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Secretary of State  
Office of Administrative Rules



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

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# Submissions to Governor and Legislature

Within 10 calendar days after adoption by an agency of proposed PERMANENT rules, the agency must submit the rules to the Governor and the Legislature. A "statement" of such submission must subsequently be published by the agency in the *Register*.  
For additional information on submissions to the Governor/Legislature, see 75 O.S., Section 303.1 and 308.

## **TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 11. ADMINISTRATION OF ABSTRACTORS ACT**

*[OAR Docket #18-160]*

### **RULEMAKING ACTION:**

Submission to Governor and Legislature

### **RULES:**

Subchapter 3. Abstract Licenses, Certificates of Authority and Permits

5:11-3-6. Transfer of certificate of authority [AMENDED]

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

February 26, 2018

*[OAR Docket #18-160; filed 2-27-18]*

## **TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION**

*[OAR Docket #18-155]*

### **RULEMAKING ACTION:**

Submission to Governor and Legislature

### **RULES:**

Subchapter 1. General Provisions

165:15-1-1. Purpose [AMENDED]

165:15-1-2. Definitions [AMENDED]

Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance

Part 1. General Authority

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

Part 3. Motor Fuels and Antifreeze

165:15-3-10. Sampling [AMENDED]

Part 5. Liquid Measuring Devices

165:15-3-16. Inspection for compliance [AMENDED]

Part 7. Storage Tanks and Ancillary Equipment

165:15-3-20. Water in storage tanks [AMENDED]

165:15-3-21. Containment of petroleum products [AMENDED]

165:15-3-22. Equipment installation [AMENDED]

Part 11. Accessibility and Assistance

165:15-3-34. Authority to block off [AMENDED]

165:15-3-35. Marina docks [AMENDED]

Subchapter 9. Description of Motor Fuel

165:15-9-2. Display on pump dispenser [AMENDED]

Subchapter 13. Labeling of Tanks and Product Lines

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

Subchapter 19. Violations and Contempt

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

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

165:15-19-4. Re-inspection, Enforcement and Fine Citation [AMENDED]

165:15-19-5. Payment of fine or hearing [AMENDED]

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

February 26, 2018

*[OAR Docket #18-155; filed 2-26-18]*

## **TITLE 165. CORPORATION COMMISSION CHAPTER 20. GAS & HAZARDOUS LIQUID PIPELINE SAFETY**

*[OAR Docket #18-176]*

### **RULEMAKING ACTION:**

Submission to Governor and Legislature

### **RULES:**

Subchapter 5. Safety Regulations for Gas Pipelines

Part 5. Minimum Safety Standards for Gas

165:20-5-21. Adoption of federal safety regulations [AMENDED]

Part 9. Mandatory Participation in Oklahoma One Call

165:20-5-41. Mandatory participation in Oklahoma One Call [AMENDED]

Subchapter 7. Safety Regulations for Hazardous Liquids

165:20-7-1. Adoption of federal safety and reporting regulations [AMENDED]

165:20-7-3. Mandatory participation in Oklahoma one call [AMENDED]

Subchapter 11. Drug Testing

165:20-11-1. Control of drug use in pipeline operations [AMENDED]

Subchapter 15. Regulations for Grants to Aid State Pipeline Safety Programs

165:20-15-1. Regulations for grants to aid state pipeline safety programs [AMENDED]

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

March 2, 2018

*[OAR Docket #18-176; filed 3-2-18]*

## Submissions to Governor and Legislature

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### **TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS**

*[OAR Docket #18-156]*

#### **RULEMAKING ACTION:**

Submission to Governor and Legislature

#### **RULES:**

Chapter 25. Underground Storage Tanks [AMENDED]

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

February 26, 2018

*[OAR Docket #18-156; filed 2-26-18]*

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### **TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS**

*[OAR Docket #18-157]*

#### **RULEMAKING ACTION:**

Submission to Governor and Legislature

#### **RULES:**

Chapter 26. Aboveground Storage Tanks [AMENDED]

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

February 26, 2018

*[OAR Docket #18-157; filed 2-26-18]*

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### **TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND**

*[OAR Docket #18-158]*

#### **RULEMAKING ACTION:**

Submission to Governor and Legislature

#### **RULES:**

Subchapter 1. General Provisions

165:27-1-2. Definitions [AMENDED]

Subchapter 3. Eligibility Requirements

165:27-3-1. General requirements [AMENDED]

Subchapter 5. Qualifications for Reimbursement

165:27-5-1. Qualifications for reimbursement [AMENDED]

165:27-5-2. Application for reimbursement [AMENDED]

165:27-5-3. Application for supplemental reimbursement [AMENDED]

Subchapter 7. Reimbursement

165:27-7-1. Reimbursable expenses [AMENDED]

165:27-7-2. Reimbursement [AMENDED]

165:27-7-3. Cost Recovery [NEW]

165:27-7-6. Conditions for reimbursement [AMENDED]

165:27-7-9. The Pre-Approval Program [AMENDED]

165:27-7-11. Purchase order procedures [AMENDED]

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

February 26, 2018

*[OAR Docket #18-158; filed 2-26-18]*

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### **TITLE 165. CORPORATION COMMISSION CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES**

*[OAR Docket #18-159]*

#### **RULEMAKING ACTION:**

Submission to Governor and Legislature

#### **RULES:**

Subchapter 1. General Provisions

Part 3. Definitions

165:29-1-11. Definitions [AMENDED]

Subchapter 3. Release Prevention, Detection and Correction

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165:29-3-1. Release prohibition [AMENDED]

165:29-3-2. Release reporting [AMENDED]

165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting [AMENDED]

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165:29-3-76. Tier 1A ORBCA [AMENDED]

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165:29-3-79. Tier 2 and Tier 3 ORBCA [AMENDED]

Part 7. Licensing for Environmental Consultants

165:29-3-90. Licensing for Environmental Consultants involved with closures, ~~investigation and the remediation~~ and/or corrective action of releases from underground or aboveground storage tanks [AMENDED]

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

February 26, 2018

*[OAR Docket #18-159; filed 2-26-18]*

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**TITLE 165. CORPORATION COMMISSION  
CHAPTER 30. MOTOR CARRIERS,  
PRIVATE CARRIERS AND  
TRANSPORTATION NETWORK  
COMPANIES**

*[OAR Docket #18-177]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 7. Procedural Rules
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- 165:30-12-1. Unified Carrier Registration [AMENDED]
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- Subchapter 19. Registration Pursuant to the International Registration Plan
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- 165:30-19-13. Amended mileage/adding states [REVOKED]
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- Subchapter 21. International Fuel Tax Agreement
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- Subchapter 26. Nonconsensual Wrecker and Towing Services
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- 165:30-26-14. Nonconsensual towing rate complaints and audits [AMENDED]

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

March 2, 2018

*[OAR Docket #18-177; filed 3-2-18]*

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

*[OAR Docket #18-151]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 3. Permit Provisions and Applications
- Part 1. General Provisions
- 252:515-3-5. Duration of permit [AMENDED]
- Subchapter 21. Used Tire Processing, Certification, Permits and Compensation
- Part 1. General Provisions
- 252:515-21-2. Definitions [AMENDED]
- 252:515-21-5. Special collection efforts [AMENDED]
- Part 5. Used Tire Transportation
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- 252:515-21-71. Eligibility requirements [AMENDED]
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- Part 9. Erosion Control, River Bank Stabilization and Other Conservation Projects [REVOKED]
- 252:515-21-91. Permit [REVOKED]
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- Subchapter 27. Cost Estimates and Financial Assurance
- Part 1. General Provisions
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**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE**

February 26, 2018

*[OAR Docket #18-151; filed 2-26-18]*

**TITLE 252. DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL  
COMBUSTION RESIDUALS FOM  
ELECTRIC UTILITIES**

*[OAR Docket #18-152]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 1. General Provisions
- 252:517-1-3. Definitions [AMENDED]
- Subchapter 9. Groundwater Monitoring/Corrective Action
- 252:517-9-4. Groundwater sampling and analysis requirements [AMENDED]
- Subchapter 11. Design Criteria
- 252:517-11-1. Design Criteria for new CCR landfills and any lateral expansion of a CCR landfill [AMENDED]
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Subchapter 15. Closure and Post-Closure Care

252:517-15-7. Criteria for conducting the closure or retrofit of CCR units [AMENDED]

