibility. If the applicant is found eligible for ~~Medicaid~~SoonerCare, certification may be made retroactive for any service provided on or after the first day of the third month prior to the month of application and for future months. ~~An applicant approved for long-term medical care under Medicaid as categorically needy is mailed a Medical Identification Card.~~

(b) **Time limited approvals for nursing care.** A medical certification period of a specific length may be assigned for an individual who is categorically related to ~~ABD~~Aged, Blind and Disabled or ~~AFDC~~Aid to Families with Dependent Children. This time limit is noted on the system. It is the responsibility of the nursing facility to notify the area nurse ~~30~~thirty (30) days prior to the end of the certification period if an extension of approval is required by the client. Based on the information from the NF the area nurse, or nurse designee, determines whether or not an update of the ~~UCAT~~Uniform Comprehensive Tool (UCAT) is necessary for the extension. The area nurse, or nurse designee, coordinates with appropriate staff for any request for further UCAT assessments.

(c) **Certification period for long-term medical care.** A financial certification period of ~~12~~twelve (12) months is assigned for an individual who is approved for long-term care.

[OAR Docket #17-691; filed 9-6-17]

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

[OAR Docket #17-692]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-4 [AMENDED]

Subchapter 3. Conditions of Eligibility - Need

Part 3. Income

340:10-3-31.1 [AMENDED]

(Reference WF 17-17)

**AUTHORITY:**

Director of Human Services; Section 162 and 230.52 of Title 56 of the Oklahoma Statutes; Sections 261.2, 262.10, and 261.30 of Part 261 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 261.2, 262.10, and 261.30); Section 5(N) of the CCDBG of 2014, P.L. 113-186; and 45 C.F.R. § 98.21.

**ADOPTION:**

July 31, 2017

**APPROVED BY GOVERNOR:**

August 28, 2017

**EFFECTIVE:**

October 1, 2017

**EXPIRATION:**

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

# Emergency Adoptions

## FINDING OF EMERGENCY:

Emergency rulemaking approval is requested effective October 1, 2017, to align with Child Care Subsidy rules that must meet the federal deadline for implementation of P.L. 113-186.

## GIST/ANALYSIS:

The proposed revisions to Chapter 10, Subchapter 2 amend the rules to: (1) remove the Supported Transitional Employment Program (STEP) as a subsidized employment option; (2) update child care rules upon TANF cash assistance closure to align with emergency child care rule changes; and (3) add legal and rule citations.

The proposed revisions to Chapter 10, Subchapter 3 amend the rules to add: (1) information regarding loss of the earned income disregard period upon job loss when the client does not obtain a new job within 10-calendar days; (2) the worker's responsibility to update the client's employability plan to include the client's place of employment and job hours; (3) information regarding the client's eligibility for child care during the earned income disregard (EID) period, upon job loss, and upon TANF closure to align with emergency child care rule changes; (4) information regarding the client's eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits and SoonerCare (Medicaid) upon TANF closure; and (5) rule citations.

## CONTACT PERSON:

Dena Thayer at 405-521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2017:**

## SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

### 340:10-2-4. Employment

(a) **Applicability.** Temporary Assistance for Needy Families (TANF) Work activities are designed to help the participant obtain employment to achieve economic self-sufficiency, per Sections 261.2, 261.10, and 261.30 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 261.2, 261.10, and 261.30). Work allows participants to enhance their self-esteem and to become more independent. Every effort is made to assist participants in securing jobs that provide financial security and opportunities for advancement. The appropriate employment criteria for subsidized and unsubsidized employment are included in (1) through (5) of this subsection.

- (1) Appropriate employment may be temporary, permanent, full-time, part-time, or seasonal work, as long as the daily and weekly hours of employment do not exceed those customary to the occupation.
- (2) The wage must meet or exceed the federal or state minimum wage laws or the prevailing rate for similar employment, whichever is applicable. The state law applies when federal law does not cover the job.
- (3) A participant is not required to accept employment when the position offered is vacant due to a strike, lockout, or other bona fide labor dispute.
- (4) A participant is not required to work for an employer when it is contrary to the conditions of membership in the union governing that occupation. Employment not

governed by the rules of the union to which the participant belongs may be appropriate.

- (5) A participant is not required to accept employment that results in the net loss of income.
- (b) **Unsubsidized employment.** The State Work Incentive Program and any employment for which the employer does not receive reimbursement for any portion of the wages paid are examples of unsubsidized employment.

(1) **State Work Incentive Program.** The State Work Incentive Program is designed to assist in employing TANF participants into entry level positions in all branches of state government. Oklahoma Department of Human Services (DHS), in cooperation with other state agencies and the Office of Management and Enterprise Services Human Capital Management, coordinates job placements for TANF participants referred to the program on Form 08TW023E, State Work Incentive Referral.

(A) Employment of eligible participants may be considered for positions of unclassified status for a two-year period in a full-time or part-time capacity. These positions are not included within any limitation on full-time equivalent employee positions for any agency.

(B) Participants hired under this program are eligible for leave and other benefits available to other state employees, subject to other eligibility requirements, and may be reassigned or promoted while in the program.

(C) Participants hired are exempt from probationary hiring procedures. They may be considered for conversion to permanent classified status after two years of continuous program participation.

(D) Requirements for placing employees in permanent status include:

- (i) completing satisfactory performance ratings conducted during employment; and
- (ii) having possession of the minimum requirements stated in the job specifications.

(2) **Other unsubsidized employment.** Unsubsidized employment includes any employment in which a participant is hired by a private or public employer and there is no reimbursement of any portion of the wages paid to the recipient.

(c) **Subsidized employment.** The Subsidized Employment Program (SEP), and on-the-job training (OJT), and ~~Supported Transitional Employment Program (STEP)~~ are examples of subsidized employment. The employment criteria in (a) of this Section apply.

(1) **SEP.** SEP is a subsidized employment program through which DHS reimburses employers hiring TANF participants into full-time employment for a portion of their wages for up to four months. Public agencies, non-profit private agencies, and private employers are eligible to participate. When a state agency expresses an interest in participating in the program, DHS staff informs agency personnel that the subsidized employment reimbursement must not be used by the state agency to claim matching federal funds. When, for any reason in any given month,

a SEP participant is paid less than the amount of his or her cash assistance at the time of entry into the program, the SEP participant receives a supplemental TANF benefit. SEP participants are entitled to all benefits the employer makes available to other employees. Participants are assigned based on their employability plan and the availability of appropriate and willing employers.

(A) **Participant requirements.** TANF participants are:

- (i) included in the cash assistance unit; and
- (ii) available for immediate employment.

(B) **Position requirements.** Position requirements must include:

- (i) full-time employment for a minimum of 35 hours per week;
- (iii) the same wages, benefits, and working conditions as provided to other employees performing a substantially equivalent job;
- (iv) employer agreement to conform to the Equal Employment Opportunity Commission and fair employment practices, such as nondiscrimination regarding age, race, sex, color, national origin, disability, and in some cases religion or political belief; and
- (v) employer assurance the position does not:
  - (I) ~~does not~~ displace the employer's current employees, including any involved in a strike or lockout;
  - (II) ~~does not~~ involve commission sales when at least \$10 per hour is not guaranteed; or
  - (III) is not for casual, intermittent, or seasonal labor.

(C) **Recruitment of employers.** Designated county staff or the career development specialist (CDS) recruits employers interested in SEP. The employer is asked to notify designated county staff or the CDS of potential positions with job specifications and qualifications in order to match the employer with an appropriate TANF participant referral. Designated county staff or the CDS give Form 08TW011E, Subsidized Employment Program (SEP) Referral to the TANF participant to take to the employer specified on the form.

(i) When explaining SEP to employers, designated county staff or the CDS emphasizes that employers are expected to retain the SEP participant in full-time employment unless there is good cause for the dismissal. Employers who fail to continue the successful SEP participant's employment without good cause are not granted subsequent contracts. Good cause reasons for dismissal occur when:

- (I) there is a lay-off due to economic reasons that results in a reduction-in-force;
- (II) the employee is frequently absent from work or engages in disruptive or inappropriate behavior; or

(III) the employee is unable to perform at an acceptable skill level.

(ii) Before designated county staff or the CDS writes new or additional contracts with an employer, SEP employees or other employees in lay-off status must be recalled.

(iii) Designated county staff or the CDS has the responsibility for ensuring the employer is complying with the contract.

(D) **SEP placements.** Designated county staff or the CDS arranges interviews between participants and potential employers. SEP participants may begin employment any time during the month. The employer is informed that reimbursement begins after the participant completes the first 30-calendar days of employment.

(i) Following the employer's agreement to participate and selection of a TANF participant, designated county staff or the CDS negotiates the contract, Form 08TW017E, Subsidized Employment Program (SEP) Contract, with the employer. Negotiation includes the beginning date of employment, the employee's salary, and the employee's planned number of employment hours per week.

(ii) Upon receipt of the contract, designated county staff or the CDS reviews it for completeness and, when approved, signs and dates the contract. Designated county staff or the CDS delivers the employer's copy of the contract and Form 08TW018E, Subsidized Employment Program (SEP) Invoice, for requesting reimbursement to the employer.

(iii) Designated county staff or the CDS contacts the participant to complete and sign Form 08TW006E, Subsidized Employment Program (SEP) Temporary Assistance for Needy Families (TANF) Participant Agreement.

(iv) When a contract is not approved, a letter is mailed by the designated county staff or the CDS to the employer explaining the reason for the disapproval. Designated county staff or the CDS notifies the participant by phone or letter that the contract was not approved.

(E) **Program procedures.** The procedures for programs listed in (i) through (iv) of this subparagraph are used.

(i) **TANF cash assistance.** Under SEP, eligibility for TANF cash assistance is frozen. During the participation period, the TANF assistance unit cannot be determined ineligible.

(ii) **Medical benefits.** SEP participants whose TANF cash assistance is frozen, continue to be eligible for SoonerCare (Medicaid) benefits unless found ineligible for a reason other than earned income.

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- (iii) **Food benefits.** SEP participants whose TANF cash assistance is frozen and who are receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) benefits per Oklahoma Administrative Code (OAC) 340:50-11-20 continue to receive SSNAP benefits without consideration of the SEP income during the participation period as long as household composition remains the same. Once the SEP participation period ends and the TANF benefit closes, the household may be eligible for transitional food benefits per OAC 340:50-11-27.
- (iv) **Child care.** ~~Child care plans must be explored with each SEP participant.~~ During the SEP participation period while the TANF cash assistance is frozen, the child remains predetermined eligible for child care subsidy benefits with a zero family share ~~co-payment~~copayment per OAC 340:40-7-1. Once the SEP participation period ends and the TANF benefit closes, the worker determines if the participant's child care renewal is due per OAC 340:40-9-1. When the child care renewal is due, the worker considers the participant's earnings and computes the family share copayment per DHS Appendix C-4, Child Care Eligibility/Copayment Chart. When the child care renewal is not due, the participant's family share copayment does not increase until the renewal is due per OAC 340:40-5-1(9).
- (F) **Payment of employers.** Employers are eligible for:
- (i) one hundred percent reimbursement of the employee's gross wages, capped at a maximum of 40 hours per week at \$12 per hour, for the first 30-calendar days of employment.
- (I) Employers are eligible to apply for reimbursement 30-calendar days following the date of hire.
- (II) Employers file for reimbursement by submitting Form 08TW018E, with proof of the participant's earnings for the last six months attached, directly to Adult and Family Services (AFS) TANF staff.
- (III) When a business changes ownership, the SEP contract transfers with the business. When change of ownership occurs mid-month, the original owner maintains the right to file a claim for reimbursement for the transfer month. The new owner may claim for subsidized wages for the remaining months of the original SEP agreement;
- (ii) fifty percent reimbursement of the employee's gross wages, for the following three months, provided the employee remains employed a minimum of 35 hours per week and earning at least \$10 per hour. The reimbursement is capped at a maximum of 40 hours per week at \$12 per hour; and
- (iii) a bonus equal to 100 percent of the unsubsidized portion of wages up to 40 hours per week for the four month subsidized period, provided the SEP employee:
- (I) remains employed a minimum of 35 hours per week;
- (II) earns a minimum of \$10 per hour; and
- (III) is retained for a minimum period of six months after the subsidized agreement ends.
- (G) **Supplemental payments to SEP participants.** AFS automatically issues supplemental payments for months in which income shown on Form 08TW018E is less than the amount of the SEP participant's cash assistance prior to entering the program.
- (H) **SEP contract period completions.** At the end of the fourth month of subsidized employment, the worker reviews the participant's continued TANF eligibility.
- (I) **SEP contract terminations.** When the SEP placement ends during the four months of subsidized employment, the worker reviews the participant's continued TANF eligibility.
- (2) **OJT.** OJT is subsidized employment in which a private or public employer hires the participant and, while engaged in productive work, receives training that provides knowledge or skills essential to the full performance of the job. During the OJT period, the employer receives reimbursement for a portion of the wages paid to the employee.
- (A) Participants who successfully complete the Work Experience Program, have a recent history of employment, or complete a job readiness activity are the primary candidates for OJT referral.
- (B) Income from OJT is considered as any other earned income.
- (C) The worker explains the availability of transitional child care per OAC 340:40-7-1 and continued medical benefits per OAC 340:10-3-75 to the participant at the time of entry into OJT.
- ~~(3) **STEP.** STEP is a subsidized employment program PROVIDING comprehensive support services leading to permanent employment placements for TANF participants. These services are contracted with specified vendors who provide temporary, paid work experience to program participants in a supportive work environment. When the participant is accepted into the program, his or her TANF benefit remains active with no cash benefit issued. When eligible, the participant continues to receive other program benefits.~~
- (d) **Work Opportunity Tax Credit (WOTC).** The WOTC law permits for-profit employers to take a federal income tax credit when workers from certain target groups are hired. Workers in these target groups have faced significant barriers to employment. The WOTC is equal to between 25 percent and 40 percent of the first year wages, up to \$9000, depending on the number of hours the employee works, and the applicable

target group for the person. The main objective of this program is to enable targeted employees to gradually move from economic dependency into self-sufficiency as he or she earns a steady income and become contributing taxpayers, while the participating employers are compensated by reducing their federal income tax liability.