Subchapter 17. Cost Estimates and Financial Assurance

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Subchapter 19. Record Keeping, Notification, and Posting of Information to the Internet

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

February 26, 2018

*[OAR Docket #18-152; filed 2-26-18]*

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### **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY** **CHAPTER 628. INDIRECT POTABLE REUSE FOR SURFACE WATER AUGMENTATION**

*[OAR Docket #18-153]*

#### **RULEMAKING ACTION:**

Submission to Governor and Legislature

#### **RULES:**

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252:628-1-2. Definitions [NEW]

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Subchapter 5. Treatment Standards for IPR Source Water [NEW]

252:628-5-1. IPR Source Water Treatment Plant [NEW]

252:628-5-2. Source control [NEW]

252:628-5-3. Reliability, redundancy, robustness, and resilience [NEW]

252:628-5-4. General Standards, Preliminary Treatment Standards, and Sludge Facility Standards [NEW]

252:628-5-5. Nutrient removal requirements [NEW]

252:628-5-6. Filtration requirements [NEW]

252:628-5-7. Disinfection requirements [NEW]

252:628-5-8. Constituents of Emerging Concern requirements [NEW]

Subchapter 7. Operation and Maintenance for IPR Source Water Treatment Plants [NEW]

252:628-7-1. General provisions [NEW]

252:628-7-2. Compliance required [NEW]

252:628-7-3. DEQ's right to inspect [NEW]

252:628-7-4. Security [NEW]

252:628-7-5. Operation and maintenance for IPR Source Water Treatment Plants [NEW]

252:628-7-6. Laboratory accreditation [NEW]

252:628-7-7. Validation of data [NEW]

252:628-7-8. Operator requirements [NEW]

252:628-7-9. Sampling, recordkeeping and reporting requirements [NEW]

Subchapter 9. Permitting Requirements for IPR Source Water [NEW]

252:628-9-1. General [NEW]

252:628-9-2. Permitting process [NEW]

252:628-9-3. Applications [NEW]

252:628-9-4. Feasibility study [NEW]

252:628-9-5. Pilot study [NEW]

252:628-9-6. Engineering report [NEW]

252:628-9-7. Plans and specifications [NEW]

252:628-9-8. Revisions [NEW]

252:628-9-9. Variances from construction standards [NEW]

252:628-9-10. Operation and maintenance [NEW]

Subchapter 11. IPR Receiving Waterbody Monitoring [NEW]

252:628-11-1. General provisions [NEW]

252:628-11-2. Sampling plans [NEW]

252:628-11-3. Data requirements [NEW]

252:628-11-4. SWS-R requirements [NEW]

252:628-11-5. Action levels [NEW]

252:628-11-6. Trend monitoring [NEW]

252:628-11-7. Developing parameter monitoring lists [NEW]

Appendix A. IPR Source Water Benchmarks [NEW]

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

February 26, 2018

*[OAR Docket #18-153; filed 2-26-18]*

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 40. VETERINARIAN PRACTICES AND RESTRICTIONS**

[OAR Docket #18-163]

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- 325:40-1-1. Purpose [AMENDED]
- 325:40-1-2. Definitions [AMENDED]
- 325:40-1-3. Veterinary practices - Treatment restricted [AMENDED]
- 325:40-1-4. Veterinarians under supervision of Official Veterinarian [AMENDED]
- 325:40-1-5. Veterinarian reports [AMENDED]
- 325:40-1-6. Bandages [AMENDED]
- 325:40-1-7. Posterior digital neurectomy [AMENDED]
- 325:40-1-8. Postmortem examination [AMENDED]
- 325:40-1-9. Labeling of veterinary prescription medications ~~medication~~ [AMENDED]
- 325:40-1-10. Veterinary Sterile equipment ~~required~~ [AMENDED]

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

February 23, 2018

[OAR Docket #18-163; filed 2-28-18]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 45. MEDICATION AND PROHIBITED PRACTICES AND EQUINE TESTING PROCEDURES**

[OAR Docket #18-164]

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- 325:45-1-1. Purpose [AMENDED]
- 325:45-1-2. Definitions [AMENDED]
- 325:45-1-3. Intent of medication rules [REVOKED]
- 325:45-1-4. ~~Drugs or Medication~~ Substance violations [AMENDED]
- 325:45-1-5. ~~Power to Have Tested~~ Collection and testing of biological samples [AMENDED]
- 325:45-1-6. ~~Authorized Medication~~ Use of permitted substances [AMENDED]
  - 325:45-1-6.1. Listed thresholds for Thoroughbreds [NEW]
  - 325:45-1-6.2. Listed thresholds for Quarter Horses, Paints, and Appaloosas [NEW]
- 325:45-1-7. Authority to test sample [REVOKED]

- 325:45-1-9. Furosemide (~~Salix~~) ~~use without detention barn~~ use [AMENDED]
- 325:45-1-9.1. Phenylbutazone use [NEW]
- 325:45-1-11. Trainer responsibility ~~Furosemide (Salix)~~ [AMENDED]
- 325:45-1-12. ~~Bleeder and Furosemide (Salix) User List~~ lists [AMENDED]
- 325:45-1-13. Racing after bleeding [AMENDED]
- 325:45-1-14. Racing soundness examination [AMENDED]
- 325:45-1-15. Equine drug testing laboratory reports [REVOKED]
- 325:45-1-16. Pre-race testing [AMENDED]
- 325:45-1-17. Requirements for official testing [AMENDED]
- 325:45-1-18. ~~Taking~~ Collection of post-race samples [AMENDED]
- 325:45-1-19. ~~Laboratories approved and designated by the commission~~ Official testing [AMENDED]
- 325:45-1-20. Split samples ~~tests~~ [AMENDED]
- 325:45-1-21. Facilitating the ~~taking~~ collection of post-race urine samples [AMENDED]
- 325:45-1-22. Phenylbutazone use [REVOKED]
- 325:45-1-23. Trainer responsibility - Phenylbutazone [REVOKED]
- 325:45-1-24. ~~Drug Substance classification~~ classification and penalties [AMENDED]
- 325:45-1-26. Primary laboratory's request for additional test time [AMENDED]
- 325:45-1-27. Prohibited practices and certain penalties [AMENDED]
- 325:45-1-29. Environmental contaminants and substances of human use [AMENDED]

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

February 23, 2018

[OAR Docket #18-164; filed 2-28-18]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 65. PARI-MUTUEL WAGERING**

[OAR Docket #18-165]

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 9. Calculation of Payoffs and Distribution of Pools
- 325:65-9-6. Win Three pools [AMENDED]
- 325:65-9-7. Pick (n) Pools [AMENDED]
- 325:65-9-8. Place Pick (n) pools [AMENDED]

## Submissions to Governor and Legislature

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

February 23, 2018

*[OAR Docket #18-165; filed 2-28-18]*

### TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 75. OKLAHOMA-BRED PROGRAM

*[OAR Docket #18-166]*

#### RULEMAKING ACTION:

Submission to Governor and Legislature

#### RULES:

325:75-1-3. Definition of Accredited Oklahoma-Bred Thoroughbred [AMENDED]

325:75-1-12.1. Application requirements, categories and fees for Thoroughbreds, ~~beginning with an effective date of January 1, 2010~~ [AMENDED]

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

February 23, 2018

*[OAR Docket #18-166; filed 2-28-18]*

### TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS CHAPTER 20. CODE OF PROFESSIONAL CONDUCT

*[OAR Docket #18-161]*

#### RULEMAKING ACTION:

Submission to Governor and Legislature

#### RULES:

675:20-1-4. [AMENDED]

675:20-1-6. [AMENDED]

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

February 26<sup>th</sup>, 2018

*[OAR Docket #18-161; filed 2-27-18]*

### TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS CHAPTER 25. POST-MILITARY SERVICE OCCUPATION, EDUCATION AND CREDENTIALING RULES

*[OAR Docket #18-161A]*

#### RULEMAKING ACTION:

Submission to Governor and Legislature

#### RULES:

675:25-1-4. [NEW]

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

February 26<sup>th</sup>, 2018

*[OAR Docket #18-161A; filed 2-27-18]*

### TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

*[OAR Docket #18-167]*

#### RULEMAKING ACTION:

Submission to Governor and Legislature

#### RULES:

Subchapter 1. General Provisions

785:5-1-1. Purpose [AMENDED]