(1) WOTC is available to employers for workers hired from targeted groups. The targeted groups are:

(A) TANF recipients who have received assistance for nine months out of the last 18 months;

(B) qualified veterans. Qualified veterans are persons who received food benefits for at least three consecutive months within the last 15 months preceding the hire date;

(C) qualified ex-felons. Qualified ex-felons are persons who were convicted of a felony and within the last year were either convicted or released from prison;

(D) designated community residents. Designated community residents are persons, who are 18 years of age, but not 40 years of age, on the hiring date and whose principal place of residence is within an Empowerment Zone, Enterprise Community, or a Rural Renewal County, and for those who began work after May 25, 2007. This High-Risk Youth group was renamed "Designated Community Resident" and expanded to include residents of Rural Renewal Counties;

(E) vocational rehabilitation recipients. Vocational rehabilitation recipients are persons with a disability who received or are receiving vocational rehabilitation from a rehabilitation agency approved by the state or Department of Veterans Affairs;

(F) qualified summer youth employees. Qualified summer youth employees are persons at least 16 years of age, but not 18 years of age, on the hiring date and have a principal residence in an Empowerment Zone, Enterprise Community, or Rural Renewal County hired between May 1 and September 15;

(G) qualified food benefit recipients. Qualified food benefit recipients are persons, who are at least 18 years of age, but not 40 years of age, who are:

(i) members of a household that received food benefits for the last six-consecutive months prior to their hiring date; or

(ii) able-bodied adults without dependents no longer eligible for benefits who reside with a household currently receiving food benefits or a household that received food benefits for at least three months out of the last five consecutive months, prior to the hiring date;

(H) qualified recipients of Supplemental Security Income (SSI). Qualified recipients of SSI are persons who received SSI for any month during the 60-calendar days before the hire date;

(I) long-term TANF recipients. Long-term TANF recipients are persons certified by a designated local

agency as members of families who received TANF payments for:

(i) at least 18 consecutive months ending on the hiring date;

(ii) a total of at least 18 months, whether consecutive or not, after August 5, 1997, when hired within two years after the date the 18 month total is reached;

(J) Hurricane Katrina employees. Hurricane Katrina employees do not require certification;

(K) unemployed veterans. Unemployed veterans are persons hired after 2008, and before 2011, who:

(i) were discharged or released from active duty in the United States (U.S.) Armed Forces at any time during the five-year period ending on the hiring date; and

(ii) received unemployment compensation under federal or state law for at least four weeks during the one-year period ending on the hiring date; and

(L) disconnected youth. Disconnected youth are persons certified as:

(i) having attained 16 years of age, but not 25 years of age, on the hiring date;

(ii) not regularly attending any secondary, technical, or post-secondary school during the six month period preceding the hiring date;

(iii) not regularly employed during the six month period preceding the hiring date; and

(iv) not readily employable by reason of lacking a sufficient number of basic skills.

(2) Through an agreement with the Oklahoma Employment Security Commission, DHS issues WOTC conditional certification forms for DHS recipients.

(3) U.S. Department of Labor Form ETA-9062, Conditional Certification Work Opportunity Tax Credit, and a letter from the worker stating the number of months the participant received DHS benefits is given to the participant to present to the employer, on or before, the first day of employment. An explanation is given to the participant about the purpose of the form and how the tax credit may help the participant get a job.

(e) **Work Experience Program (WEP).** The purpose of WEP is to provide job skills and work enhancement to TANF participants enabling them to move toward self-sufficiency and obtain unsubsidized employment following completion of the placement.

(1) **Benefits.** Program benefits for participants include an opportunity to establish a work history and earn a recommendation from an employer. Participants also learn to balance the demands of home and work, gain confidence by performing in a job setting, enhance current job skills, learn marketable skills on-the-job, and determine interest and aptitude for a particular type of work by doing the job.

(2) **WEP assignments.** WEP assignments are approved for an initial period of 90-calendar days.

(A) No salary is paid.

## Emergency Adoptions

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- (B) With respect to injuries incurred during WEP working hours, federal law requires medical coverage be offered under either state workers' compensation law or by DHS. Oklahoma workers' compensation law does not cover WEP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.
- (3) **WEP referrals.** Participants are referred to WEP slots based on the employability plan. The worker coordinates assignment to a WEP position with the participant. Based on the employability plan, the worker:
- (A) determines which facility best meets the participant's needs;
  - (B) arranges an interview between the facility and the participant; and
  - (C) notifies the participant of the place, time, and interviewer's name.
- (4) **WEP facilities.** Facilities selected for WEP placements must be capable of providing employment and have an apparent intent to hire, or be able to provide quality job skills enhancement. WEP facilities are solicited by designated county staff, the CDS, or a contracted entity who agreed to assist with job development and placement, including WEP. Local job market conditions, opportunities for employment following completion of WEP participation, as well as the ability of the facility to provide the necessary supervision and skills enhancement are criteria used when soliciting a facility.
- (A) WEP slots are developed to meet participant employment needs as determined by the employability plan. When a facility agrees to participate in WEP, the facility representative is requested to provide:
- (i) a written description of the type of activities in which the participant will be involved ~~in~~;
  - (ii) the number of participants the facility can accept;
  - (iii) the hours of participation; and
  - (iv) any special requirements, such as uniforms or special equipment.
- (B) There are two types of WEP facilities, WEP Non-profit (WEP-NP) and WEP-For-Profit (WEP-FP).
- (i) WEP-NP placement is approved for public and private non-profit organizations or businesses. When a participant requires additional skills enhancement, the worker may approve a 60-calendar day extension. Extensions are not granted when the primary purpose is to provide additional help to the facility. The criteria listed in (I) through (VII) of this unit are used as a guide in determining the appropriateness of requesting an extension beyond the initial three-month period.
    - (I) The participant needs additional time to acquire skills to meet minimum hiring requirements.
    - (II) The participant demonstrates a willingness to learn, but needs additional time to develop new skills, to compete in the labor market.
    - (III) The facility agrees to hire the participant, but does not have funds available or a job opening until a specific date.
    - (IV) The facility has an opening in a different area from where the participant was working and agrees to hire the participant when additional time is granted for additional development of job skills.
    - (V) The participant showed improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting.
    - (VI) The participant missed more than two weeks due to illness or the illness of a household member.
    - (VII) There are extenuating circumstances that prevented the participant from receiving full benefit of the job skills enhancement.
  - (ii) WEP-FP is approved for businesses or entities that operate for profit. Only one WEP-FP placement is allowed per 25 full-time employees in a for-profit business or entity. The criteria in (I) through (II) of this unit must be in effect prior to a WEP-FP placement.
    - (I) The placement matches the participant's employability plan and the career path chosen by the participant.
    - (II) The employer committed to hire the participant, on or before, the completion of the three-month placement.
- (5) **WEP procedures.** Upon the county director, designated county staff, or the CDS approval, the worker contacts the WEP facility to complete Form 08TW015E, Work Experience Program - Non-profit Training Agreement, or Form 08TW115E, Work Experience Program - For-Profit Training Agreement.
- (A) The worker instructs the facility representative or supervisor on the purpose and use of Form 08TW013E, Time and Progress Report.
  - (B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.
  - (C) Approved WEP slots not utilized within a six-month period are reviewed for appropriateness. When the position is no longer feasible, designated county staff or the CDS sends a letter to the facility stating the WEP slot is no longer active and may be re-evaluated at the facility's request.
- (6) **Non-cooperation by WEP facility.** When the worker obtains information the facility is violating the terms and conditions of Forms 08TW015E and/or 08TW115E, or participants are treated unfairly, the county director is informed immediately. The nature of the allegations guides the necessary action that may include:
- (A) suspension of subsequent assignments at the facility;

- (B) immediate removal of current participants; or
  - (C) termination of the agreement.
- (7) Notification to participant and facility. Ten-calendar days prior to the anticipated WEP completion date, or at any time the participant becomes ineligible for WEP, the worker notifies the participant by letter or phone call. The worker notifies the facility by letter or phone call five-calendar days prior to the termination.
- (8) **Changes in placements and subsequent placements.** When the facility, worker, and participant determine placement in a different facility is more beneficial, the worker locates a new facility and arranges an interview for the participant. When the participant fails to secure employment following successful completion of WEP, a conference is held with the participant, worker, and supervisor to determine if a second WEP placement might be beneficial. The worker reviews the employability plan prior to allowing a participant to re-enter WEP. Consideration is given to reassignment to job search or another appropriate work activity. In making this decision, consideration must be given to the:
- (A) participant's ability to secure and maintain full-time employment;
  - (B) opportunities for employment in the new field and in the area in which the participant received job skills enhancement;
  - (C) participant's efforts to secure employment; and
  - (D) length of time between assignments.
- (f) Community Partnership (CP). CP is unpaid employment in which TANF recipients perform work for the direct benefit of the community. A CP may be approved for both public and non-profit agencies and organizations. A CP assignment is limited to projects that serve a useful community purpose and are designed to improve the employability of recipients not otherwise able to obtain employment. All CPs must be approved by AFS TANF staff. Placements in CP require daily supervision. A recipient's training, experience, and skills are considered in making an appropriate CP assignment.
- (1) **Benefits.** Participant program benefits include an opportunity to establish the basic skills necessary to obtain employment, such as daily attendance, appropriate attire, and proper behavior in a work environment. Participants also learn to balance the demands of home and work and gain confidence by performing in a job setting.
- (2) **CP facilities.** CP facilities are solicited by designated county staff or the CDS. The ability of the CP to provide the necessary supervision and basic skills training are criteria used when soliciting a partnership.
- (A) Training slots are developed to meet the participant's employment needs as determined by the employability plan.
  - (B) The worker submits Form 08TW019E, Community Partnership (CP) Approval Request, to AFS TANF staff for training facility approval.
  - (C) When a CP agrees to participate, the facility representative is requested to provide:
    - (i) a written description of the type of activities in which the participants will be involved;
    - (ii) the number of participants the CP can accept;
    - (iii) the hours of participation; and
    - (iv) any special requirements, such as uniforms or special equipment.
  - (D) No salary is paid.
  - (E) When injuries occur during working hours in CP, federal law requires medical coverage be offered under either state workers' compensation law or by DHS. Oklahoma workers' compensation law does not cover CP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.
- (3) **CP assignments.** CP assignments are approved for an initial period of no more than 60-calendar days. When a participant requires additional training, the worker may approve a 30-calendar day extension. The criteria listed in (A) through (F) of this paragraph are used as a guide when determining the appropriateness of an extension request beyond the initial 60-calendar day period, but are not limited to:
- (A) the participant needs additional time to acquire skills to meet minimum hiring requirements;
  - (B) the participant demonstrates a willingness to learn, but needs additional time to develop basic job skills necessary to compete in the labor market;
  - (C) the CP has an opening in a different area from the one in which the participant was trained;
  - (D) the participant shows improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting;
  - (E) the participant missed more than two weeks of training due to illness or the illness of a household member; or
  - (F) extenuating circumstances prevented the participant from receiving the full benefit of the training.
- (4) **CP referrals.** Participants are referred to CP slots based on their employability plan and the availability of CP positions. Assignment to a CP position is coordinated between the participant, worker, and the CP. Based on the employability plan, the participant and worker determine:
- (A) which CP best meets the participant's needs; and
  - (B) the location, date, and time to report to the CP.
- (5) **Procedures.** Upon approval by AFS TANF staff, the worker contacts the CP facility to complete Form 08TW020E, Community Partnership (CP) Agreement.
- (A) The worker instructs the facility representative or the training supervisor regarding the purpose and use of Form 08TW013E.
  - (B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.
- (6) **Non-cooperation by CP.** When the worker obtains information that the CP is violating the terms and conditions of Form 08TW020E or participants are treated unfairly, the worker informs the county director, designated county staff, or the CDS immediately. The nature

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of the allegations guides the necessary action that may include:

- (A) suspension of subsequent CP assignments;
- (B) immediate removal of the current participants;
- or
- (C) termination of the agreement.

(7) **Changes in placements and subsequent placements.** Following successful completion of CP training, the worker and participant meet to determine if a second CP placement or other work activity might be beneficial. The worker reviews the employability plan prior to allowing a participant to enter the next work activity. When making this decision, consideration is given to:

- (A) the participant's ability to secure and maintain employment;
- (B) whether the participant needs additional training or placement opportunities to enhance employment skills; or
- (C) whether the participant needs any educational opportunities to enhance employment skills.

## SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

### PART 3. INCOME

#### 340:10-3-31.1. Earned income disregard

(a) A Temporary Assistance for Needy Families (TANF) recipient may be eligible to receive an earned income disregard (EID) when conditions described in (1) through (3) of this ~~Section-subsection~~ are met. When applied, the ~~earned income disregard EID~~ excludes all earned income from consideration against the cash assistance payment for up to three consecutive months. The recipient is eligible for one ~~earned income disregard EID~~ EID period per rolling 12-month period.

(1) Applicants and individuals not included in the cash assistance unit are not eligible for an ~~earned income disregard EID~~.

(2) The combined monthly earned income of all TANF cash assistance unit members must not exceed \$2,064.

(3) Before applying the ~~earned income disregard EID~~, the worker first subtracts all applicable earned income exemptions per Oklahoma Administrative Code (OAC) 340:10-3-33 from the payment standard to determine if the individual remains eligible for TANF.

(A) Refer to Schedule IX on the Oklahoma Department of Human Services (DHS) Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards for the TANF payment standard.

(B) When the recipient remains eligible, the assistance unit is not eligible for an ~~earned income disregard EID~~ EID period.

(C) When the client is eligible for an EID period, the worker and client update and sign Form 08TW002E, TANF Work/Personal Responsibility

Agreement, to include the client's place of employment and scheduled hours.

(b) When child care is needed during the EID period, the child remains predetermined eligible with a zero family share copayment per OAC 340:40-7-1.

(c) When the client loses his or her job during the EID period, the worker removes the earned income and the EID for the next non-advance notice effective date per Appendix B-2. Deadlines for Case Actions.

(1) Unless the client begins new employment within 10-business days of losing the first job, he or she is not eligible for the remainder of the EID period.

(2) The worker and client update and sign Form 08TW002E indicating the client's agreed upon TANF work activities.

(3) When child care is open and the client begins participating in a TANF Work activity, the worker adjusts the child care plan hours to meet the needs of the new activity when increased plan hours are needed. Per OAC 340:40-5-1(3)(D), child care plan hours are not decreased until the child care renewal is due.

(4) When child care is open and the client does not begin participating in a TANF Work activity, child care is extended for 90-calendar days per OAC 340:40-7-8 and 340:40-9-2(f)(4).

(d) When the client remains employed for the entire EID period, an automated process closes the TANF benefit for the next negative action effective date per Appendix B-2.

(1) When Supplemental Nutrition Assistance Program food benefits are open, refer to OAC 340:50-11-27 and DHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, to determine continued eligibility.

(2) The client remains eligible for SoonerCare (Medicaid) per OAC 340:10-3-75.

(3) When child care subsidy benefits are open the worker determines if the participant's child care renewal is due per OAC 340:40-9-1. When the child care renewal is:

- (A) due, the worker considers the participant's earnings in determining continued eligibility and family share copayment amount per DHS Appendix C-4, Child Care Eligibility/Copayment Chart; or
- (B) not due, the participant's family share copayment does not increase until the renewal is due per OAC 340:40-5-1(9).

[OAR Docket #17-692; filed 9-6-17]

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

[OAR Docket #17-693]

RULEMAKING ACTION:  
EMERGENCY adoption

**RULES:**

- Subchapter 3. Initial Application  
340:40-3-1 [AMENDED]
- Subchapter 5. Child Care Plan  
340:40-5-1 [AMENDED]
- Subchapter 7. Eligibility  
340:40-7-10 [AMENDED]  
340:40-7-13 [AMENDED]
- Subchapter 9. Procedures Relating to Case Changes  
340:40-9-1 [AMENDED]  
340:40-9-2 [AMENDED]
- Subchapter 13. Child Care Rates and Provider Issues  
340:40-13-1 [AMENDED]  
340:40-13-2 [AMENDED]
- Subchapter 15. Overpayments  
340:40-15-1 [AMENDED]

(Reference WF 17-16)

**AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; CCDBG Act of 2014 [P.L. 113-186]; and Sections 98.10, 98.11, 98.16, 98.21, and 98.41 of Title 45 of the Code of Federal Regulations.

**ADOPTION:**

July 31, 2017

**APPROVED BY GOVERNOR:**

August 28, 2017

**EFFECTIVE:**

October 1, 2017

**EXPIRATION:**

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

Emergency rulemaking approval is requested effective October 1, 2017 to meet the federal deadline for implementation of P.L. 113-186. DHS implemented 12 month eligibility effective October 1, 2016 and was granted a waiver until 10-1-17 to implement the remaining federal requirements.

**GIST/ANALYSIS:**

The proposed revisions to Chapter 40, Subchapter 3 amend the rules to: (1) update rule and legal citations; and (2) change reporting requirements.

The proposed revisions to Chapter 40, Subchapter 5 amend the rules to: (1) remove the one star center provider exception because it is no longer valid; (2) only allow a client to choose an in-home provider who is related to the child; (3) change information to only allow child care plan hours to be reduced or the family share copayment to be increased at renewal; (4) add two income eligibility thresholds; one based on state income guidelines for applicants and one based on federal income guidelines for recipients; (5) update terminology; and (6) simplify and clarify language.

The proposed revisions to Chapter 40, Subchapter 7 amend the rules to: (1) add tag lines and rule citations; (2) add anticipated income to income considered when determining eligibility for subsidy benefits; (3) update how income from a new source is considered; (4) change income information to not increase income until the renewal month and only require households to report income changes between eligibility determinations when the income exceeds the exit income threshold and child care benefits must be closed; (5) add information to decrease income between eligibility periods when reported; (6) remove information that income must be verified within 90 calendar days when the last 30 days of income was not available at application or renewal; (7) update terminology and how income is considered and calculated at initial certification; (8) add two income eligibility thresholds; one for initial certification and one for ongoing eligibility; and (8) simplify and clarify income information.

The proposed revisions to Chapter 40, Subchapter 9 amend the rules to: (1) update rule citations; (2) add graduated phase-out of subsidized care information to include two income eligibility thresholds; one for initial certification and one for ongoing eligibility; (3) change reporting requirements between renewals to only require the client to report when household income exceeds federal income guidelines; (4) no longer allow decreases in benefits or increases in the family share copayment between renewals, (5) reorganize information; (6) update reasons for benefit closures; (7) remove reasons a new application is required; and (8) add legal citations.

The proposed revisions to Chapter 40, Subchapter 13 amend the rules to: (1) require an in-home provider to be related to the child; (2) define the term related to; (3) remove personal references from caregiver qualifications; (4) update in-home provider requirements to include current certification in first aid and infant and child cardiopulmonary resuscitation (CPR); (5) remove specific examples of recommended training for providers caring for children who receive the special needs rate; (6) add legal citations; and (7) update terminology and simplify language.

The proposed revisions to Chapter 40, Subchapter 15 amend the rules to: (1) add taglines; (2) specify client overpayment referrals are sent to Adult and Family Services (AFS) Benefit and Recovery (BIR) and provider overpayments are sent to Financial Services Electronic Payment Systems (EPS); (3) reorganize and clarify overpayment determination and claim establishment procedures and monthly account statement information; (4) clarify agency error client overpayments; (5) add rule citation; (6) remove provider error overpayments based on failure to maintain records; (7) remove repetitive information; (8) clarify provider overpayment repayment procedures; and (9) update terminology.

**CONTACT PERSON:**

Dena Thayer at 405-521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 3. INITIAL APPLICATION**

**340:40-3-1. Application process**

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits must be synchronized with the client's food benefits or Sooner-Care (Medicaid) benefits per Oklahoma Administrative Code (OAC) 340:40-9-1(~~f~~)(g). Child Welfare Services or Adult and Family Services (AFS) staff process the application.

(1) **When an application is required.** An application is required<sub>1</sub> when:

(A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;

(B) the client's subsidized child care benefits are closed for more than 30-calendar days;

(C) the payee for the subsidized child care benefits changes; or

(D) the family income was not considered because OAC 340:40-7-12(6) policy applied and one or more of the affected adopted children turns 6 years of age unless there is already a separate open income eligible case and the child can be added to that case per OAC 340:40-9-2(~~e~~)(d).

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. When an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving the person permission to act on behalf of the applicant or the applicant must have

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designated the person as his or her authorized representative on the signed application.

- (A) When the natural or adoptive parent or stepparent lives with the child, he or she is considered the applicant and eligibility is based on the parent's situation regardless of whether he or she has custody of the child.
  - (B) When both the natural and adoptive parent of the child live in the same household and the adoption is final, the adoptive parent is considered the applicant and eligibility is based on the adoptive parent's situation.
  - (C) When the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.
  - (D) When the child's parent is a minor, either the minor parent or the responsible adult the minor lives with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.
  - (E) When the natural or adoptive parent lives in the home but is too incapacitated to apply, another person living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.
- (3) **Application.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. When the applicant requests child care for a child with disabilities, the worker gives Form 08AD006E, Certification for Special Needs Rate for Licensed Child Care Homes and Centers, to the applicant.
- (4) **Request date.** The request date, known as the application date for other Adult and Family Services programs, is the date the applicant requests subsidized child care benefits verbally or in writing.
- (5) **Certification date.** The certification date is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the client chooses to use.
- (A) The provider must have a valid Oklahoma Department of Human Services (DHS) child care provider contract.
  - (B) Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.
  - (C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.
- (6) **Child care interview.** Child care interviews may be completed face-to-face or over the phone with the applicant or authorized representative.
- (7) **Explanation of eligibility factors.** At the time of the initial interview, the worker informs the applicant or authorized representative of:
- (A) his or her rights and responsibilities;

- (B) all factors of eligibility including the requirement that the chosen child care provider be contracted with DHS;

- (C) the child care plan and reason child care may be approved based on the applicant's statements at interview;

- (D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video;

- (E) the earliest date child care can be approved;

- (F) the requirement to cooperate with the DHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

- (G) the requirement to report ~~changes in his or her circumstances~~ within 10-calendar days when household income exceeds the federal exit income threshold per DHS Appendix C-4, Child Care Eligibility/Copayment Chart, Schedule II. At certification and renewal, a computer-generated notice issues to inform the client of the current, federal income threshold for his or her family size.

(8) **Timeliness.** To be considered timely, the worker must determine eligibility within two-business days of receiving all necessary verification to certify or deny the application.

- (A) When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date.

- (B) When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, Client Notice of Action Taken, explaining the reason for delay.

(9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.

(b) **Presumptive eligibility processing.** The worker may presumptively approve a maximum of 30-calendar days of child care prior to making a complete eligibility determination when a reason described in (1) of this paragraph applies.

(1) Reasons include, when the applicant:

- (A) is in danger of losing a job or cannot start a new job unless child care is immediately approved. In this circumstance it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care;

- (B) is employed but has not received pay from the job and is not guaranteed a wage because he or she is self-employed or works on a commission-only basis. Further care is not approved until the applicant provides proof he or she received earnings from the job;

- (C) requests protective or preventive child care per OAC 340:40-7-8(f); or

- (D) requests good cause for refusal to cooperate in pursuing child support with Child Support Services per OAC 340:40-7-9 and has not provided good cause

proof yet. Further care is not approved until the applicant provides good cause proof that supports the good cause claim.

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what he or she needs to provide before further care is approved.

(c) **Eligibility determination.** The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. After calculating family income, the worker uses DHS Appendix C-4, Child Care Eligibility/Copayment Chart, Schedule I.A or I.B to determine if the household meets income guidelines. Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 340:40-7-13 for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period per Section ~~658E(e)(2)(N)(i) of the Child Care and Development Block Grant Act of 2014, Public Law 113-186~~98.21 of Title 45 of the Code of Federal Regulations. The applicant is responsible for child care used before the certification date.

(A) The client swipes attendance with his or her EBT card through a point-of-service machine at the child care facility.

(B) DHS does not pay for care for any day the child attends child care when the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client or provider.

(C) When the client fails to swipe attendance, he or she is responsible for any care provided that day and may be responsible for any absent day payment DHS pays, when all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The worker denies the child care request or application when the applicant completes the application process and is determined ineligible, does not provide needed verification, or fails to cooperate in determining eligibility.

(A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date.

(B) When the worker denies the application because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary verification within 60-calendar days of the original request date.

(C) When the worker denies the application because the applicant fails to cooperate in determining eligibility, a new application is not required when the

applicant cooperates within 30-calendar days of the original request date.

## SUBCHAPTER 5. CHILD CARE PLAN

### **340:40-5-1. Child care plan**

Providing child care is part of an overall plan of service designed to help the parent or caretaker with whom the child lives achieve his or her maximum potential for self-support. Quality child care services assure the parent or caretaker each child has adequate care that affords developmental and learning experiences while the parent or caretaker is engaged in self-support activities. The child care plan consists of many components that link to form a goal-directed child care plan, and includes components (1) through (11) of this Section.

(1) **Child characteristics.** The worker gathers information about the child for whom child care is needed including his or her name, age, grade level, and whether the child has a disability.

(2) **Need for child care.** The worker determines whether the parent or caretaker meets a need factor per Oklahoma Administrative Code (OAC) 340:40-7-7 and 340:40-7-8.

(3) **Plan hours.** The worker gathers information about the days and hours the parent or caretaker meets the need factor, including travel time.

(A) When there are two parents or caretakers in the home, the worker only approves subsidized child care benefits when both parents or caretakers meet a need factor during the same hours per OAC 340:40-7-7 and 340:40-7-8.

(B) Based on the days and hours the child requires care, the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, weekly, or a blended unit type.

(C) Refer to OAC 340:40-7-7(e) for plan hours concerning a child attending an Early Head Start-Child Care ~~(EHS-CC)~~ Partnership (EHS-CCP) grant program.

(D) The worker does not decrease the child care plan hours because the client no longer meets a need factor or has a decreased need for child care between renewal periods per Section 98.21(a) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21) and OAC 340:40-9-2(b).

(4) **Alternative to subsidized child care benefits.** The worker and client explore whether there is an appropriate, feasible alternative to Oklahoma Department of Human Services (DHS) subsidized child care benefits.

(A) When the alternative is a spouse or the natural or adoptive parent of the child who lives in the home, the client must use the alternative rather than subsidized child care benefits.

(B) When the alternative is someone other than a spouse or parent of the child, the client ~~has a~~ choice may choose whether to use the alternative.

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(5) **Plan to increase income.** At each application or renewal, the client and worker explore ways the client could become more self-supporting by increasing household income. Ways to increase income may include pursuing a work promotion, searching for a higher paying job, or increasing job skills. The client must also pursue any identified potential income per OAC 340:40-7-9.

(6) **Back up plan.** The worker and client discuss and develop a back up plan for child care when the child cannot go to the usual provider because of illness, school holidays, or other unforeseen emergencies. The back up plan includes the name and address of a person the client feels he or she can rely on when the normal plan of care cannot be used.

(7) **Choice of provider.** The worker documents the choice of provider on the application or renewal form.

(A) When the client does not choose a provider at the time of request, the worker provides the client with information to help in making the choice.

(B) The client may choose a family child care home regardless of star level.

(C) The client may not choose a child care:

(i) facility that does not have a valid contract with DHS;

(ii) facility in which the client or his or her spouse, including the child's parent or stepparent, has an ownership interest;

(iii) home in which the child resides;

(iv) home in which the client also works during the hours his or her child is in care;

(v) provider who does not allow parental access during the hours the provider is caring for children;

(vi) program receiving state or federal funds, such as Head Start, Early Head Start, or public schools, and not charging all parents for the hours subsidy payment is requested. ~~EHS-CC Partnership~~ EHS-CCP grant programs are exempt from this rule; and

(vii) provider caring for a school age child during the regular school day when the student could be attending a public or private school during those hours; ~~or~~

(viii) center, when it is a one star facility, unless there are no centers with a higher star status in the community or special exception criteria are met. Special exception criteria are:

(I) the child was approved for care ~~at the one star center prior to January 1, 2003, or~~ prior to the provider's star status being reduced to one star. The child may remain at the facility unless the child stops attending there for more than 30-calendar days. The child may be approved at the same facility again when the only reason the child did not attend for more than 30-calendar days was because of a school break or circumstances beyond the control of the family, such as the illness of the child;

(II) care is requested for a child living in the same home as a child already approved for care per (7)(C)(viii)(I) of this subsection for the same one star child care provider; or

(III) the parent or guardian demonstrates there is no other child care option that meets the family's needs; ~~or~~

(ix) in-home provider who is not related to the child. Per OAC 340:40-13-2, related means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home.

(8) **Income determination.** Per OAC 340:40-7, the worker determines who is considered part of the household for income determination; ~~and what income is countable; and what income is or~~ excluded.

~~(A) After determining the amount of countable household income, the worker uses DHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine whether the household meets The household's countable income must not exceed the entry income guidelines threshold, per DHS Appendix C-4, Child Care Eligibility/Copayment Chart, Schedule I.A or Schedule I.B, state income guidelines for initial certification. When the family's countable income exceeds the eligibility standard on the appendix, the family is not approved for subsidized child care benefits.~~

(B) When the household reports increased income during the 12-month eligibility period that exceeds the entry income threshold but remains below the exit income threshold per DHS Appendix C-4, Schedule II, federal income guidelines, the household remains eligible. The family share copayment does not increase until renewal per (9)(A) of this Section.

(C) At renewal, the household's countable income must not exceed the exit income threshold to remain eligible for an additional 12 months.

(9) **Family share copayment.** The worker ~~uses~~ refers to DHS Appendix C-4 to determine the family share copayment for each family. The family share copayment is applied before DHS pays a child care subsidy. The family's copayment cost varies based on family size, income, and the number of children receiving subsidized child care benefits.

(A) The family share copayment is determined at approval and may not be increased until renewal, per 45 C.F.R. § 98.21(a)(3). When the worker anticipates changes in household income at approval, such as when the client started a new job and did not receive a full month's pay for the application month, the worker increases household income and the family share copayment for the next month in the certification action. All family share copayment changes made at certification are included in the approval notice(s).

(B) When household income decreases during the eligibility period, the worker decreases the family share copayment, when applicable, per OAC 340:40-9-2(c). Following a decrease, the copayment

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is not increased until renewal unless the income is over the federal income guidelines per DHS Appendix C-4, Schedule II.

(C) At renewal, when the family's income exceeds the state income guidelines and remains below the federal income guidelines, per OAC 340:40-9-1(f) the worker increases the family share copayment per DHS Appendix C-4.