785:5-1-2. Definitions [AMENDED]

785:5-1-3. Board to charge and collect fees [AMENDED]

785:5-1-6. Stream water permit application and administration fees [AMENDED]

785:5-1-7. Watercourse reclamation permit fee [REVOKED]

785:5-1-10. Groundwater application and administration fees [AMENDED]

785:5-1-14. Stream Water and Groundwater petition fees [AMENDED]

785:5-1-15. Fees for reproduction, maps and publications [AMENDED]

785:5-1-16. Fees required in other matters [AMENDED]

785:5-1-17. Loan application fees [AMENDED]

785:5-1-19. Request for Water Quality Standards site specific criteria fee [NEW]

785:5-1-20. Aquifer storage and recovery permit fees [NEW]

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

February 27, 2018

*[OAR Docket #18-167; filed 2-28-18]*

### TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 32. AQUIFER STORAGE AND RECOVERY

*[OAR Docket #18-168]*

#### RULEMAKING ACTION:

Submission to Governor and Legislature

#### RULES:

Subchapter 1. General Provisions [NEW]

785:32-1-1. Purpose [NEW]

- 785:32-1-2. Definitions [NEW]
- Subchapter 3. Permit Application Requirements and Processing [NEW]
- 785:32-3-1. Requirement for permit [NEW]
- 785:32-3-2. Site-specific aquifer storage and recovery plan [NEW]
- 785:32-3-3. Well spacing [NEW]
- 785:32-3-4. Fees [NEW]
- 785:32-3-5. Acceptance of application for filing; when applications deemed withdrawn [NEW]
- 785:32-3-6. Notice of application [NEW]
- 785:32-3-7. Approval of application [NEW]
- Subchapter 5. Aquifer Storage and Recovery Permits [NEW]
- 785:32-5-1. Contents of permits [NEW]
- 785:32-5-2. Annual reports [NEW]
- 785:32-5-3. Cancellation or suspension of permits [NEW]

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

February 27, 2018

*[OAR Docket #18-168; filed 2-28-18]*

**TITLE 785. OKLAHOMA WATER  
RESOURCES BOARD  
CHAPTER 45. OKLAHOMA'S WATER  
QUALITY STANDARDS**

*[OAR Docket #18-169]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 5. Surface Water Quality Standards
- Part 5. Special Provisions
- 785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [AMENDED]
- Subchapter 7. Groundwater Quality Standards
- 785:45-7-1. Scope and Applicability; Purpose [AMENDED]
- Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [REVOKED]
- Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]

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

February 27, 2018

*[OAR Docket #18-169; filed 2-28-18]*

**TITLE 785. OKLAHOMA WATER  
RESOURCES BOARD  
CHAPTER 46. IMPLEMENTATION  
OF OKLAHOMA'S WATER QUALITY  
STANDARDS**

*[OAR Docket #18-170]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 13. Implementation of Antidegradation Policy
- 785:46-13-1. Applicability and scope [AMENDED]
- 785:46-13-4. Tier 2 protection; maintenance and protection of ~~High Quality Waters, Sensitive Water Supplies, and Sensitive Water Supply-Reuse~~ and other Tier 2 waterbodies [AMENDED]
- 785:46-13-5. ~~Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters~~ Tier 2.5 protection; maintenance and protection of high quality waters, sensitive water supplies, and other tier 2.5 waterbodies [AMENDED]
- 785:46-13-6. ~~Protection for Appendix B areas~~ Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters [AMENDED]
- 785:46-13-7. Protection for Appendix B areas [NEW]
- 785:46-13-8. Antidegradation review in in surface waters [NEW]

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

February 27, 2018

*[OAR Docket #18-170; filed 2-28-18]*

**TITLE 785. OKLAHOMA WATER  
RESOURCES BOARD  
CHAPTER 50. FINANCIAL ASSISTANCE**

*[OAR Docket #18-171]*

**RULEMAKING ACTION:**

Submission to Governor and Legislature

**RULES:**

- Subchapter 1. General Provisions
- 785:50-1-2. Definitions [AMENDED]
- Subchapter 5. Applications for Financial Assistance
- 785:50-5-1. Application form and required information [AMENDED]
- 785:50-5-2. Application verification and approval [AMENDED]
- Subchapter 6. Water and Sewer Program Emergency Grants Requirements and Procedures [NEW]
- 785:50-6-1. Approval criteria [NEW]
- 785:50-6-2. Evaluation procedure for grant application [NEW]
- 785:50-6-3. Emergency grant priority point system [NEW]

## Submissions to Governor and Legislature

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785:50-6-4. Disbursement of grant funds [NEW]  
Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants State Loan Program Revenue Bond) Requirements and Procedures  
785:50-7-1. General procedures [AMENDED]  
785:50-7-2. Approval criteria [AMENDED]  
785:50-7-3. Evaluation procedures for grant applications [REVOKED]  
785:50-7-5. Emergency grant priority point system [REVOKED]  
785:50-7-7. Disbursement of funds [AMENDED]  
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures  
785:50-8-3. Application review and disposition [AMENDED]  
Subchapter 9. Clean Water State Revolving Fund Regulations  
Part 1. General Provisions  
785:50-9-9. Definitions [AMENDED]  
Part 3. General Program Requirements  
785:50-9-21. Eligible project [AMENDED]  
785:50-9-24. Intended use plan [AMENDED]  
785:50-9-28. Pre-Application for funding [AMENDED]  
785:50-9-29. Pre-Planning conference [REVOKED]  
785:50-9-30. Planning documents [AMENDED]  
785:50-9-31. Pre-Application conference [REVOKED]  
785:50-9-33. Application for financial assistance [AMENDED]  
785:50-9-35. Loan closing [AMENDED]  
785:50-9-36. Refinancing construction loans [AMENDED]  
785:50-9-37. Minimum assistance agreement conditions [REVOKED]  
785:50-9-38. Construction phase [AMENDED]

785:50-9-39. Project changes [AMENDED]  
785:50-9-40. Building phase submittal [REVOKED]  
785:50-9-41. Progress payments [REVOKED]  
785:50-9-42. Retainage [AMENDED]  
785:50-9-43. Post Building phase responsibilities of the recipient [AMENDED]  
785:50-9-44. Accounting [AMENDED]  
785:50-9-45. Compliance with federal authorities [AMENDED]  
Part 7. SRF Environmental Review Process  
785:50-9-60. Requirement of environmental review [AMENDED]  
785:50-9-61. Environmental information documents required by the Board [AMENDED]  
785:50-9-62. Environmental impact statement review by the Board [AMENDED]  
Subchapter 10. Drinking Water Treatment Revolving Loan Program Regulations  
785:50-10-3. Terms and conditions [AMENDED]  
Subchapter 11. Miscellaneous Provisions  
785:50-11-4. Application fees [AMENDED]  
785:50-11-5. Project completion, inspection and audit [AMENDED]  
785:50-11-7. Approval and notification regarding certain proposed action of an eligible entity [REVOKED]  
785: 50-11-10. Insurance requirements for loan recipients [AMENDED]

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

February 27, 2018

*[OAR Docket #18-171; filed 2-28-18]*

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# Withdrawn Rules

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

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

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

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**TITLE 252. DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
CHAPTER 653. AQUIFER STORAGE AND  
RECOVERY**

*[OAR Docket #18-154]*

**RULEMAKING ACTION:**

Withdrawal of PERMANENT rulemaking

**WITHDRAWN RULES:**

252:653-1-12. Fees [NEW]

**DATES:**

**Adoption:**

November 7, 2017

**Submission of adopted rules to Governor and Legislature:**

November 17, 2018

**Withdrawn:**

February 26, 2018

*[OAR Docket #18-154; filed 2-26-18]*

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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 2. GRIEVANCE PROCEDURES AND PROCESS

[OAR Docket #18-174]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

317:2-1-16 [AMENDED]

(Reference APA WF # 17-33A)

### 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; Section 30-101 of Title 11 of Oklahoma Statutes; Section 790.1 of Title 19 of Oklahoma Statutes; Section 176 of Title 60 of Oklahoma Statutes; Sections 1-1902 and 1-1905 of Title 63 of Oklahoma Statutes

### ADOPTION:

February 8, 2018

### EFFECTIVE:

Immediately upon Governor's approval

### APPROVED BY GOVERNOR:

February 27, 2018

### EXPIRATION:

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

Per Oklahoma Statute §75-253 (Emergency rules), emergency approval of these eligibility rule revisions are needed to comply with federal guidance from the Centers for Medicare and Medicaid Services (CMS). The rule revisions would remove language that allows a non-state government-owned entity (a nursing facility that is eligible for the Upper Payment Limit supplemental payments) to appeal program eligibility determinations to OHCA. Going forward, CMS will be making program eligibility determinations. If an emergency approval is not granted, it could allow these facilities to appeal program eligibility determinations based on our old rules, resulting in confusion. This emergency approval is also needed as a cohesive change to accompany the emergency approval of Oklahoma Administrative Code 317:30-5-136, which updates the care criteria and eligibility requirements that a nursing facility will be required to meet to receive the upper payment limit (UPL) reimbursement and participate in the UPL program.