(10) **Social services requests.** When a client requests help in meeting the social services needs listed on the application or renewal form, the worker provides all available information to aid a client in meeting these needs.

(11) **Client rights and responsibilities.** The worker ~~advises~~informs the client of his or her rights and responsibilities ~~listed in~~per (A) through (G) of this paragraph.

(A) A child care request is only approved back to the request date of ~~request~~ when the interview is conducted and verification is provided on ~~that same~~the request date.

(B) The client has the right to ask for a fair hearing when the client disagrees with an action taken on his or her case, per OAC 340:2-5.

(C) The provider may charge the client for special fees, such as enrollment or transportation fees, provided these fees are posted and also charged to ~~the general public~~families attending the facility who do not receive subsidized child care.

(D) The provider may charge the client for care provided in excess of the DHS approved child care plan when the client chooses to leave the child in care longer. When the provider requires all children in the facility to begin care by a certain time of day and the client's child care plan hours start later, the provider must not charge the client for ~~those~~the additional hours. The client swipes attendance based on the child care plan hours.

(E) The provider may charge the client for any days DHS refuses to pay for care ~~when~~because the:

- (i) ~~the~~ client did not swipe attendance for the correct days and times his or her child attended child care;
- (ii) swipes were denied and the client did not get them corrected within 10-calendar days; or
- (iii) ~~the~~ provider ~~loses~~lost the absent day payment for a child approved for a weekly unit type because the client did not swipe correct attendance for every day the child attended that month.

(F) The provider may not charge the client for days:

- (i) days and hours covered in the child care plan when all attendance was correctly swiped, even when the hours are more than customary for a full-time day; and
- (ii) days the child is not in attendance.

(G) The client is required to cooperate with the DHS Office of Inspector General in any audit or investigation of possible overpayments by the client or by the client's chosen provider.

**340:40-7-10. General provisions regarding income**

(a) **Income considered.** ~~All available~~Available and anticipated income, except that required to be disregarded by law or Oklahoma Department of Human Services (~~OKDHS~~DHS) policy per Oklahoma Administrative Code (OAC) 340:40-7-12, is ~~taken into consideration~~inconsidered when determining a client's eligibility for child care ~~services~~subsidy benefits per this Section and OAC 340:40-7-11.

(b) **Reporting requirement.** The client must report all sources of income at ~~the time of~~ application and as changes occur per (e) of this Section and OAC 340:40-9-2.

(c) **Income from a new source.** Income from a new source is only considered ~~available~~ after it has actually been received for the approval month when a full check is received on or prior to the certification date. ~~Anticipated income from a new source~~Income is never anticipated and considered until it is actually in hand and under the control of the person for the next month when a full check from the new source is expected to be received by the first of the month. When a full check is not received by the first of the next month, it is anticipated and considered for the third month before income is set for the remainder of the eligibility period.

(d) **Past income.** Past income is not used to anticipate future income for any month in which ~~an income change in income~~ has occurred or employment has been terminatedended.

(e) **Increased income between eligibility determinations.** ~~The~~Between eligibility determinations, per Section 98.21(e)(1) of Title 45 of the Code of Federal Regulations, the client ~~must~~is only required to report ~~any income~~ changes in the amount or source of income within ~~ten~~10-calendar days of the date the change occurs, when the household's gross income exceeds the federal exit income threshold for the household size per DHS Appendix C-4, Child Care Eligibility/Copayment Chart, Schedule II. ~~Income changes reported timely are considered available.~~

(1) A computer-generated notice issues at certification and renewal informing the client of the current federal exit income threshold for his or her family size and instructs the client to report when the household income exceeds this amount.

(2) When income exceeds the federal exit income threshold, the worker closes the child care benefit for the next advance-notice effective date shown on OKDHS Appendix B-2, Deadlines for Case Actions per OAC 340:40-9-2(f).

(f) **Decreased income after approval.** When income decreases after approval, the worker makes the change for the current month, when appropriate, or by the next non-advance notice effective date per Oklahoma Department of Human Services (DHS) Appendix B-2, Deadlines for Case Actions. Once income decreases, it is not increased until the renewal month per OAC 340:40-5-1(8) and (e) of this Section.

(fg) **Garnished income.** When a person's income is reduced due to garnishment, the gross amount before the garnishment is counted as income.

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(gh) **Withheld or returned payments not considered as income.** Payments not considered as income are:

- (1) monies withheld from any income source to repay a prior overpayment received from that same source;
- (2) monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source; or
- (3) child support payments received by Temporary Assistance for Needy Families (TANF) recipients ~~which that must be sent to the Oklahoma DHS Child Support Services to maintain TANF eligibility.~~

(hi) **Withheld or returned payments considered as income.** Monies withheld or returned to repay overpayments in federal, state, or local means tested assistance programs are not excluded when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

### 340:40-7-13. Computation of income

(a) **Ongoing income.** ~~Any income~~ Income from an ongoing source ~~that is~~ received regularly but in amounts that vary, or income received irregularly, is averaged over a minimum of 30-calendar days unless the client has not received fewer than at least 30-calendar days of representative income. This includes overtime pay, irregular child support, and other occasional increases or decreases in the monthly gross income. When income is received more often than once per month, the income is converted to a monthly amount.

(b) **Income verification.** ~~Income of the applicant or recipient is verified by~~ The worker verifies the household's income using the best available information.

(1) When at application or renewal the ~~applicant~~ person received at least 30-calendar days of income, the best available information is normally the person's pay stubs or an employer statement. When neither source is available, the worker uses whatever records are available that best establish the ~~amount~~ of income already received and expected for future months. ~~When the last 30 days of income is not available, actual income must be verified and recomputed within 90 calendar days.~~

(2) When the client's ongoing employment income ~~has~~ changed and the last 30-calendar days of income ~~are~~ not indicative of future earnings, the best available information may be an employer statement ~~rather than pay stubs~~. When work hours remain the same but the client received a pay raise, ~~best available information may be to average~~ the worker averages the person's work hours over the last 30-calendar days and multiply the figure multiplies the averaged hours by the new pay rate.

(3) For earned income, pay stubs are used for verification only ~~if~~ when the client's name or Social Security number, date(s) of the pay period, and amount of income before deductions are shown on the pay stub. When this information is not shown on the pay stub, or pay stubs are not available, phone contact with the employer verification or an employer statement is required.

(e4) ~~With~~ When a household member starts a new employment job, the worker verifies the beginning person's

start date, date the first full paycheck is expected to be received, hourly rate, and anticipated number of hours per week. Income from a new source is never used in calculating the family share co-payment until after income is received. See OAC 340:40-7-10 for general provisions regarding income.

(e4) **Income calculations at initial certification.** ~~To calculate income for~~ For an initial certification, the worker calculates income using procedures in (1) through (4):.

(1) When household income is ongoing, the worker uses actual income received for the approval month of application and current month, if known, except when:

(A) all income for the month has not been received and verified. ~~Instead~~ When this occurs, the worker uses any full representative paychecks to anticipate income not yet received for the certification approval month and future months; or

(B) the person is ~~paid every two weeks and received three checks~~ an additional check in the approval month of certification from ongoing employment; or

~~(C) the person is paid weekly and received five checks in the month of certification from ongoing employment; or~~ due to a third or fifth week. When this occurs, the worker averages the last 30-calendar days of

(2) anticipates income for the approval month of application and current month when the household receives an extra check in the initial month due to a third or fifth week and the income is ongoing and future months. In the month of application, the anticipated income may be less than a full month's wages.

(2) When income is ongoing and actual income is used for the approval month, the worker averages the last 30-calendar days of representative income and converts it to a monthly amount for the following month.

(3) When income is from a new source and the person did not receive any income as of the approval date, the worker does not consider income for the approval month per Oklahoma Administrative Code (OAC) 340:40-7-10.

(A) Income expected to be received in the month following the approval month is anticipated and considered when a full check is expected to be received on or before the first of the month following the approval month.

(B) When only partial earnings are expected to be received in the month following the approval month, earnings are not considered until the next month.

(4) The worker adds together all countable earned and unearned income to arrive at the household's gross income.

(e4) **Income calculation at renewal.** To calculate income ~~at review~~ renewal, the worker determines eligibility based on circumstances anticipated for future months using the best information available.

~~(f1) At~~ The worker adds together all countable earned and unearned income is added together to arrive at the household's gross income for the household.

(2) When the household reports earned income from a new source at renewal, the worker considers the earned income effective the first month a full check is expected to be received by the first of that month.

~~(ge) **Income deduction.** Once After computing gross income is computed, the only allowable deduction from gross income is for the amount of worker subtracts any verified, legally-binding child support payments paid by a household member to or for a non-household member, including child support and child care support payments made to a third party on behalf of the non-household member.~~

~~(hf) **Income eligibility guidelines.** The worker uses Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Copayment Copayment Chart, Schedule I.A or I.B, to determine whether if the household meets income guidelines for initial certifications and Schedule II to determine ongoing eligibility. Seeper Section 98.21(b) of Title 45 of the Code of Federal Regulations and OAC 340:40-5-1(8).~~

**SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES**

**340:40-9-1. Renewal of child care eligibility**

(a) **Child care renewal.** The client must complete the child care renewal at the end of the 12-month eligibility period in order to continue receiving benefits per Section 98.21(a) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21(a)). Refer to Oklahoma Administrative Code 340:40-9-2~~(g)~~(f) for reasons child care is closed prior to the renewal. At renewal, the client is sent a computer-generated notice informing the client:

- (1) the renewal is due;
- (2) the methods the client may use to complete the renewal;
- (3) types of verification that may be required; and
- (4) when benefits close if the renewal is not completed.

(b) **Renewal time frame.** A child care renewal is due no earlier than 12 months from the approval date of approval or the last renewal unless the client receives SNAPSSupplemental Nutrition Assistance Program food benefits and benefits must be synchronized per ~~(f)~~(g) of this Section.

(c) **Signature requirement.** The client or the client's authorized representative must sign the renewal.

(d) **Interview requirement.** An interview is not required at renewal for the Child Care Subsidy Program.

(e) **Eligibility determination.** An eligibility determination is made once the renewal is signed, and all required information verification is provided, and all information evaluated.

- (1) The eligibility determination results in:
  - (A) completing the renewal without changes;
  - (B) completing the renewal with changes; or
  - (C) closing the child care benefits.
- (2) Benefits, when closed, may be reopened when the client provides required information within 30-calendar days of closure.

~~(f) **Graduated phase-out of subsidized care.** When the household's income at renewal exceeds state income guidelines but remains below federal income guidelines, the household is eligible to receive 12 more months of subsidized care. The family share copayment is increased per Oklahoma Department of Human Services Appendix C-4, Child Care Eligibility/Copayment Chart.~~

~~(fg) **Synchronization of benefits.** When the client is receiving receives other Adult and Family Services benefits in addition to the subsidized child care benefits, certification and renewal dates must be coordinated with the other programs.~~

**340:40-9-2. Case changes**

(a) **Case changes**~~Change reporting.~~ The client must report changes in his or her circumstances within 10 calendar days that would result in an increase or decrease in subsidized child care benefits. The worker acts within 10 calendar days of a reported change listed in this paragraph, except for (8), when the change increases or decreases the subsidized child care benefits. Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

- (1) household income;
- (2) household composition;
- (3) names and number of household members in child care;
- (4) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed;
- (5) the client's address or phone number;
- (6) the child care facility the child is attending;
- (7) when child care is no longer being used;
- (8) when the reason for child care changes or the client no longer meets a need factor;
- (9) family size; and
- (10) when a child stops attending an Early Head Start Child Care Partnership grant program.

Between eligibility determinations, per Section 98.21(e)(1) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.21(e)(1)), the household must report within 10-calendar days of the change occurring, when the household's gross income exceeds federal exit income threshold for the household size per Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Copayment Chart, Schedule II.

(1) A computer-generated notice issues at certification and renewal informing the client of the current federal exit income threshold for his or her family size and instructs the client to report when the household income exceeds this amount.

(2) When the client fails to report an income increase timely that, if reported, would have resulted in benefit closure, the worker makes an overpayment referral to Adult and Family Services Benefit Integrity and Recovery per Oklahoma Administrative Code (OAC) 340:40-15-1.

~~(b) **Change of payee**Action taken on reported changes. When a change of payee is reported, a new application must be taken. Refer to Oklahoma Administrative Code (OAC)~~

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~~340:40-3-1 for application processes.~~The worker must act on all changes reported by the household between renewal periods. Benefits do not decrease unless the client requests a decrease to avoid or reduce an overpayment or the reported change results in closure of the child care benefit per (f) of this Section.

**(c) Changes that increase subsidized child care benefits.** When the client reports a change within 10-calendar days of the change that increases the amount of child care approved or decreases the family share copayment, the client and the worker jointly plan the effective date of the change. When the client does not report the change within 10-calendar days of the change, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

**(ed) Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two-business days of the client providing all necessary verification to determine eligibility. When eligible, the child may be approved for subsidized child care benefits beginning with the date of request. ~~Family share copayment increases due to adding an additional child to the subsidized child care benefits are effective the month after the month the client requests subsidized child care benefits for the child.~~

**(d) Changes that increase the subsidized child care benefits.** When the client reports a timely change that increases the subsidized child care benefits, the client and the worker jointly plan the effective date of the change. When the client does not report timely changes, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

**(e) Changes that decrease the subsidized child care benefits.** When possible, the worker and client plan changes that decrease the subsidized child care benefits before implementing the change. When the client reports an increase in income, the worker uses Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Copayment Chart, to determine whether the household meets income guidelines per OAC 340:40-5-1(8) and to apply or increase a family share copayment when appropriate. Unless the client consents to an earlier change date, the worker makes changes that decrease the client's subsidized child care benefits effective the next advance notice deadline date per DHS Appendix B-2, Deadlines for Case Actions.

**(f) Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports the change timely. The worker completes provider changes within two-business days of the date the client reports the change.

**(gf) Closure of the subsidized child care benefits.** When the client is no longer eligible for subsidized child care benefits, the closure date varies depending on circumstances. Refer to DHS Appendix B-2, Deadlines for Case Actions, for advance-notice deadline dates.

~~(1) When advance notice is required for reasons other than (2) through (6) of this paragraph, the~~The worker closes the subsidized child care benefits effective 10-calendar days from the date action is taken, when the:

~~(A) payee for the child care benefit changes. When this occurs, a new application is needed per OAC 340:40-3-1(a)(1)(C);~~

~~(B) only child(ren) approved for subsidized child care leaves the home;~~

~~(C) client already received income in excess of the federal exit income threshold per DHS Appendix C-4, Schedule II;~~

~~(D) client moves out of state; or~~

~~(E) client was approved for child care in error.~~

~~(2) When the closure is based on anticipated income the client will receive in the next month, the~~The worker closes the child care benefit effective the last day of the current calendar month when the client's anticipated income for the next month is expected to exceed the federal income guidelines per 45 C.F.R. § 98.21(e)(1) and DHS Appendix C-4, Schedule II.

~~(3) When at child care renewal, the worker closes the child care benefit effective the last calendar day of the renewal month when:~~

~~(A) the client does not meet a need factor or;~~

~~(B) the client is not pursuing child support or other potential income per OAC 340:40-7-9, the worker closes the child care benefit effective the last calendar day of the renewal month;~~

~~(C) the child reached the maximum age limit per OAC 340:40-7-3; or~~

~~(D) an adopted child turned 6 years of age and the family income must now be considered per OAC 340:40-7-12. In this circumstance, a new application is required per OAC 340:40-3-1(a)(1)(D).~~

(4) When the client ~~receiving~~receives Temporary Assistance for Needy Families (TANF) related subsidized child care per OAC 340:40-7-8(e) and stops meeting a need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(5) When a client stops participating in Supplemental Nutrition Assistance Program Employment and Training activities per OAC 340:40-7-8(d) and does not meet another need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

~~(6) Ten-day advance notice is not required when~~When the client gives written permission agreeing to an earlier ~~requests~~closure date. ~~The~~of the child care benefit, the earliest date the worker closes the child care benefit is the date action is taken.

(7) When the client does not complete the benefit renewal timely, the system closes the child care benefit effective the last day of the renewal month.

**(hg) Reopen action.** When a client's subsidized child care benefits close, benefits may be reopened within 30-calendar days of the closure effective date using current eligibility information unless the client must complete a new application per OAC 340:40-3-1(a)(1). Child care benefits are not decreased unless the renewal is due per 45 C.F.R. § 98.21(a). ~~A new application is required when:~~

- (1) ~~the client's subsidized child care benefits are closed for more than 30 calendar days;~~
- (2) ~~the payee changes; or~~
- (3) ~~family income was excluded per OAC 340:40-7-12(6) for an adopted child turning 6 years of age unless the child can be added to an open income eligible case established for the child's siblings in which the adoptive parent's income is considered. When an adopted child turns 6 years of age during the eligibility period, household income is exempt until the next renewal, at which time, a new application is required.~~

**SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES**

**340:40-13-1. Child care arrangements**

(a) **Out-of-home child care arrangements.** Out-of-home child care is ~~care~~ provided outside of the child's home for less than 24 hours per day. The Oklahoma Department of Human Services (~~OKDHS~~)(DHS) purchases out-of-home child care services only from licensed or permitted child care centers and family child care homes. A list of licensed, contracted out-of-home providers is available upon request.

(b) **In-home child care arrangements.** ~~OKDHS~~ purchasedDHS only approves in-home child ~~care services are obtained only from approved in-home providers related to the child. Related to means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home per Section 98.41(a)(1) of Title 45 of the Code of Federal Regulations. In home child care is considered the arrangement of choice when night time child care is needed or when care is needed for a medically fragile child.~~ A parent ~~can~~may choose an in-home provider ~~even~~ when an out-of home provider is available. In no instance is housekeeping service approved. The approval is for the child care plan and the person ~~giving~~providing care. ~~Guidelines~~Refer to Oklahoma Administrative Code 340:40-13-2 for guidelines regarding use and approval of in-home child care are found at OAC 340:40-13-2.

**340:40-13-2. Guidelines for use in approving Approving in-home child care**

(a) **Purpose.** In-home child care is defined as care given to a child by a ~~person~~relative coming into the child's own home for the ~~express purpose of caring for the child.~~ A parent ~~can~~may choose an in-home provider ~~even~~ when an out-of-home provider is available. The purpose of standards for in-home care is to help ensure the safety of children cared for in their own home when the usual, responsible adult is temporarily absent due to employment, training, illness, or other valid reason.

(b) **Qualifications of caregiver.** ~~The worker helps the family select a caregiver capable of providing adequate care and supervision of the child.~~ The caregiver:

- (1) must be related to the child. Related to means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home;
- (2) must be at least 18 years of age;
- (2) ~~demonstrates the vitality and flexibility needed to care for children as well as the ability to exercise good judgment and appropriate authority;~~
- (3) ~~must provide personal references prior to approval if, in the worker's judgment, they are considered necessary;~~
- (4) ~~cannot~~may not be a member of the child's household, ~~whether relative or non relative;~~
- (5) ~~can~~may only care for the child of one family at a time. The provider ~~can give~~may provide care to more than one family as long as the hours do not overlap and the child of each family is cared for in his or her own home; and
- (6) must not be under the effects of alcohol, illegal drugs, or medication that impairs functioning when caring for children.

(c) **Requirements prior to approval of the caregiver for subsidy payment.** ~~Upon selection of~~After a caregiver is selected, requirements in ~~paragraphs~~ (1) through (3) of this subsection must be met before the caregiver may be approved as an in-home provider.

(1) The client and caregiver must complete and sign forms described in (A) through (C) ~~of this paragraph.~~

(A) ~~Form 08CC003E, In-home Mutual Agreement and Notification to Provide Child Care Services.~~ Form 08CC003E, In-Home Mutual Agreement and Notification to Provide Child Care Services, notifies the caregiver of the eligibility and child care plan for the child requiring care and the intent of the parent or caretaker to receive care from the caregiver. Once approved, it also serves as the in-home provider's authorization to bill the Oklahoma Department of Human Services (~~OKDHS~~)(DHS) for services provided on or after approval.

(B) ~~Form 08CC004E, Mutual Agreement Regarding the Plan of Care.~~ Form 08CC004E, Mutual Agreement Regarding the Plan of Care, serves as a basis for discussion between the parent or caretaker and the in-home provider of the plan of care for the child, duties of the in-home provider, how to handle emergencies, and the family rules.

(C) ~~Form 08CC005E, In-Home Provider Health and Safety Checklist.~~ Form 08CC005E, In-Home Provider Health and Safety Checklist, serves as a basis for discussion between the parent or caretaker and the in-home provider of adequate safety precautions and possible safety hazards in the child's home. The parent or caretaker is also responsible for ~~advising~~informing the provider of known risks of a contagious condition of one or more persons in the household. The disclosure allows for training in the universal precautions against exposure.

(2) The caregiver must provide photo identification and a copy of his or her Social Security card.

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(3) The caregiver must provide proof of the results of an Oklahoma State Bureau of Investigation (OSBI) criminal history investigation as described in (A) of this paragraph and not be guilty of crimes or enter a plea of guilty or nolo contendere, no contest, to crimes described in (B) of this paragraph.

(A) Criminal history investigations:

(i) are required and must be provided by each caregiver and substitute caregiver, prior to caring for children;

(ii) are not required for persons who have documentation of a criminal history investigation within the last 12 months;

(iii) must be obtained from:

(I) the Oklahoma State Bureau of Investigation (OSBI); and

(II) the authorized agency in the previous state of residence ~~if~~when the individual has resided in Oklahoma less than one year;

(iv) must include a search of the Oklahoma Department of Corrections files maintained by the OSBI pursuant to ~~per~~ the Sex Offenders Registration Act; and

(v) must include ~~the worker completing~~ a computer check completed by the worker using the Social Security number of the potential caregiver ~~prior to approval as an in-home provider~~. When a Child Welfare Services (CWS) case number appears, the worker consults with CWS staff to determine if concerns exist about this person's the potential in-home provider's ability to care for children.

(B) ~~A caregiver whose~~When a caregiver's criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or repeated convictions that indicate a pattern of criminal activity ~~is not approved as an~~the in-home provider is not approved. Persons who are convicted of or enter a plea of guilty or nolo contendere, no contest, to certain crimes are not approved to care for children or be a substitute caregiver ~~caregivers~~. These crimes include:

(i) violence against a person;

(ii) child abuse or neglect;

(iii) possession, sale, or distribution of illegal drugs;

(iv) sexual misconduct; or

(v) gross irresponsibility or disregard for the safety of others.

(4) ~~Once~~After requirements described in paragraphs (1) through (3) of this subsection are met, the worker scans the supporting documentation into imaging and sends an email to ~~the~~ Adult and Family Services (AFS) Child Care Subsidy ~~Section to request~~requesting approval.

(A) ~~If~~When the chosen caregiver is approved as an in-home provider, the approval is valid for a maximum of one year from the date AFS Child Care Subsidy ~~Section~~ staff signs Form 08CC003E. This

form must be renewed annually. ~~Once~~When approved, AFS Child Care Subsidy ~~Section~~ staff mails the in-home provider a copy of Form 08CC003E advising the in-home provider of the assigned contract number.

(B) ~~If~~When the chosen caregiver is not approved as an in-home provider, AFS Child Care Subsidy ~~Section~~ staff sends a letter to the caregiver advising of the denial. The worker sends Form 08MP038E, Client Notice of Action Taken, to the client ~~advising~~informing him or her of the denial of benefits and need to choose another caregiver.

(5) The caregiver must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR) from a DHS-approved source.

(d) **Duties of the caregiver.** The caregiver:

(1) provides adequate care and supervision of children at all times, including frequent observations of children in cribs or playpens. The caregiver must arrange to have a competent adult provide consistent supervision during his or her absence from the home;

(2) is responsible only for ~~each child~~children specified ~~in~~on Form 08CC003E;

(3) ~~must be~~is aware of adequate safety precautions and ~~takes~~takes action to correct hazards to children's safety, both indoors and outdoors;

(4) provides opportunities for learning, indoor and outdoor play, rest periods, and meals. The caregiver ensures the use of television is age-appropriate and suitable for children;

(5) ~~must be able to give~~gives understanding, consistent, and loving guidance. Discipline is constructive and educational in nature and appropriate to the child's age and circumstances. Loud, profane, and abusive language, corporal punishment, or any technique that is either humiliating or frightening to children is not used. Discipline is not associated with rest, toilet training, or loss of food;

(6) seeks emergency medical attention in case of sudden illness or accident. The parent or guardian stipulates who is called in case of an emergency by entering this information on Form 07LC038E, Child Information. The caregiver has emergency ~~telephone~~phone numbers readily available at all times. Emergency ~~telephone~~phone numbers include ~~dialing~~—911, the fire department, police department, ambulance service, and physician or clinic;

(7) ~~is responsible for preparation~~prepares and ~~serving~~serves food. The child's family provides the food used to prepare snacks and meals. The caregiver consults with the child's parent(s) or guardian to ensure a balanced diet suitable to the age and physical development of the child is provided; and

(8) ensures the child's school attendance in accordance with the requirements of the Oklahoma State Department of Education.

(e) **In-home provider training requirements.** The in-home provider must read "The Good Health Handbook - A Guide For Those Caring For Children" within 90-calendar days of the approval date of the in-home provider shown on

Form 08CC003E. The in-home provider ~~must then sign~~ signs and ~~complete~~ completes Form 08CC008E, In-Home Child Care Provider Training Declaration of Completion, and ~~return~~ returns it to the AFS Child Care Subsidy Section staff. The signature and completion of Form 08CC008E meets the in-home provider training requirement for the first year of approval.

(1) After the first year of approval, the in-home provider must annually receive and declare six clock-hours of training ~~yearly~~. The provider can meet the training requirement by attending workshops, formal training programs, viewing videos, or through individual job-related readings. The declaration is valid for one year from the date the provider signs the document.

(2) Training hours earned by the in-home provider ~~are transferable~~ may transfer from one family to another during the year the declaration is in force.

(f) **Requirements Requirement to renew the in-home provider agreement.** Form 08CC003E ~~must be~~ is completed annually.

(g) **Requirements prior to approval for a special needs child care rate for a child with disabilities.** When an in-home child care provider cares for a child with disabilities, the provider may be approved for the special needs rate in addition to the applicable daily rate. Prior to receiving this additional rate, the:

(1) ~~the~~ client, provider, and worker must complete Form 08CC006E, In-home Child Care Certification for Special Needs, per ~~OAC~~ Oklahoma Administrative Code 340:40-7-3.1;

(2) ~~the provider must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR). Only training that is OKDHS approved, such as Red Cross, American Heart Association, or First Care, is accepted;~~

(3) ~~the~~ provider must receive on-site consultation regarding the nature of the child's disability and the development of the child care plan ~~that may include~~ including how to operate equipment needed by the child and any specialized training needs. The consultant ~~also~~ provides any available resource materials that ~~might~~ may aid the provider ~~in caring~~ for the child. This consultation may be provided by a:

- (A) health care professional;
- (B) child guidance specialist;
- (C) SoonerStart provider when the child is ~~un-~~ der younger than 3 years of age;
- (D) public school teacher, who is familiar with the child; or
- (E) consultant through the Center for Early Childhood Professional Development; and

(4) ~~the~~ provider must agree to obtain six additional hours of training in areas that address the care of children with disabilities within six months of approval. This training is documented on Form 08CC008E.

(A) First aid, CPR, or informal training ~~may~~ is not be counted to meet the special training requirement.

(B) ~~Recommended training includes:~~

- (i) ~~Special Care's Unique Environments;~~
- (ii) ~~Child Care Careers' Helping Children with Special Needs;~~
- (iii) ~~SoonerStart training;~~
- (iv) ~~Training Inclusive Child Care Equal Ter- rific Opportunities for Children (TIC-TOC) train- ing;~~
- (v) Countable formal training must be from an ~~OKDHS~~ a DHS-approved sponsor ~~on the training list; or~~
- (vi) ~~specialized workshops or conferences ad- dressing the care of children with disabilities.~~

## SUBCHAPTER 15. OVERPAYMENTS

### 340:40-15-1. Overpayments

(a) ~~Determinations~~ Overpayment claim definition. ~~Overpayments occur~~ A client or child care provider over- payment claim may occur as a result of agency, client, or provider error. ~~A client or child care provider overpayment is determined by Oklahoma Department of Human Services (OKDHS) staff when a household received more child care benefit was received~~ benefits than it is entitled to receive or a provider was paid in error per (b)(1)(B) or (3) of this Section.

(b) Overpayment referral. ~~Workers,~~ Oklahoma Depart- ment of Human Services (DHS) staff including, but not limited to, Adult and Family Services (AFS) or Child Welfare Services (CWS) staff, Office of Inspector General (OIG) auditors or investigators, ~~Quality Control reviewers, or Fi- nancial Services (FS) Electronic Payment Systems (EPS) staff from the Finance Division, or other OKDHS staff~~ may identify a possible overpayment. When DHS staff suspects an overpayment occurred, he or she sends a client overpayment referral to AFS Benefit Integrity and Recovery (BIR) and a provider overpayment referral to FS EPS for an overpayment determination and claim establishment.

(c) Overpayment determination and claim establish- ment. AFS BIR staff determines if a client overpayment occurred, when it occurred, and if it is due to an agency or client error. When the overpayment is due to a client error, AFS BIR staff establishes the overpayment as an inadvertent client error, willful misrepresentation, or fraud. FS EPS staff determine and establish provider overpayments. An overpayment claim is considered established on the date AFS BIR staff sends the overpayment notice to the household or FS EPS staff sends a letter to the child care provider.

(1) Agency error overpayment claim. An agency error overpayment claim ~~is~~ may be established against ~~either~~ the client or the child care provider depending on the circumstances. An agency error overpayment occurs when ~~DHS staff did not exercise due diligence was not exercised by OKDHS.~~

(A) When the worker AFS staff incorrectly calcu- lates the amount of care approved or the countable income, which results and/or deductions resulting in an incorrect co-payment/family share copayment or complete ineligibility, or AFS or CWS staff approves

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~~more care than the household is entitled to receive, the worker and supervisor establish.~~ AFS BIR staff establishes the agency error overpayment against the client.