### GIST/ANALYSIS:

These emergency revisions are necessary in order to revise the grievance procedures and appeals processes for the supplemental payment program for nursing facilities owned and/or operated by non-state government-owned (NSGO) entities. The proposed revisions will remove the program eligibility

determination as an appealable issue and add the requirement that the NSGO must have an attorney file their LD-2 form. Finally, revisions will update acronyms, definitions, and references to other legal authorities; and correct grammatical errors.

### CONTACT PERSON:

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

**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):**

### 317:2-1-16. Nursing Facility Supplemental Payment Program appeals

In accordance with ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-136, ~~OHCA~~the Oklahoma Health Care Authority (OHCA) is authorized to promulgate rules for appeals of the Nursing Facility Supplemental Payment Program (NF-SPP). The rules in this ~~Section~~section describe those appeal rights.

(1) The following are appealable issues of the program: ~~program eligibility determination~~, the assessed amount for each component of the ~~Intergovernmental transfer~~intergovernmental transfer (IGT), the Upper Payment Limit (UPL) payment, the ~~Upper Payment Limit~~UPL Gap payment, and penalties for the ~~providers~~non-state government-owned entity (NSGO). This is the final and only process for appeals regarding NFSPP. Suspensions or terminations from the program are not appealable in the administrative process.

(2) Appeals are heard by the OHCA Administrative Law Judge (ALJ).

(3) To file an appeal, the ~~provider~~(Appellant NSGO (appellant is the provider NSGO who files an appeal)) shall file an LD-2 form within twenty (20) days from the date of the OHCA letter which advises the ~~provider~~NSGO of the ~~program eligibility determination~~, component of ~~intergovernmental transfer (IGT)~~IGT, UPL payment, UPL ~~GAP~~Gap payment and/or a penalty. An IGT that is not received by the date specified by OHCA, or that is not in the total amount indicated on the NPR shall notice of

## Emergency Adoptions

program reimbursement (NPR) shall be subject to penalty and suspension from the program. Any applicable penalties ~~must~~shall also be deducted from the UPL payment regardless of any appeal action requested by the facility. Any change in the payment amount resulting from an appeals decision in which a recoupment or additional allocation is necessary will be adjusted in the future from any ~~Medicaid~~SoonerCare payments.

(4) The LD-2 shall only be filed by the NSGO or the NSGO's attorney in accordance with (5) below.

(45) Consistent with Oklahoma rules of practice, the non-state ~~government-owned~~government-owned (NSGO) entity ~~must~~shall be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma ~~must~~shall comply with ~~5 O.S. Art II, Sec. 5~~Article II, Section (§) 5 of Title 5 of the Oklahoma Statutes (O.S.), and rules of the Oklahoma Bar Association.

(56) The hearing will be conducted in an informal manner, without formal rules of evidence or procedure. However, parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.

(67) The ~~provider~~appellant has the burden of proof by the preponderance of the evidence standard as defined by the Oklahoma Supreme Court.

(78) The docket clerk will send the ~~Appellant~~appellant and any other necessary party a notice which states the hearing location, date, and time.

(89) The ALJ may:

(A) Identify and rule on issues being appealed which will be determined at the administrative hearing;

(B) Require the parties to state their positions concerning appeal issue(s);

(C) Require the parties to produce for examination those relevant witnesses and documents under their control;

(D) Rule on whether witnesses have knowledge of the facts at issue;

(E) Establish time limits for the submission of motions or memoranda;

(F) Rule on relevant motions, requests, and other procedural items; limiting all decisions to procedure matters and issues directly related to the contested determination resulting from ~~OAC~~Oklahoma Administrative Code 317:30-5-136;

(G) Rule on whether discovery requests are relevant;

(H) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, or used as a means of harassment, unduly burdensome, or not timely filed;

(I) Schedule pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end the appeal;

(J) Impose appropriate sanctions against any party failing to obey an order of the ALJ;

(K) Rule on any requests for extension of time;

(L) Dismiss an issue or appeal if:

(i) it is not timely filed or is not within the OHCA's jurisdiction or authority;

(ii) it is moot or there is insufficient evidence to support the allegations;

(iii) the appellant fails or refuses to appear for a scheduled meeting, conference or hearing; or

(iv) the appellant refuses to accept a settlement offer which affords the relief the party could reasonably expect if the party prevailed in the appeal;

(M) Set and/or limit the time frame for the hearing.

(910) After the hearing:

(A) The ALJ should attempt to make the final hearing decision within ninety (90) days from the date of the hearing and send a copy of the ALJ's decision to both parties outlining their rights to appeal the decision. Any appeal of the final order pursuant to 12 O.S. § 951 ~~must~~shall be filed with the District Court of Oklahoma County within 30 days.

(B) It shall be the duty of the ~~Appellant~~appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within thirty (30) days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the ~~Appellant~~appellant.

~~(1011)~~ All orders and settlements are non-precedential decisions.

~~(1112)~~ The hearing shall be digitally recorded and closed to the public.

~~(1213)~~ The case file and any audio recordings shall remain confidential.

[OAR Docket #18-174; filed 3-2-18]

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

[OAR Docket #18-173]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 5. Individual Providers and Specialties

Part 6. Inpatient Psychiatric Hospitals

317:30-5-95 [AMENDED]

317:30-5-95.39 [AMENDED]

(Reference APA WF # 17-19)

#### 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; 10 O.S. §§ 401 to 402; 63 O.S. § 1-702(A); 42 Code of Federal Regulation, Sec. 435.1010; 42 C.F.R. 441 Subpart C and D; 42 C.F.R. Part 456, Subpart C; 42 C.F.R. § 482.13; 42 C.F.R. Part 483, Subpart G; 42 United States Code, Sec. 1395x(f)

**ADOPTION:**

February 8, 2018

**APPROVED BY GOVERNOR:**

February 27, 2018

**EFFECTIVE:**

Immediately upon Governor's approval

**EXPIRATION:**

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

Per Oklahoma Statute §75-253 (Emergency rules), emergency approval of these eligibility rule revisions are needed in order to protect the public health, safety or welfare and in order to avoid violation of federal law or regulation or other state law. Without the emergency rule revisions, the health and safety of individuals under the age of twenty-one who are receiving inpatient psychiatric care could be at risk.

Amendments are necessary to make SoonerCare rules consistent with federal requirements for restraint or seclusion. Psychiatric Residential Treatment Facilities (PRTF), a type of inpatient facility that exclusively serves minors and young adults, must comply with the condition of participation for restraint or seclusion, as is established by 42 C.F.R. §§ 483.350 through 483.376. Additionally, all general and psychiatric hospitals must comply with the federally-established standards for restraint or seclusion, in accordance with 42 C.F.R. § 482.13(e) - (g). The agency requests emergency approval of the aforementioned rule revisions in order to comply with federal law.

**GIST/ANALYSIS:**

These emergency revisions are necessary in order to revise definitions and align them with federal regulations. Definitions will now be incorporated throughout policy in the Sections in which they are used. In addition, the term "American Osteopathic Accreditation" will be removed as an accrediting body for PRTFs, as it is no longer an accreditation option for this kind of facility. The term "Licensed independent practitioner" will be removed from the rules, and the rules will now specifically explain which types of practitioners can order restraint or seclusion, or perform face-to-face assessments of patients. Revisions will also align policy with federal requirements for restraint or seclusion. PRTFs, a type of inpatient facility that exclusively serves minors and young adults, must comply with the condition of participation for restraint or seclusion, as is established by 42 C.F.R. §§ 483.350 through 483.376. Additionally, all general and psychiatric hospitals must comply with federally-established standards for restraint or seclusion, in accordance with 42 C.F.R. § 482.13(e) - (g).