(B) ~~Finance Division~~ FS EPS staff establishes agency error overpayments against the provider for child care plan of service errors when OKDHS/DHS pays an incorrect rate.

(2) **Client error overpayment claim.** ~~A client error~~ AFS BIR staff establishes an overpayment claim is established against the client when the client:

(A) provides incorrect information at the time of application or ~~review~~ renewal;

(B) fails to report ~~within ten days~~ any change that affects eligibility per Oklahoma Administrative Code (OAC) 340:40-9-2; or

(C) uses child care for days and hours the client is not eligible for child care.

(3) **Provider error overpayment claim.** ~~A provider error~~ FS EPS establishes an overpayment claim is established against the provider when the provider:

(A) submits incorrect claims;

(B) fails to timely void inaccurate attendance entered in the point-of-service (POS) machine by the client;

(C) receives payment for care the provider did not provide and is not entitled to receive. This can occur when the provider has possession of the client's electronic benefit transfer (EBT) card and swipes attendance for a day a child did not attend or facility staff requests that a parent do so;

(D) receives payment for care from ~~OKDHS/DHS~~ that was provided after the date his or her child care license ~~has been~~ was revoked or contract was cancelled; or

(E) moves a POS machine to a different location prior to obtaining written approval from the ~~FSSD~~ AFS Child Care Subsidy Section staff and payment was made for care during that period; or

(F) ~~fails to accurately maintain records as required by OKDHS for three years or until the resolution of pending legal issues whichever is later.~~

(4) **Establishing the overpayment.**

(A) ~~The establishment of a client overpayment is made by the worker's supervisor or staff in the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section.~~

(B) ~~Finance Division~~ staff establishes all provider overpayment claims.

(C) ~~At the time a claim is established, an overpayment notice and Form 08OP011E, Repayment Agreement, are automatically issued and mailed to the household.~~

(5) **Liquidated damages.** Per OAC 340:2-11-150, ~~Finance Division~~ FS EPS staff may assess liquidated damages in addition to ~~an~~ a provider overpayment when the provider:

(A) is in possession of the client's EBT card;

(B) swipes the card through the POS machine; or

(C) knows the client's personal identification number (PIN).

(bd) ~~Notice of overpayment~~ **Overpayment notice.** ~~Finance Division~~ Following claim establishment, AFS BIR staff sends the client an overpayment notice and FS EPS staff sends an overpayment notice to the provider once the overpayment has been established. FSSD Benefit Integrity and Recovery Section staff sends the client a monthly account statement that reflects all payment and account information beginning the month following the initial notice month.

(ee) **Appeal rights.** Only a client has the right to appeal all or part of any overpayment claim established against ~~his or her~~ him or her.

(df) **Repayment of an overpayment claim.** ~~OKDHS/DHS~~ requires repayment of all established overpayments.

(1) ~~AFS BIR staff sends the client Form 08OP011E, Repayment Agreement, is sent to the client with the original overpayment notice and begins sending a monthly account statement the following month that reflects all payment and account information.~~

(2) ~~Finance Division~~ FS EPS staff sends a letter to the provider that explains the ~~recoupment~~ repayment process for vendor overpayments. ~~Providers must contact the Finance Division if they have questions concerning the repayment plans for overpayments that occur after the EBT system was implemented.~~ When the provider:

(A) receives subsidy payments, a portion of his or her weekly payments are retained to repay the overpayment; or

(B) does not receive subsidy payments, he or she must set up a repayment plan with FS EPS staff.

[OAR Docket #17-693; filed 9-6-17]

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

[OAR Docket #17-694]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Procedures Relating to Case Changes

Part 1. General Provisions

340:65-5-1 [AMENDED]

(Reference WF 17-18)

### AUTHORITY:

Director of Human Services; Sections 162 and 168 of Title 56 of the Oklahoma Statutes, CCDBG Act of 2014, P.L. 113-186, and Section 98.21 of Title 45 of the Code of Federal Regulations.

### ADOPTION:

July 31, 2017

### APPROVED BY GOVERNOR:

August 28, 2017

### EFFECTIVE:

October 1, 2017

### EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

Emergency rulemaking approval is requested effective October 1, 2017, to align with Child Care Subsidy rules that must meet the federal deadline for implementation of P.L. 113-186.

**GIST/ANALYSIS:**

The proposed revisions to Chapter 65, Subchapter 5 amend the rules to: (1) add taglines and rule citations; (2) update change reporting requirements for Child Care Subsidy and Supplemental Nutrition Assistance Program (SNAP); (3) update reasons advance notice is not required for a Child Care Subsidy closure; (4) update information regarding when Child Care Subsidy and SNAP benefits may be reduced; and (5) add clarifying information.

**CONTACT PERSON:**

Dena Thayer at 405-521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES**

**PART 1. GENERAL PROVISIONS**

**340:65-5-1. Case changes**

(a) Change reporting requirement for Temporary Assistance for Needy Families (TANF), State Supplemental Payment (SSP), and SoonerCare (Medicaid). The client/Recipients of TANF, SSP, and SoonerCare (Medicaid) for the aged, blind, and disabled must report within 10-calendar days any changes in his or her circumstances that would result in an increase or decrease in increases, reduces, or closes benefits. For the Supplemental Nutrition Assistance Program (SNAP), refer to OAC 340:50-9-5 for reporting exceptions.

- (1) The worker:
  - (A) gives the client 10-calendar days to provide any required proof to verify the reported change. The worker promptly; and
  - (B) acts on changes that increase, reduce, or decrease close benefits or result in benefit closure. To be considered prompt, the change must be made within 10-calendar days of the date the change was reported and required proof was received.
- (2) Failure to report changes timely may result in a client error overpayment assessment against the client.
- (3) Examples of changes the client must report include:
  - (A) household income;
  - (B) household resources;
  - (C) household composition;
  - (D) the client's address or telephone number;
  - (E) legal alien status of non-citizens;

(6F) insurance coverage per Oklahoma Administrative Code (OAC) 317:35-5-43; and

(7G) in addition, for the Temporary Assistance for Needy Families (TANF) program:

(Ai) deprivation of parental support, per OAC 340:10-10-1 through 340:10-10-4;

(Bii) when the TANF Work activity stops or starts, per OAC 340:10-2-1 through 340:10-2-8; and

(Ciii) when a child in the assistance unit stops attending school, per OAC 340:10-13-1; and

(8) in addition for the Child Care Subsidy program the:

(A) names of household members in child care;

(B) reason child care is needed;

(C) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed; and

(D) name of the child care facility the child is attending.

(b) Change reporting for the Supplemental Nutrition Assistance Program (SNAP). SNAP has three categories of households with different change reporting responsibilities: annual reporters, semi-annual reporters, and change reporters. Refer to OAC 340:50-9-5 for change reporting requirements.

(c) Change reporting for the Child Care Subsidy Program. Child care subsidy recipients must report income changes within 10-calendar days when the household's gross income exceeds federal income guidelines for the household size per OAC 340:40-9-2(a). Refer to Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Copayment Chart, Schedule II for the federal exit income threshold.

(d) Change processing deadline. After certification, all reported changes, except those reported prior to certification, must be processed by deadline dates shown on per Oklahoma Department of Human Services (OKDHS) DHS Appendix B-2, Deadlines for Case Actions, to be effective the first day of the month following the deadline date.

(e) Notices. A computer-generated notice is sent to advise the client of any increase or decrease in when the action taken increases, reduces, suspends, or closes benefits. A computer-generated notice is not sent when the action taken does not affect the benefit level.

(21) Advance notice is required when the action taken reduces, closes, or suspends benefits for a reason other than those listed under (b)(3) per (2) of this Section subsection. When advance notice is required, refer to DHS Appendix B-2 for advance notice deadline dates shown in OKDHS Appendix B-2, Schedule I apply.

(32) When advance notice is not required, refer to DHS Appendix B-2 non-advance notice deadline dates shown in OKDHS Appendix B-2, Schedule II apply. Advance notice of action is not required when the action taken does not suspend, close, or reduce benefits, or is because of when:

(A) the death of all members included in the benefit die;

(B) the death of the TANF payee when dies and there is not a relative available to serve as a new payee;

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- (C) ~~transfer of benefits are transferred~~ from one category of assistance to another without a resulting ~~decrease~~reduction or interruption in benefits, such as changing from disability to aged benefits;
- (D) ~~approval of care is approved~~ in a skilled nursing facility or an intermediate nursing care facility ~~resulting in that requires~~ closure of the person's ~~State Supplemental Payment (SSP) benefit or the SoonerCare (Medicaid) Qualifying Individuals - group 1 (QI-1s) benefit;~~
- (E) the household moves out of state;
- (F) an automatic increase in income occurs because of federal legislation, such as a cost-of-living increase to all beneficiaries of Social Security, Supplemental Security Income, Railroad Retirement, or Veterans' benefits;
- (G) ~~admission of the client is admitted~~ to a public institution where his or her needs are fully supplied;
- (H) ~~receipt of a the client provides a signed, written statement signed by the client:~~
- (i) stating he or she no longer ~~wishes~~chooses to receive assistance; or
  - (ii) requesting closure or reduction of benefits to avoid or repay an overpayment;
- (I) the client's whereabouts ~~being~~are unknown, ~~and OKDHS~~This may occur when DHS mail directed to ~~him or her has been~~the client is returned by the post office indicating no known forwarding address, ~~for all Adult and Family Services (AFS) programs except the Supplemental Nutrition Assistance Program (SNAP) and Child Care Subsidy benefits are not closed for this reason;~~
- (J) a TANF child ~~being~~is removed from the home ~~as a result~~because of a judicial determination or ~~voluntarily placed involuntary~~ foster care placement by the legal guardian for a ~~period in excess of~~more than 30-calendar days;
- (K) a change occurs in federal or state or federal law;
- (L) a ~~reduction in~~ SSP benefits ~~necessary~~must be reduced to comply with federal law pertaining to maintenance of effort or a state mandate; or
- (M) a ~~verbal request, child care services no longer being used, a child reaching the maximum allowable age,~~the client requests a reduction in or closure of the child care benefit or a change in child care provider for the Child Care Subsidy program per OAC 340:40-9-2 and 340:40-9-3.
- (ef) **Reinstating or reopening benefits.** ~~Following the~~Within 30-calendar days of notice issuance of a notice, the client may ~~present proof to show the action is incorrect and request~~ reduced benefits be reinstated or closed benefits be reopened at the previous benefit level ~~until the last calendar day of the month of closure~~due to an incorrect action or a change in circumstances.
- (1) When ~~information shows~~benefits were reduced and the worker determines the client remains eligible at:
    - (A) the previous benefit level, the worker restores benefits to the previous benefit level for all Adult and Family Services (AFS) programs;
    - (2B) ~~When information shows the client remains eligible at an increased benefit level, benefits are increased based on specific program rules;~~ or
    - (C) a reduced level than the last action taken, the worker reduces benefits further:
      - (i) effective the next advance notice deadline date for TANF, SSP, and SoonerCare (Medicaid);
      - (ii) when the renewal is due for Child Care Subsidy and SNAP. When the renewal is not due:
        - (I) benefits are not reduced for Child Care Subsidy, per OAC 340:40-9-2(a); or
        - (II) reduced in limited circumstances for SNAP. Refer to OAC 340:50-9-5 for appropriate circumstances.
  - (32) ~~When~~For TANF, SSP, and SoonerCare (Medicaid), when benefits were closed or suspended and ~~proof provided shows~~ the client remains eligible, but at a reduced benefit level, benefits are reopened using current eligibility information.
  - (4) ~~When benefits were reduced and proof provided shows the client is eligible, but at a reduced level than the last action taken, the worker reduces benefits further using deadline dates shown in OKDHS Appendix B 2, Schedule I.~~
  - (3) When Child Care Subsidy benefits are reopened and the renewal is not due, benefits are not reduced below the benefit level at closure. Child care benefits may only be reduced at renewal, per OAC 340:40-9-2(a).
  - (4) When SNAP benefits are reopened and the benefit renewal is not due, benefits may only be reduced in limited circumstances. Refer to OAC 340:50-9-5 for appropriate circumstances.
  - (4g) **Fair hearing information.** When the client requests a fair hearing ~~at the same time he or she requests benefits be reinstated, or requests a hearing at a later date~~within 90-calendar days of the date action is taken for SNAP or 30-calendar days for all other AFS programs, the worker follows fair hearing procedures per OAC 340:2-5 ~~and explains if benefits are continued and the appeal is not decided in the client's favor, he or she is expected to repay the benefits.~~
  - (1) When the client requests a fair hearing within 10-calendar days following the notice issuance date ~~of the notice~~ and requests benefits be reinstated at the same benefit level pending the outcome of the hearing, the worker reopens benefits at the same benefit level and explains to the client if the appeal is not decided in the client's favor, he or she is expected to repay the benefits. Benefits remain open unless another change occurs before a hearing decision is made that requires benefits be reduced or closed.
  - (2) When the client ~~requests a~~ does not request the fair hearing ~~regarding the action more than~~within 10-calendar days following the issuance of the notice date of the notice,

the worker does not restore benefits unless the client provides information provided shows verifying the client remains eligible at the previous benefit level, the worker determines an incorrect action was taken, or if the hearing is decided in the client's favor.

(3) Per OAC 340:2-5, the ~~OKDHS~~ DHS Legal Services Appeals Unit makes a decision regarding the fair hearing and sends a decision letter of ~~decision~~ to the client and the county office.

(A) The worker is responsible for taking the action needed to carry out the hearing decision of ~~the OKDHS Appeals Unit.~~

(B) ~~If the OKDHS Appeals Unit denies the appeal~~ When benefits were reinstated or reopened and the hearing decision is not in the client's favor, benefits are continued through the end of the month in which the final decision on the fair hearing is reached and an overpayment referral is sent to AFS Benefit Integrity and Recovery, when appropriate.

[OAR Docket #17-694; filed 9-6-17]

**TITLE 460. DEPARTMENT OF MINES  
CHAPTER 15. UNDERGROUND COAL AND ASPHALT**

[OAR Docket #17-686]

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**  
Subchapter 1. General Standards  
460:15-1-10. Certificate of Competency [AMENDED]

**AUTHORITY:**  
Title 45 O.S. Section 1.5; Oklahoma Mining Commission

**ADOPTION:**  
June 15, 2017

**APPROVED BY GOVERNOR:**  
July 28, 2017

**EFFECTIVE:**  
Immediately upon Governor's approval

**EXPIRATION:**  
Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**FINDING OF EMERGENCY:**  
The Oklahoma Mining Commission determined there was a compelling state interest for emergency rules that were necessary for protection of the health and safety of persons employed in the mines, pursuant to 45 O.S. § 1.5 and 75 O.S. § 253. Oklahoma's underground mining companies requested that the Department of Mines (ODM) amend 460:20-15 in order to continue using their modern technology supported tracking and communications systems, under the supervision and approval of ODM, in satisfying the sight and sound underground safety requirements of Chapter 15. Emergency rules are needed for the continued implementation and monitoring of modern technology infused sight and sound systems or methods in trial to determine if satisfaction of the Chapter 15 safety requirements being met. There is a compelling state and public interest to protect underground coal and asphalt miners and any persons that are located at or near underground mine site from any accidents that might occur below or above the ground.

**GIST/ANALYSIS:**  
Apprentice coal miners, seeking Certificates of Competency, pursuant to 460:15-1-10 (k), are permitted to work underground for a limited time,

but can never be out of the sight and sound of an actual certified miner. This physical safety requirement is an antiquated method and has limited safety benefits in today's technology backed safety equipment. Mining companies requested this amendment for allowance to apply and use modern technology to bring their sight and sound methods in-line with the national norms. A brief monitored trial period was allowed for establishing and implementing the modern methods or systems and rapid response accident and rapid response plans, but now emergency rules are needed to allow updated sight and sound methods and response plans to remain while ODM determines if these new modern tracking and communication methods, such as two communication systems and rapid response plans that allow for above ground persons, for compliance with Chapter 15's underground safety requirements.

**CONTACT PERSON:**

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

**SUBCHAPTER 1. GENERAL STANDARDS**

**460:15-1-10. Certificate of Competency**

(a) No person shall act as a mine superintendent, mine foreman, fire-boss, shot-firer, hoisting engineer or miner without first having obtained a certificate of competency from the Oklahoma Mining Commission. No person shall employ such mine superintendent, mine foreman, fire-boss, hoisting engineer or miner who does not hold such certificate. Any person who violates the provisions of this subsection, upon conviction, shall be fined not more than one thousand five hundred (\$1,500.00) or be imprisoned in the county jail for a term not more than six (6) months, or both.

(b) The examination for a certificate of competency as a mine superintendent, mine foreman, fire-boss, shot-firer, or hoisting engineer shall be administered by only employees or advisors of the Department of Mines who also hold equal or higher certificates of competency. The examination shall be sufficient to determine that such applicant fully understands the requirements of coal mining laws of this state.

(c) Each applicant for mine superintendent, mine foreman, fire-boss, hoisting engineer or shot-firer shall hold a first-aid certificate issued within one (1) year prior to the date of the examination of the Department by an organization recognized by the Oklahoma Mining Commission.

(d) The Department shall hold monthly examinations for certificates of competency as underground miners. Applications for such certificates may be granted a temporary permit by the Commission until an examination is held by the Department in the region in which the applicant resides. Applicants must successfully answer a written or oral examination pertaining to such requirements and qualifications of underground miners as are determined necessary by the Commission.

(e) Certificate of competency shall be granted by the Oklahoma Mining Commission to persons who have given the Department satisfactory evidence of their ability to perform the duties and skills as are required by the Council. Previous

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experience and record of service of the applicant shall have equal weight with the examination.

(f) The minimum experience necessary for certificates of competency are as follows:

- (1) Shot-firer-1 years' practical underground experience, including working in blasting operations for at least twelve (12) months under immediate supervision of an experienced blaster.
- (2) Hoisting engineer 1 year's practical hoisting experience.
- (3) Fire-boss 2 year's practical underground experience.
- (4) Mine foreman-3 year's practical underground experience.
- (5) Superintendent-5 year's practical underground experience.
- (6) Practical miner -1 year's practical experience as a miner or the equivalent experience as defined by the Commission.

(g) A student who has completed an accredited two-year or four-year mining program shall be credited one (1) year of experience toward a fire-boss, mine foreman or superintendent certification.

(h) Certification required by 45 O.S., Section 2 shall be issued under the signature and seal of the Oklahoma Mining Commission. Such certification shall bear the date of issuance, full name and age of the recipient and shall designate the position for which the recipient is certified by the Commission. Applications for certificates of competency shall be accompanied with the following fees:

- (1) Superintendent-\$20.00
- (2) Mine Foreman-15.00
- (3) Fire-boss-10.00
- (4) Shot-fire-10.00
- (5) Hoisting engineer-10.00
- (6) Practical miner-5.00

(i) The Secretary of the Oklahoma Mining Commission shall make a record of the names and addresses of all persons to whom certificates are issued. Certificate of competency when issued as provided for in this Chapter, shall entitle the holders thereof to accept and discharge the duties for which said certificate declare them qualified. The Director shall advise the Oklahoma Mining Commission as far in advance as possible the date and place of an examination to be held by the Department and shall, as soon as examination is completed, furnish the Commission with a list of names of all persons who took the examination and persons successfully completing said examinations shall be duly notified.

(j) The Secretary of the Commission may, upon the recommendation of at least two other members of the Commission, issue a temporary permit to an applicant for a certificate for mine foreman, fire-boss, shot-firer or hoisting engineer. Said temporary permit shall be valid only until next meeting of the Commission or not to exceed thirty-one (31) days.

(k) Apprentices may be regularly employed in an underground coal mine up to fourteen (14) months to become qualified to obtain a certificate of competency as a miner. Non-certified miners or apprentice shall never be out of the

sight or sound of a certified miner, and The sight and sound provisions of this subsection may be met by the Department's determination, acknowledgement and approval that the tracking and communication system in use satisfies the sight and sound requirements needed for this Chapter, such as a two-way communication system and a plan for above ground personnel to determine the current or immediately pre-accident location of all underground personnel. Non-certified miners or apprentices shall not be used in the faced area on a production shift for thirty (30) working days. A one-on-one ratio of a certified to non-certified shall not be exceeded in the working face area on a production shift. A ratio of one certified miner to five non-certified miners shall not be exceeded near the working face, or on a non-production shift.

(l) For the purpose of certification, two hundred (200) working days shall be considered one (1) year's experience.

(m) A petitioner may take a mine foreman's examination after having worked for one (1) year as a fire-boss and a superintendent's examination after having worked as a mine foreman for one (1) year.

(n) Shot-firer certification shall be obtained by all persons utilizing explosives in underground mining. A current OSBI criminal background check must be submitted as a portion of the certification application. A shot-firer certification shall be valid for a period of two (2) years. Renewal of certification shall require a current OSBI background check be submitted prior to recertification. A certification or recertification shall not be granted to any person with a felony conviction.

[OAR Docket #17-686; filed 9-5-17]

### TITLE 460. DEPARTMENT OF MINES CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

[OAR Docket #17-687]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operations Plan  
460:20-27-6. Operation plan: blasting [AMENDED]

#### AUTHORITY:

Title 45 O.S. Section 1.5; Oklahoma Mining Commission

#### ADOPTION:

June 15, 2017

#### APPROVED BY GOVERNOR:

July 28, 2017

#### EFFECTIVE:

Immediately upon Governor's approval

#### EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproved by the Legislature

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### FINDING OF EMERGENCY:

Emergency rules are needed to comply with statutory changes to Title 45 O.S. Sections 753 and 911, enacted in SB 370, effective November 1, 2017.

SB 370 changes relate to rules and regulations for explosives; defines terms; updates references; and adds rules and procedures that relate to the use of explosives in mines. SB 370 amends Title 45, to allow modernization of blasting in surface mining, including the incorporation of electronic blasting detonation. In response, the Department of Mines (ODM), by emergency rule, is amending 460:20-27-6. Operational plan: blasting, to include subsection (d) Electronic blasting detonation, to define and explain electronic blasting to ensure the safety of mining employees and the public.

These emergency rules are needed to enact the specific changes in relation to explosives and detonation devices which ensure that ODM's rules conform to all processes and provisions established by the legislature as they pertain to mines and mining and the use of explosives therein.

**GIST/ANALYSIS:**

Emergency amendments to Chapter 20, The permanent Regulations Governing The Coal Reclamation Act of 1979 [OAC 460:20 ] are proposed to reflect statutory revisions to Title 45, Mines and Mining, enacted last session by SB 370, effective November 1, 2017. 460:20-27-6 is amended to add a subsection (d) Electronic blasting detonation.

During the last legislative session, SB 370 amended Title 45 to modernize the blasting done in surface coal mining operations. Before enactment, Title 45 did not allow for "sleeping blast holes" using electronic detonation. The amendment explains to the public and the mining operators the application of the new safer blasting methods. By defining electronic blasting and its application on a mine site, these rules and regulations ensure the safety of mine employees and the public, while ODM considers permit applications using the new safer electronic blasting method, pursuant to permit specific conditions.

**CONTACT PERSON:**

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

**SUBCHAPTER 27. SURFACE MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN**

**460:20-27-6. Operation plan: blasting**

(a) **Blasting plan.** Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of Sections 460:20-43-18 through 460:20-43-23 of this Chapter. This plan shall include at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) **Monitoring system.** Each application shall contain a description of any system to be used to monitor compliance with the standards of Section 460:20-43-22 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) **Blasting near underground mines.** Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

**(d) Electronic blasting detonation.**

**(1) Definitions. As used in this Subsection only:**

**(A) "Blasting site" means the area within fifty (50) feet, or any alternative distance provided in**

**the blasting plan of the approved permit on file, of any holes loaded with explosives, blasting agents or detonators.**

**(B) "Blasting area" means the area where flying rock may be considered dangerous, which shall be determined by the certified blaster.**

**(C) "Loaded hole" means one that contains explosives or blasting agents with a primer where the hole has been stemmed and has a short length of connecting wire sticking out but does not have a firing device connected.**

**(D) "Charged hole" means one that contains explosives or blasting agents with a primer where the hole has been tamped with a short length of connecting device sticking out and it does have a firing device connected.**

**(2) For blasting operations using electronic blasting detonators, loaded holes shall be charged as near to blasting time as practical and in compliance with the known physical limitations and properties of the specific blasting materials and equipment specified by the manufacturer. Unless authorized by the Department, loaded holes shall be detonated within sixty (60) days from the date of loading. The date the holes are loaded shall be documented to determine compliance. This information shall become part of the Blasting Report Log.**

**(3) During the loading of holes, only the work activities associated with the explosives operation will be permitted in the blasting site.**

**(4) During charging and firing, only the work activities associated with the explosives operation will be permitted in the blasting area.**

**(5) Loaded holes shall be marked and barricaded for identification and safety purposes.**

**(6) Holes with easy accessibility to the public shall not be allowed to remain loaded as outlined in paragraph (d) (2) of this Subsection.**

*[OAR Docket #17-687; filed 9-5-17]*

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

*[OAR Docket #17-695]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 17. Oklahoma Voluntary Disclosure Initiative [NEW]  
710:1-17-1 through 710:1-17-9 [NEW]

**AUTHORITY:**

68 O.S. §§ 203, 216.4; Oklahoma Tax Commission

**ADOPTION:**

August 1, 2017

**APPROVED BY GOVERNOR:**

September 14, 2017

**EFFECTIVE:**

Immediately upon Governor's approval

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## EXPIRATION:

Effective through September 14, 2018, unless superseded by another rule or disapproval by the Legislature.

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## FINDING OF EMERGENCY:

Compelling public interest was found to warrant emergency promulgation of these rules to insure that the public has timely information regarding the Voluntary Disclosure Initiative authorized by the 56th Legislature, 1st Regular Session (2017), due to commence September 1, 2017.

## GIST/ANALYSIS:

These rules set out definitions, delineate in detail the types of taxes, penalties and interest to which the Voluntary Disclosure Instructive program will apply, describes the qualifications for waiver and the manner in which a taxpayer may take advantage of this program.

## CONTACT PERSON:

Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133

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

## SUBCHAPTER 17. OKLAHOMA VOLUNTARY DISCLOSURE INITIATIVE

### 710:1-17-1. General provisions

In order to encourage the voluntary disclosure and payment of taxes owed to the State, the Legislature has authorized the Oklahoma Tax Commission to establish a three-month period during which a full waiver of penalty and interest due on eligible taxes shall be granted to any taxpayer who voluntarily files delinquent returns or reports and pays the taxes owed for any and all eligible periods.

### 710:1-17-2. Definitions

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

"Voluntary Disclosure Initiative" means a program providing for the waiver of interest and penalty associated with an eligible Oklahoma tax liability.

"Voluntary disclosure initiative period" means the period commencing at the start of the posted business day on September 1, 2017 and ending on November 30, 2017.

"Commission" means the Oklahoma Tax Commission.

### 710:1-17-3. Voluntary Disclosure Initiative

(a) **Applicability.** Any taxpayer who voluntarily files delinquent returns or reports and pays in full the taxes associated with the filing periods for which waiver is sought, or enters into and timely complies with the terms of a payment plan pursuant to the provisions of 710:1-17-9, during the voluntary disclosure initiative period shall be entitled to a waiver pursuant to the Voluntary Disclosure Initiative.

(b) **Payments.** Payments made by taxpayers under the Voluntary Disclosure Initiative may be in the form of cash, check, money order, electronic funds transfer, or may be charged to an approved credit card. [See: [www.tax.ok.gov](http://www.tax.ok.gov)]

(c) **Continued compliance.** The waiver of penalty and interest is fully effective provided taxpayer continues payment or collection and remittance of applicable taxes, as required by law, for a period of one (1) year after the tax period(s) for which taxes were paid pursuant to this initiative. If taxpayer does not continue payment or collection and remittance for a period of one (1) year after the periods for which tax was paid pursuant to this initiative, the interest and penalty will be reinstated.

(d) **Waiver of penalty and interest.** The penalties and interest otherwise imposed by law upon the principal amount shall be waived by operation of law and no further action by the Commission or by the taxpayer shall be required for the waiver of such penalty and applicable interest.

(e) **Bankruptcy.** Generally, a taxpayer who is currently in bankruptcy is not eligible for participation in the Voluntary Disclosure Initiative.

### 710:1-17-4. Eligible tax liabilities to which Voluntary Disclosure Initiative may apply

All penalties and interest imposed upon the taxes set out in this subsection are eligible for waiver pursuant to the Voluntary Disclosure Initiative: [See: 68 O.S. § 216.4, generally]

- (1) **Mixed beverage tax** levied pursuant to Section 576 of Title 37 of the Oklahoma Statutes;
- (2) **Gasoline and diesel tax** levied pursuant to Section 500.4 of Title 68 of the Oklahoma Statutes;
- (3) **Gross production and petroleum excise tax** levied pursuant to Sections 1001, 1101 and 1102 of Title 68 of the Oklahoma Statutes;
- (4) **Sales tax** levied pursuant to Section 1354 of Title 68 of the Oklahoma Statutes;
- (5) **Use tax** levied pursuant to Section 1402 of Title 68 of the Oklahoma Statutes;
- (6) **Income tax** levied pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for tax periods ending prior to January 1, 2016; and
- (7) **Withholding tax** levied pursuant to Section 2385.2 of Title 68 of the Oklahoma Statutes.