**CONTACT PERSON:**

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

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

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 6. INPATIENT PSYCHIATRIC HOSPITALS**

**317:30-5-95. General provisions and eligible providers**

~~(a) Inpatient psychiatric hospitals or psychiatric units provide treatment in a hospital setting 24 hours a day. Psychiatric Residential Treatment Facilities (PRTF) provide non acute inpatient facility care for members who have a behavioral health disorder and need 24 hour supervision and specialized~~

~~interventions. Payment for psychiatric and/or chemical dependency/detoxification services for adults between the ages of 21 and 64 are limited to acute inpatient hospital settings.~~

~~(b) **Definitions.** The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~(1) **"AOA"** means American Osteopathic Accreditation.~~

~~(2) **"CARF"** means the Commission on Accreditation of Rehabilitation Facilities.~~

~~(3) **"Licensed independent practitioner (LIP)"** means any individual permitted by law and by the licensed hospital to provide care and services, without supervision, within the scope of the individual's license and consistent with clinical privileges individually granted by the licensed hospital. Licensed independent practitioners may include Advanced Practice Nurses (APN) with prescriptive authority and Physician Assistants.~~

~~(4) **"Psychiatric Residential Treatment Facility (PRTF)"** means a facility other than a hospital.~~

~~(5) **"Restraint"** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a member to move his or her arms, legs, body, or head freely, or drug or medication when it is used as a restriction to manage the member's behavior or restrict the member's freedom of movement and is not the standard treatment or dosage for the member's condition. Restraint does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a member for the purpose of conducting routine physical examinations or tests, or to protect the member from falling out of bed, or to permit the member to participate in activities without the risk of physical harm (this does not include physical escort).~~

~~(6) **"Seclusion"** means the involuntary confinement of a member alone in a room or area from which the member is physically prevented from leaving and may only be used for the management of violent or self destructive behavior that jeopardizes the immediate physical safety of the member, a staff member, or others.~~

~~(7) **"TJC"** means The Joint Commission.~~

~~(e) **Hospitals and freestanding psychiatric facilities.** To be eligible for payment under this Section, inpatient psychiatric programs must be provided to eligible SoonerCare members in a hospital that is:~~

~~(1) appropriately licensed and surveyed by the state survey agency;~~

~~(2) accredited by TJC; and~~

~~(3) contracted with the Oklahoma Health Care Authority (OHCA);~~

~~(d) **Psychiatric Residential Treatment Facility (PRTF).** A PRTF is any non hospital facility contracted with the OHCA to provide inpatient services to SoonerCare eligible members under the age of 21. To enroll as a hospital based or freestanding PRTF, the provider must be appropriately state licensed pursuant to Title 10 O.S. Section 402 accredited by TJC, CARF, COA or AOA and approved by the OHCA to provide services~~

## Emergency Adoptions

to individuals under age 21. Distinct PRTE units of state operated psychiatric hospitals serving individuals ages 18-22 are exempt from licensure pursuant to Title 63 O.S. Section 1-702. Out of state PRTEs should be appropriately licensed in the state in which they do business. In addition, the following requirements must be met:

- (1) ~~**Restraint and seclusion reporting requirements.**~~ In accordance with Federal Regulations at 42 CFR 483.350, the OHCA requires a PRTE that provides SoonerCare inpatient psychiatric services to members under age 21 to attest, in writing, that the facility is in compliance with all of the standards governing the use of restraint and seclusion. The attestation letter must be signed by an individual who has the legal authority to obligate the facility. OAC 317:30-5-95.39 describes the documentation required by the OHCA.
- (2) **Attestation letter.** The attestation letter at a minimum must include:
  - (A) the name and address, telephone number of the facility, and a provider identification number;
  - (B) the signature and title of the individual who has the legal authority to obligate the facility;
  - (C) the date the attestation is signed;
  - (D) a statement certifying that the facility currently meets all of the requirements governing the use of restraint and seclusion;
  - (E) a statement acknowledging the right of the State Survey Agency (or its agents) and, if necessary, Center for Medicare and Medicaid Services (CMS) to conduct an on-site survey at any time to validate the facility's compliance with the requirements of the rule, to investigate complaints lodged against the facility, or to investigate serious occurrences;
  - (F) a statement that the facility will notify the OHCA and the State Health Department if it no longer complies with the requirements; and
  - (G) a statement that the facility will submit a new attestation of compliance in the event the individual who has the legal authority to obligate the facility is no longer in such position.
- (3) ~~**Reporting of serious injuries or deaths.**~~ Each PRTE is required to report a resident's death, serious injury, and a resident's suicide attempt to the OHCA, and unless prohibited by state law, to the state designated Protection and Advocacy System (P and As). In addition to reporting requirements contained in this section, facilities must report the death of any resident to the CMS regional office no later than close of business the next business day after the resident's death. Staff must document in the resident's record that the death was reported to the CMS Regional Office.
- (e) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the OHCA's website.
  - (a) **Definitions.** The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:
    - (1) **"C. F. R."** means Code of Federal Regulations.

- (2) **"CMS"** means Centers for Medicare and Medicaid Services.
  - (3) **"General Hospital"** means a general medical surgical hospital, as defined by 63 Oklahoma Statutes, Sec. 1-701(2).
  - (4) **"Institution for Mental Diseases (IMD)"** means a hospital, nursing facility, or other institution of more than sixteen (16) beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services, as defined by 42 C.F.R. § 435.1010.
  - (5) **"OHCA"** means Oklahoma Health Care Authority.
  - (6) **"O. S."** means Oklahoma Statutes.
  - (7) **"Psychiatric Hospital"** means an institution which is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons, as defined by 42 of the United States Code, Sec. 1395x(f).
  - (8) **"Psychiatric Residential Treatment Facility (PRTE)"** means a non-hospital facility contracted with the OHCA to provide inpatient psychiatric services to SoonerCare-eligible members under the age of twenty-one (21), as defined by 42 C.F.R. § 483.352.
  - (9) **"U. S. C."** means United States Code.
- (b) **Eligible settings for inpatient psychiatric services.** The following individuals may receive SoonerCare-reimbursable inpatient psychiatric services in the following eligible settings:
- (1) Individuals twenty-one (21) to sixty-four (64) years of age may receive SoonerCare-reimbursable inpatient psychiatric and/or chemical dependency/substance use/detoxification services in a psychiatric unit of a general hospital.
  - (2) Individuals sixty-five (65) years of age or older may receive SoonerCare-reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, or in a psychiatric hospital.
  - (3) Individuals under twenty-one (21) years of age, in accordance with OAC 317:30-5-95.23, may receive SoonerCare-reimbursable inpatient psychiatric services in a psychiatric unit of a general hospital, a psychiatric hospital, or a PRTE.
- (c) **Psychiatric hospitals and psychiatric units of general hospitals.** To be eligible for payment under this Part, inpatient psychiatric programs must be provided to eligible SoonerCare members in a hospital that:
- (1) is a psychiatric hospital that:
    - (A) successfully underwent a State survey to determine whether the hospital meets the requirements for participation in Medicare as a psychiatric hospital per 42 C.F.R. § 482.60; or
    - (B) is accredited by a national organization whose psychiatric accrediting program has been approved by CMS; or
  - (2) is a general hospital with a psychiatric unit that:
    - (A) successfully underwent a State survey to determine whether the hospital meets the requirements for

participation in Medicare as a hospital as specified in 42 C.F.R. Part 482; or

(B) is accredited by a national accrediting organization whose accrediting program has been approved by CMS; and

(3) meets all applicable federal regulations, including, but not limited to:

(A) Medicare Conditions of Participation for Hospitals (42 C.F.R. Part 482), including special provisions applying to psychiatric hospitals (42 C.F.R. §§ 482.60-.62);

(B) Medicaid for Individuals Age 65 or over in Institutions for Mental Diseases (42 C.F.R. Part 441, Subpart C);

(C) Inpatient Psychiatric Services for Individuals under Age 21 in Psychiatric Facilities or Programs (42 C.F.R. Part 441, Subpart D); and/or

(D) Utilization Control [42 C.F.R. Part 456, Subpart C (Utilization Control: Hospitals) or Subpart D (Utilization Control: Mental Hospitals)]; and

(4) is contracted with the OHCA; and

(5) if located within Oklahoma and serving members under eighteen (18) years of age, is appropriately licensed by the Oklahoma Department of Human Services (DHS) as a residential child care facility (10 O.S. §§ 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168.