### 710:1-17-5. Eligible taxpayers

To be eligible to participate in the Voluntary Disclosure Initiative, taxpayers must:

- (1) **Not have outstanding tax liabilities other than those reported pursuant to this initiative;**
- (2) **Not have been contacted by the Commission, or third party acting on behalf of the Commission, with respect to the taxpayer's potential or actual obligation to file a return or make a payment to the state;**
- (3) **Not have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes; and**

(4) Not have, within the preceding three (3) years, entered into a voluntary disclosure agreement for the type of tax owed.

**710:1-17-6. Modified Voluntary Disclosure Agreement**

(a) Taxpayers who meet all of the qualifications specified in 710:1-17-5, except 710:1-17-5(3), may enter into a modified voluntary disclosure agreement.

(b) Taxpayers who comply with the terms of a modified voluntary disclosure agreement shall be granted a waiver of the penalty by operation of law and no further action by the Commission or by the taxpayer shall be required for the waiver of such penalty. A waiver of interest may be granted, at the discretion of the Commission.

(c) Additional taxes may be assessed for all periods in which tax has been collected but not remitted; the assessment period is not limited to the three-year or thirty-six-month period provided in 710:1-17-7.

**710:1-17-7. Verification and review**

Any tax return or report filed under the Voluntary Disclosure Initiative will remain subject to verification and review. The Commission shall limit the period for which additional taxes may be assessed to three (3) taxable years for annually filed taxes or thirty-six (36) months for taxes that do not have an annual filing frequency, except as provided in 710:1-17-6.

**710:1-17-8. Disclosure**

No return or document filed with the Commission pursuant to the Voluntary Disclosure Initiative will be subject to disclosure, except as provided by 68 O. S. § 205.

**710:1-17-9. Payment plan guidelines**

(a) The Commission shall waive the penalty and interest due on eligible taxes of any taxpayer who enters into a payment plan during the voluntary disclosure initiative period, complies timely with the terms of the payment plan, and pays in full the taxes associated with the filing periods for which waiver is sought.

(b) Individuals and businesses are eligible to enter into a payment plan if they are unable to pay the taxes in full during the voluntary disclosure initiative period and if the original base tax amount is at least \$75.00.

(c) The term of the payment plan will be for no more than six (6) payments. The first payment of ten percent (10%) will be required as the down payment and must be made with the request.

(d) Payments will be due on the 15th day of each subsequent month during the term of the payment plan.

[OAR Docket #17-695; filed 9-7-17]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 45. GROSS PRODUCTION**

[OAR Docket #17-696]

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 9. Exemptions and Exclusions  
Part 7. Incremental Production from Enhanced Recovery Projects or Properties

710:45-9-31 [AMENDED]  
710:45-9-32.1 [AMENDED]  
710:45-9-34 [AMENDED]  
710:45-9-35 [AMENDED]

Part 9. Production Enhancement Projects

710:45-9-40 [AMENDED]  
710:45-9-41 [AMENDED]  
710:45-9-43 [AMENDED]

Part 11. Reestablishment of Production from an Inactive Well

710:45-9-51 [AMENDED]  
710:45-9-53 [AMENDED]

Part 15. New Discovery Wells

710:45-9-73 [AMENDED]  
Part 17. Economically At-Risk Leases  
710:45-9-82 [AMENDED]  
710:45-9-84 [AMENDED]

Part 19. Production Using Three Dimensional Seismic Shoots

710:45-9-93 [AMENDED]  
710:45-9-94 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203 and 1001.3a; Oklahoma Tax Commission

**ADOPTION:**

August 1, 2017

**APPROVED BY GOVERNOR:**

September 14, 2017

**EFFECTIVE:**

Immediately upon Governor's approval

**EXPIRATION:**

Effective through September 14, 2018, unless superseded by another rule or disapproval by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

Amendments to Sections 1001 and 1001.3a of Title 68 were enacted into law pursuant to HB 2377. The statutory language took effect on July 1, 2017. Therefore, an emergency exists in which emergency rules need to be put in effect in order for the Oklahoma Tax Commission to implement these new provisions in the law.

**GIST/ANALYSIS:**

Subchapter 9 has been amended to implement the provisions of HB 2377 [56th Legislature, 1st Regular Session (2017)] which changed the sunset date for the qualification of various gross production tax incentive exemptions to July 1, 2017, and permanently suspended the remaining term periods for such incentives for production on or after July 1, 2017. Incentive rebates that have qualified for production periods prior to July 1, 2017, shall be claimed no later than eighteen (18) months from the first day of the fiscal year in which the refund is first available, or September 30, 2017, whichever is earlier. This subchapter was also amended by changing the sunset date for the qualification of the economically at-risk rebate ending with calendar year 2016.

**CONTACT PERSON:**

Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133.

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

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## SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

### PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

#### 710:45-9-31. Definitions

In addition to terms defined in 710:45-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

**"Base Production amount"** means the average monthly amount of production for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

**"Completion date"** means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

**"Enhanced recovery project costs"** means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

**"Existing tertiary enhanced recovery project"** means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a tertiary enhanced recovery project whose beginning date is prior to October 16, 1987.

**"Incremental production"** means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

**"Incremental working interest revenue"** means the gross value of the incremental production, less the royalty interest therein.

**"Monthly rate of production decline"** means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

**"New enhanced recovery project"** means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a secondary or tertiary enhanced recovery project whose beginning date is on or after October 16, 1987.

**"Project beginning date"** means the date on which the injection of liquids, gas, or other matter begins on an enhanced recovery operation.

**"Project payback or payout"** means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

**"Secondary recovery projects"** means secondary recovery projects approved or having an initial project beginning date on or after July 1, 2000 and before July 1, ~~2020~~2017, such

that any incremental production attributable to the working interest which results from such secondary recovery property shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, or shall not apply to production periods subsequent to June 30, 2017, whichever occurs first.

#### 710:45-9-32.1. Recovery of costs allowed as payback factors

(a) **Enhanced recovery projects with beginning date between October 17, 1987, and June 30, 1990.** For enhanced recovery projects whose beginning dates are October 17, 1987, through June 30, 1990, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses associated with the enhanced recovery project.

(b) **Enhanced recovery project with beginning date between July 1, 1990, and June 30, 1993.** For any enhanced recovery project whose beginning date was July 1, 1990, through June 30, 1993, **allowable enhanced recovery project costs** shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. No expenditure after the completion date of such wells shall be included.

(c) **Secondary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2000.** For any secondary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, **allowable enhanced recovery project costs** shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however, that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, ~~2020~~2017.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, ~~2020~~2017, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses and the capital expense of pipelines constructed to transport carbon dioxide to a tertiary recovery project, provided such payback shall not exceed a period of ten (10) years from the project beginning date or July 1, 2017, whichever is sooner.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the **"Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations"** and **"COPAS Bulletin No. 16"**, or subsequent revisions thereto.

**710:45-9-34. Summary reports; due dates; final project report**

(a) For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, ~~2020~~2017, operators of exempt projects will submit to the Oklahoma Tax Commission annual summaries of project operations, on each anniversary of the project's beginning date, showing:

- (1) Original capital investment in the enhanced recovery project;
- (2) Additional investments in the enhanced recovery project;
- (3) Enhanced recovery project operating expense for previous years, when applicable;
- (4) Enhanced recovery project operating expense for the current year, when applicable;
- (5) Schedule of project production (volume and value) by year of operation;
- (6) Royalty payments, by year; and.
- (7) Computation of revenue applied to project payback.

(b) The annual summary is to be filed with the Oklahoma Tax Commission on or before the sixtieth (60th) day following each anniversary of the project's beginning date.

(c) A final project report must be filed within sixty (60) days of achieving project payback.

**710:45-9-35. Expiration of exemption for incremental production**

For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, ~~2020~~2017, once the gross working interest revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the Gross Production Tax thereon.

**PART 9. PRODUCTION ENHANCEMENT PROJECTS**

**710:45-9-40. Scope of Part 9**

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to July 1, ~~2020~~2017, set out in 68 O.S. § 1001(G) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

**710:45-9-41. Definitions**

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

**"Base production"** means the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project or the average monthly

amount of production for the twelve-month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

**"Effective date"** means the project beginning date for the production enhancement project.

**"Exemption period"** means a period of twenty-eight (28) months from the date of first sale after completion of the production enhancement project or ending on July 1, 2017, whichever is sooner.

**"Incremental production"** means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

**"Production enhancement project"** means:

- (A) For production enhancement projects having a project beginning date prior to July 1, 1997, any workover or recompletion, as those terms are defined in this Section, or fracturing of a producing well.
- (B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2020~~2017, any workover or recompletion, as those terms are defined in this Section, any reentry of plugged and abandoned wellbores, or addition of well or field compression.

**"Recompletion"** means:

- (A) For production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well.
- (B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2020~~2017, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

**"Workover"** means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, **"workover"** includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or

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setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2020~~2017, "workover" includes, but is not limited to, acidizing; reperforating; fracture treating; sand, paraffin, or scale removal or other wellbore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil, gas, or oil and gas, wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. "Workover" shall not mean the routine maintenance, routine repair, or like-for-like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

### 710:45-9-43. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of the application approved by the Corporation Commission certifying the well as production enhanced;
- (2) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (3) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

- (1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the

claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

## PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

### 710:45-9-51. Definitions

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

"**Effective date**" means the date on which the reestablishment of production has occurred.

"**Exemption period**" means a period of twenty-eight (28) months from the date upon which production from an inactive well is reestablished or ending on July 1, 2017, whichever is sooner.

"**Inactive well**" means a well which can be defined pursuant to one of the following:

(A) A well which, after July 1, 1997, experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including, but not limited to, casing leaks, collapse of casing, or loss of equipment in a wellbore, or any similar event which causes cessation of production and results in a workover of the well, as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas, or oil and gas for a period of not less than two (2) years, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well's status.

(C) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before

July 1, ~~2020~~2017, that has not produced oil, gas, or oil and gas for a period of not less than one (1) year, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission, reflecting the well's status.

**710:45-9-53. Rebates - Refund procedure**

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of the application approved by the Corporation Commission certifying the well as an inactive well for which production has been reestablished;
- (2) A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas;
- (3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred

in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

**PART 15. NEW DISCOVERY WELLS**

**710:45-9-73. Rebates - Refund procedure**

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

- (1) A copy of the application approved by the Corporation Commission certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and July 1, 2015;
- (2) A copy of an approved OTC Form 320A that shows date of first sale of production;
- (3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and
- (4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the

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claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

### PART 17. ECONOMICALLY AT-RISK LEASES

#### 710:45-9-82. Exemption period

The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through ~~2020~~2016, with each year being claimed separately. No claims for rebates regarding the economically at risk leases shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013. No claims for rebates regarding the economically at risk leases for production periods occurring between calendar years 2014 through 2015 shall be claimed or paid more than eighteen (18) months after the date that the refund is first available. Claims for rebates regarding economically at risk leases for production periods ending on or before December 31, 2015 shall not be claimed until after July 1 of the year following the year of production. Claims for rebates regarding economically at risk leases for production ~~periods occurring in calendar years year 2016 through 2020~~ shall be claimed prior to July 1, 2017, of the year following the year of production. Any claims for refunds received on or after July 1, 2017, of each year will not be accepted by the Tax Commission.

#### 710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Commission, a refund of the gross production taxes paid in the previous calendar year for the lease shall be issued after July 1 of the subsequent year, to the well operator or a designee.

(b) **Limitation of refund.** For oil and natural gas produced from qualifying economically at risk leases in calendar years 2015 through ~~2020~~2016, the total amount of refunds to be paid, as provided for in 68 O.S. § 1001.3a, shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) for

all products combined. If the amount of claims exceeds Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund that may be claimed by any taxpayer of a qualifying lease, so that the maximum amount authorized is not exceeded.

(c) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit, signed by the operator must be submitted to the Commission authorizing the designee to receive the refund.

### PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOTS

#### 710:45-9-93. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced after July 1, 2000, and prior to July 1, 2015; that it is located within the boundaries of a three-dimensional seismic shoot and was drilled based on such technology; and indicating whether the seismic shoot was shot either prior to, or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas, or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for

the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available or September 30, 2017, whichever is sooner.

(f) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

**710:45-9-94. Applicable time periods**

The exemption from gross production tax levied on oil, gas or oil and gas production from a well qualified pursuant to this Part shall be applied as follows:

(1) **Eighteen (18) month exemption.** For a well where the seismic shoot was shot prior to July 1, 2000, the well shall be exempt from the gross production tax levied from the date of first sales for a period of eighteen (18) months.

(2) **Twenty-eight (28) month exemption.** For a well where the seismic shoot was shot on or after July 1, 2000, the well shall be exempt from the gross production tax levied from the date of first sales for a period of twenty-eight (28) months or ending on July 1, 2017, whichever is sooner.

*[OAR Docket #17-696; filed 9-7-17]*



# 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

### 1:2017-26A.

#### AMENDED EXECUTIVE ORDER 2017-26

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare the following:

1. Due to Hurricane Harvey, which has caused an emergency of national magnitude and which continues to directly affect the Gulf Coast states including Texas and Louisiana, there is hereby declared a disaster emergency in the State of Oklahoma so that state, county, and local governments can adequately respond to the mutual aid requests and needs of the Gulf Coast states.
2. Further, due to Hurricane Irma, which has caused an emergency of national magnitude and which continues to directly affect the Gulf and Atlantic Coast states, including Florida and its contiguous states, there is hereby declared a disaster emergency in the State of Oklahoma so that state, county, and local governments can adequately respond to the mutual aid requests and needs of the Gulf and Atlantic Coast states.
3. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
4. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.
5. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

This Amended Executive Order shall terminate at the end of thirty (30) days.

Copies of this Amended Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this amended 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 15<sup>th</sup> day of September, 2017.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

[OAR Docket #17-701; filed 9-15-17]

### 1:2017-28.

#### EXECUTIVE ORDER 2017-28

I, Mary Fallin, 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 8:00 a.m. to 5:00 p.m. on Monday, September 11, 2017, to honor the victims of the September 11, 2001, terrorist attack on America.

This executive order shall be forwarded to the Division of Capital Assets Management, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

# Executive Orders

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IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 8th day of September, 2017.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

*[OAR Docket #17-697; filed 9-8-17]*

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**1:2017-29.**

## EXECUTIVE ORDER 2017-29

To the Honorable Members of the Oklahoma House of Representatives and the Honorable Members of the Oklahoma State Senate:

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 of Article VI of the Oklahoma Constitution, hereby convoke the First Extraordinary Session of the Fifty Sixth Legislature to convene at the State Capitol on Monday, September, 25, 2017. I recommend the following subjects for the Legislature's consideration:

To address the immediate budget shortfall created by the loss of the \$215 million cigarette fee revenue.

To have the option to address a long term solution to the continuing budget shortfalls.

To address the need for more consolidation and other efficiencies in all areas of state government.

To clarify through legislative amendment the intended exemptions to the new 1.25% sales tax on vehicles.

To address a needed pay increase for classroom teachers in the K-12 common education system.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of the Senate, and the Director of the Office of Management and Enterprise Services.

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 15th day of September, 2017.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

*[OAR Docket #17-702; filed 9-15-17]*

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