(d) **PRTF.** Every PRTF must:

(1) be individually contracted with OHCA as a PRTF;

(2) meet all of the state and federal participation requirements for SoonerCare reimbursement, including, but not limited to, 42 C.F.R. § 483.354, as well as all requirements in 42 C.F.R. Part 483, Subpart G governing the use of restraint and seclusion;

(3) be appropriately licensed by DHS as a residential child care facility (10 O.S. §§ 401 to 402) that is providing services as a residential treatment facility in accordance with OAC 340:110-3-168; and

(4) be accredited by TJC, the Council on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).

(e) **Out-of-state PRTF.** Any out-of-state PRTF must be appropriately licensed and/or certified in the state in which it does business, and must provide an attestation to OHCA that the PRTF is in compliance with the condition of participation for restraint and seclusion, as is required by federal law. Any out-of-state PRTF must also be accredited in conformance with OAC 317:30-5-95(d)(4).

(f) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the OHCA's website.

**317:30-5-95.39. ~~Seclusion, restraint~~ Restraint, seclusion, and serious incident occurrence reporting requirements for ~~children~~ members under the age of twenty-one (21)**

~~(a) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective~~

~~to protect the member, a staff member or others from harm and may only be imposed to ensure the immediate physical safety of the member, a staff member or others. The use of restraint or seclusion must be in accordance with a written modification to the member's individual plan of care. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the member or others from harm. Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order. Mechanical restraints will not be used on children under age 18.~~

~~(1) Each facility must have policies and procedure to describe the conditions, in which seclusion and restraint would be utilized, the behavioral/management intervention program followed by the facility and the documentation required. Each order by a physician or Licensed Independent Practitioner (LIP) may authorize the RN to continue or terminate the restraint or seclusion based on the member's face to face evaluation. Each order for restraint or seclusion may only be renewed in accordance with the following limits for up to a total of 24 hours:~~

- ~~(A) four hours for children 18 to 20 years of age;~~
- ~~(B) two hours for children and adolescents nine to 17 years of age; or~~
- ~~(C) one hour for children under nine years of age.~~

~~(2) The documentation required to ensure that seclusion and restraint was appropriately implemented and monitored will include at a minimum:~~

- ~~(A) documentation of events leading to intervention used to manage the violent or self destructive behaviors that jeopardize the immediate physical safety of the member or others;~~
- ~~(B) documentation of alternatives or less restrictive interventions attempted;~~
- ~~(C) an order for seclusion/restraint including the name of the LIP, date and time of order;~~
- ~~(D) orders for the use of seclusion/restraint must never be written as a standing order or on an as needed basis;~~
- ~~(E) documentation that the member continually was monitored face to face by an assigned, trained staff member, or continually monitored by trained staff using both video and audio equipment during the seclusion/restraint;~~
- ~~(F) the results of a face to face assessment completed within one hour by a LIP or RN who has been trained in accordance with the requirements specified at OAC 317:30-5-95.35 to include the:~~
  - ~~(i) member's immediate situation;~~
  - ~~(ii) member's reaction to intervention;~~
  - ~~(iii) member's medical and behavioral conditions; and~~
  - ~~(iv) need to continue or terminate the restraint or seclusion.~~

~~(G) in events the face to face was completed by a trained RN, documentation that the trained RN consulted the attending physician or other LIP responsible for the care of the member as soon as possible~~

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- after the completion of the one hour face to face evaluation;
- (H) debriefing of the child within 24 hours by an LBHP or licensure candidate;
  - (I) debriefing of staff within 48 hours; and
  - (J) notification of the parent/guardian.
- (b) Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a member in restraint or seclusion before performing any of these actions and subsequently on an annual basis. The PRTF must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the member population in at least the following:
- (1) techniques to identify staff and member behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion;
  - (2) the use of nonphysical intervention skills;
  - (3) choosing the least restrictive intervention based on an individualized assessment of the member's medical behavior status or condition;
  - (4) the safe application and use of all types of restraint or seclusion used in the PRTF, including training in how to recognize and respond to signs of physical and psychological distress;
  - (5) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;
  - (6) monitoring the physical and psychological well being of the member who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by the policy of the PRTF associated with the one hour face to face evaluation; and
  - (7) the use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including annual re certification.
- (c) Individuals providing staff training must be qualified as evidenced by education, training and experience in techniques used to address members' behaviors. The PRTF must document in staff personnel records that the training and demonstration of competency were successfully completed.
- (d) The process by which a facility is required to inform the OHCA of a death, serious injury, or suicide attempt is as follows:
- (1) The hospital administrator, executive director, or designee is required to contact the OHCA Behavioral Health Unit by phone no later than 5:00 p.m. on the business day following the incident.
  - (2) Information regarding the SoonerCare member involved, the basic facts of the incident, and follow up to date must be reported. The agency will be asked to supply, at a minimum, follow up information with regard to member outcome, staff debriefing and programmatic changes implemented (if applicable).
  - (3) Within three days, the OHCA Behavioral Health Unit must receive the above information in writing (example: Facility Critical Incident Report).

- (4) Member death must be reported to the OHCA Behavioral Health Services Unit as well as to the Centers for Medicare and Medicaid Regional office in Dallas, Texas.
- (5) Compliance with seclusion and restraint reporting requirements will be verified during the onsite inspection of care see OAC 317:30-5-95.42, or using other methodologies.

- (a) All PRTFs must comply with the condition of participation for restraint or seclusion, as is established by 42 C.F.R. §§ 483.350 through 483.376, which is hereby incorporated by reference in its entirety. All general and psychiatric hospitals must comply with the standard for restraint or seclusion, as is established by 42 C.F.R. § 482.13(e) - (g), which is hereby incorporated by reference in its entirety. In the case of any inconsistency or duplication between these federal regulations and OAC 317:30-5-95.39, the federal regulations shall prevail, except where OAC 317:30-5-95.39 and/or other Oklahoma law is more protective of a member's health, safety, or well-being.
- (b) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the member, a staff member, or others from harm and may only be imposed to ensure the immediate physical safety of the member, a staff member, or others. The use of restraint or seclusion must be in accordance with a written modification to the member's individual plan of care. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the member or others from harm. Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order. Mechanical restraints will not be used on children under age eighteen (18).

- (1) Each facility must have policies and procedure to describe the conditions in which restraint or seclusion would be utilized, the behavioral/management intervention program followed by the facility, and the documentation required. Restraint or seclusion may only be ordered by the following individuals trained in the use of emergency safety interventions: a Physician; a Physician Assistant (PA); or an Advanced Practice Registered Nurse (APRN) with prescriptive authority. If, however, the member's treatment team physician is available, then only he or she can order restraint or seclusion. Each order for restraint or seclusion may only be renewed in accordance with the following limits for up to a total of twenty-four (24) hours:

- (A) four (4) hours for adults eighteen (18) to twenty-one (21) years of age;
- (B) two (2) hours for children and adolescents nine (9) to seventeen (17) years of age; or
- (C) one (1) hour for children under nine (9) years of age.

- (2) An order for the use of restraint/seclusion must never be written as a standing order or on an as-needed basis.
- (3) The documentation required to ensure that restraint or seclusion was appropriately implemented and monitored will include, at a minimum:

- (A) documentation of events leading to intervention used to manage the violent or self-destructive behaviors that jeopardize the immediate physical safety of the member or others;
- (B) documentation of alternatives or less restrictive interventions attempted;
- (C) a signed order for restraint/seclusion that includes the name of the individual ordering the restraint/seclusion, the date and time the order was obtained, and the length of time for which the order was authorized;
- (D) the time the restraint/seclusion actually began and ended;
- (E) the name of staff involved in the restraint/seclusion;
- (F) documentation sufficient to show the member was monitored in accordance with 42 C.F.R. § 482.13(e) (for general and psychiatric hospitals) or 42 C.F.R. §§ 483.362 and 483.364 (for PRTFs), as applicable;
- (G) the time and results of a face-to-face assessment completed within one (1) hour after initiation of the restraint/seclusion by a Physician, PA, APRN with prescriptive authority, or Registered Nurse, who has been trained in the use of emergency safety interventions. The assessment must evaluate the member's well-being, including those criteria set forth in 42 C.F.R. § 482.13(e) (for general and psychiatric hospitals) or 42 C.F.R. § 483.358(f) (for PRTFs), as applicable;
- (H) in the event the face-to-face assessment was completed by anyone other than the member's treatment team physician, documentation that he or she consulted the member's treatment team physician as soon as possible after completion of the face-to-face assessment;
- (I) debriefing of the child and staff involved in the emergency safety intervention within twenty-four (24) hours, in accordance with 42 C.F.R. § 483.370, as applicable;
- (J) debriefing of all staff involved in the emergency safety intervention and appropriate supervisory and administrative staff within twenty-four (24) hours, in accordance with 42 C.F.R. § 483.370, as applicable; and
- (K) for minors, notification of the parent(s)/guardian(s).
- (c) Serious occurrences, including death, serious injury, or suicide attempt, must be reported as follows:
- (1) In accordance with 42 C.F.R. § 483.374, PRTFs must notify the OHCA Behavioral Health Unit and Oklahoma Department of Human Services (DHS) by phone no later than 5:00 p.m. on the business day following a serious occurrence and disclose, at a minimum: the name of the member involved in the serious occurrence; a description of the occurrence; and the name, street address, and telephone number of the facility.
- (A) Within three (3) days of the serious occurrence, a PRTF must also submit a written Facility Critical Incident Report to the OHCA Behavioral Health Unit containing: the information in OAC 317:30-5-95.39(c)(1), above; and any available follow-up information regarding the member's condition, debriefings, and programmatic changes implemented (if applicable). A copy of this report must be maintained in the member's record, along with the names of the persons at OHCA and DHS to whom the occurrence was reported. A copy of the report must also be maintained in the incident and accident report logs kept by the facility.
- (B) In the case of a minor, the PRTF must also notify the member's parent(s) or legal guardian(s) as soon as possible, and in no case later than twenty-four (24) hours after the serious occurrence.
- (2) In addition to the requirements in paragraph (1), above, the death of any member must be reported in accordance with 42 C.F.R. § 482.13(g) (hospital reporting requirements for deaths associated with the use of seclusion or restraint) or 42 C.F.R. § 483.374(c) (PRTF reporting requirements for deaths), as applicable.
- (d) In accordance with 42 C.F.R. § 483.374(a), OHCA requires all PRTFs that provide SoonerCare inpatient psychiatric services to members under age twenty-one (21) to attest in writing at the time of contracting, that the facility is in compliance with all federal standards governing the use of restraint and seclusion. The attestation letter must be signed by the facility director, and must include, at a minimum:
- (1) the name, address, and telephone number of the facility, and its provider identification number;
- (2) the name and signature of the facility director;
- (3) the date the attestation is signed;
- (4) a statement certifying that the facility currently meets all of the federal requirements governing the use of restraint and seclusion;
- (5) a statement acknowledging the right of OHCA, the Center for Medicare and Medicaid Services (CMS), and/or any other entity authorized by law, to conduct an on-site survey at any time to validate the facility's compliance with 42 C.F.R. §§ 483.350 through 483.376, to investigate complaints lodged against the facility, and to investigate serious occurrences;
- (6) a statement that the facility will notify the OHCA if it is out of compliance with 42 C.F.R. §§ 483.350 through 483.376; and
- (7) a statement that the facility will submit a new attestation of compliance in the event the facility director changes, for any reason.

[OAR Docket #18-173; filed 3-2-18]

# Emergency Adoptions

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

[OAR Docket #18-175]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 9. ~~Long-Term~~Long-Term Care Facilities

317:30-5-136 [AMENDED]

(Reference APA WF # 17-33B)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 30-101 of Title 11 of Oklahoma Statutes; Section 790.1 of Title 19 of Oklahoma Statutes; Section 176 of Title 60 of Oklahoma Statutes; Sections 1-1902 and 1-1905 of Title 63 of Oklahoma Statutes

### ADOPTION:

February 8, 2018

### EFFECTIVE:

Immediately upon Governor's approval

### APPROVED BY GOVERNOR:

February 27, 2018

### EXPIRATION:

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

Per Oklahoma Statute §75-253 (Emergency rules), emergency approval of these eligibility rule revisions are needed because 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; therefore, requests emergency approval of rule revisions to the agency's individual providers and specialties guidelines. The Upper Payment Limit (UPL) program will help to protect the public health, safety and welfare of residents in nursing facilities by providing financial reimbursement to the nursing home when the facility makes improvements in their performance and quality measures by following the UPL care criteria components. Additionally, these emergency revisions are necessary, in lieu of declining state revenue and the current state budget deficit, because this program would leverage federal funding for nursing facilities to assist with the revenue losses the facilities may be experiencing without exhausting any additional State-appropriated dollars required to maintain the SoonerCare (Oklahoma's Medicaid) program.

### GIST/ANALYSIS:

These emergency revisions are necessary in order to update and revise the rules for the nursing home supplemental payment program for nursing facilities. Additionally, the proposed revisions will update the care criteria section and eligibility requirements that a nursing facility will be required to meet to receive the upper payment limit (UPL) reimbursement and participate in the UPL program. Finally, revisions will update acronyms, definitions and references to other legal authorities.

### 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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 9. ~~LONG-TERM~~LONG-TERM CARE FACILITIES

#### 317:30-5-136. Nursing Facility Supplemental Payment Program

(a) **Purpose.** The Nursing Facility Supplemental Payment Program (NFSPP) is a supplemental payment, up to the Medicare upper payment limit (UPL), made to a non-state ~~government-owned~~government-owned entity that owns and as applicable has operating responsibility for a nursing facility(ies).

(b) **Definitions.** The following words and terms, when used in this Section have the following meaning, unless the context clearly indicates otherwise:

(1) **"Funds"** means a sum of money or other resources, as outlined in ~~42 Code of Federal Regulations 433.51~~Public Funds as the State Share of Financial Participation, 42 Code of Federal Regulation, Sec.433.51, appropriated directly to the State or local Medicaid agency, or funds that are transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or funds certified by the contributing public agency as representing expenditures eligible for Federal Financial Participation (FFP).

(2) **"Intergovernmental transfer (IGT)"** means a transfer of state share funds from a non-state ~~government owned~~government-owned entity to the Oklahoma Health Care Authority (OHCA).

(3) **"Non-state government-owned (NSGO)"** means an entity owned ~~and/or as applicable~~operated by a unit of government other than the state and ~~approved~~the application packet is accepted and determined complete by OHCA as a qualified NSGO. ~~Pursuant to federal and OHCA approval an NSGO may include public trusts pursuant to the Trust Authorities established under Oklahoma Statute Title 60.~~

(4) **"Resource Utilization Groups (RUGs)"** means the system used to set Medicare per diem payments for ~~skilled nursing~~skilled-nursing facilities, as the basis to demonstrate a Medicare payment estimate for use in the ~~upper payment limit~~UPL calculation.

(5) **"Supplemental payment calculation period"** ~~means the calendar quarter for which supplemental payment amounts are calculated based on adjudicated claims for days of service provided in the qualifying quarter. Note, in the event there are no paid days in the quarter as a result of the time in which the claims are adjudicated, the supplemental payment will be calculated on days billed in a subsequent quarter.~~means the State Fiscal Year for which supplemental payment amounts are calculated based on Medicaid paid claims (less leave days) compiled from the state's Medicaid Management Information System (MMIS) at a minimum yearly to a maximum quarterly.

(6) "Upper payment limit (UPL)" means a reasonable estimate of the amount that would be paid for the services furnished by a facility under Medicare payment principles equivalent payment.

(c) **Eligible nursing facilities.** A nursing facility that is owned and as applicable under the operational responsibility of an NSGO, is eligible for participation when the following conditions are met:

- (1) the nursing facility is licensed and certified by the Oklahoma State Department of Health;
- (2) the participating NSGO has provided proof that it holds the facility's license and has complete operational responsibility for the facility;
- (3) the participating NSGO has completed and submitted the Agreement of Participation application at minimum thirty (30) days prior to the start of the participation quarter and received approval from OHCA for participation the application packet is accepted and determined complete by OHCA;
- (4) ~~the NSGO has signed an attestation that a plan towards the reduction and mitigation of unnecessary Return to Acute Admissions (RTA) will be implemented within six (6) months of program participation start date;~~
- (5) ~~the facility is an active participant in the Focus on Excellence program and has earned at minimum 100 points; does not receive an immediate jeopardy (IJ) scope and severity tag for abuse or neglect on three (3) separate surveys within a twelve (12) month period; and~~
- (6) ~~the facility and NSGO comply with care criteria requirements. All facilities must shall provide supporting documentation (e.g., baselines, written plan, improvement summary, data sources) for the care criteria metrics.~~

(d) ~~NSGO participation requirements.~~ The following conditions are required of the NSGO:

- (1) ~~must execute a nursing facility provider contract as well as an agreement of participation with the OHCA;~~
- (2) ~~must provide and identify the state share dollars' source of the IGT;~~
- (3) ~~must pay the calculated IGT to OHCA by the required deadline;~~
- (4) ~~must provide proof of ownership, if applicable (i.e. Change of Ownership) as Licensed Operator of the nursing facility;~~
- (5) ~~must provide OHCA with an executed Management Agreement between the NSGO and the facility Manager;~~
- (6) ~~must provide proof of district authority for nursing facility participants which include proximity requirements of no greater than one hundred fifty (150) miles of NSGO. Exceptions may be made at the sole discretion of OHCA; and~~
- (7) ~~must provide per facility, the per patient per Medicaid day (PPMD) IGT within specified timeframe of receipt of the Notice of Program Reimbursement (NPR) as indicated below:~~
  - (A) ~~For the first year \$6.50 PPMD.~~
  - (B) ~~For the second year \$7.50 PPMD.~~

(C) ~~For the third year \$8.50 PPMD, or the equivalent of ten percent (10%) of nursing facility budget of the current fiscal year, whichever is less. This amount excludes any IGT for actual administration cost associated with the nursing home UPL supplemental program. Any remaining IGT after administration cost will be distributed through the rate setting methodology process. Distribution will occur once escrowed funds reach an amount sufficient to distribute as determined by OHCA.~~

(e) **Care Criteria.** (1) ~~Each facility will be required to meet or exceed at minimum two (2) of the five (5) established care criteria metrics contained in paragraphs (A) through (E) of this section. The facility will be required to develop and implement a plan and identify the current baseline for each criterion. Each facility must demonstrate ongoing progress through baseline outcomes, performance summary and goals. Care criteria data and forms must be completed and submitted within five (5) business day after quarter end.~~

(A) ~~Facilities must develop and implement a written plan for the mitigation of unnecessary Return to Acute Admissions (RTA) within six (6) months of participation. The plan will include the RTA for the trailing twelve (12) month period. The resulting outcome is to improve the efficiency and care avoidance cost to the overall SoonerCare program. A written plan must be developed and must include the following:~~

- (i) ~~the RTA management tool which identifies those residents at high risk for the potential return to acute;~~
- (ii) ~~the RTA management tools to support effective communications;~~
- (iii) ~~advance directive planning and implementation; and~~
- (iv) ~~application of Quality Assurance/Program Integrity (QA/PI) methodology in review of RTAs for the root cause analysis and teaching needs.~~

(B) ~~Facilities are required to implement a proactive Pneumonia/Flu Vaccination program which will result in improved vaccination scores above the facility specific baseline at or above the national average, as measured using the CMS Quality Metrics. The resulting outcome is to improve efficiency and care avoidance costs to the overall SoonerCare program. A written plan must be developed and must include the following:~~

- (i) ~~the latest available three quarter average of CMS measure code 411 (% of long stay residents assessed and appropriately given the seasonal influenza vaccine) and 415 (% of long stay residents assessed and appropriately given the pneumococcal vaccine) to establish baseline;~~
- (ii) ~~the current measure code 411 and 415 score; and~~
- (iii) ~~the written plan for flu and pneumonia vaccination program to address new admissions and current residents.~~

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- (C) Facilities are required to participate in the Oklahoma Healthy Aging Initiative. The resulting outcome is to improve the quality of care and health of members. Facilities must attest to elevate healthy aging in Oklahoma by implementing a plan that accomplishes at least one of the following strategies:
- (i) preventing and reducing of falls;
  - (ii) improving of nutrition;
  - (iii) increasing physical activity; or
  - (iv) reducing depression.
- (D) Facilities are required to actively take part in an OHCA approved satisfaction survey. The resulting outcome is to improve the quality of care being delivered to members. A written plan must be developed and implemented and must include the following:
- (i) the satisfaction survey results;
  - (ii) analysis of satisfaction survey with identification of, at minimum, one area for improvement; and
  - (iii) plan of action towards identified areas of improvement.
- (E) Facilities are required to demonstrate improvement above the facility specific baseline in the five (5) Star Quality Measures Composite scoring. Metrics will be determined based upon CMS Nursing Home Compare composite score over the trailing twelve (12) month period. Facilities with Quality Measures star rating of three (3) or better for the most recent quarter or showing improvement in composite scoring with no two (2) quarters consistently below three (3), will be recognized as meeting the care criteria. The resulting outcome is to improve the quality of care being provided.
- (i) Facilities must provide the most recent three (3) quarter average of the CMS quality measure star rating to establish baseline.
  - (ii) Facilities are required to have a star rating of (3) or better or must demonstrate improvement over previous quarter with no two (2) quarters below three (3) stars.
- (2) The care criteria measures may be evaluated at the discretion of OHCA on an annual basis after each fiscal year, following implementation of the program. However, OHCA reserves the right to conduct intermittent evaluations within any given year based on the quality, care and safety of SoonerCare members. The evaluation may be conducted by an independent evaluator. In addition, care criteria metrics may be internally evaluated after each fiscal year at the discretion of OHCA, in collaboration with an advisory committee composed of OHCA agency staff and provider representatives. The OHCA may make adjustments to the care criteria measures based on findings and recommendations as a result of the independent or internal evaluation.
- (f) **Supplemental Payments.**
- (1) The nursing facility supplemental payments to a NSGO under this program shall not exceed Medicare payment principles pursuant to 42 CFR 447.272. Payments are made in accordance with the following criteria:
    - (A) The methodology utilized to calculate the upper payment limit is the RUGs.
    - (B) The eligible supplemental amount is the difference/gap between the SoonerCare payment and the Medicare upper payment limit as determined based on compliance with the Care Criteria metrics.
  - (2) The amount of the eligible supplemental payment is associated with improvement of care of SoonerCare nursing facility residents as demonstrated through the care criteria. NSGO participants receive payment under the program based on earned percentages related to the care criteria. The NSGO must meet or exceed at least two (2) of the five (5) established care criteria metrics to be eligible for UPL payment for each quarter. After at least two (2) of the five (5) metrics have been met, the NSGO is eligible for eighty five percent (85%) of the total eligible UPL amount for participating nursing facilities. The NSGO may qualify for the remaining fifteen percent (15%) of the total UPL by attribution in five percent (5%) increments for each additional care criterion that is met resulting in the full one hundred percent (100%) of the eligible UPL amount.
- (d) **NSGO participation requirements.** The following conditions are required of the NSGO:
- (1) shall provide proof of ownership, if applicable (i.e. Change of Ownership) as licensed operator of the nursing facility;
  - (2) shall provide proof of proximity requirements of no greater than one hundred fifty (150) miles of NSGO. Exceptions may be made at the sole discretion of OHCA;
  - (3) shall execute a nursing facility provider contract as well as an agreement of participation with the OHCA;
  - (4) shall provide OHCA with an executed Management Agreement between the NSGO and the facility manager;
  - (5) shall provide and identify the state share dollars' source of the IGT;
  - (6) shall pay the calculated IGT to OHCA by the required deadline;
  - (7) shall utilize program dollars for health care related expenditures; and
  - (8) shall provide per facility, the per patient per Medicaid day (PPMD) IGT within specified timeframe of receipt of the Notice of Program Reimbursement (NPR) as indicated below:
    - (A) For the first year-\$6.50 PPMD.
    - (B) For the second year-\$7.50 PPMD.
    - (C) For the third year-\$8.50 PPMD, or the equivalent of ten percent (10%) of nursing facility budget of the current fiscal year, whichever is less. This amount excludes any IGT for actual administration cost associated with the nursing home UPL supplemental program. Any remaining IGT after administration cost shall be distributed through the rate setting methodology process. Distribution shall occur once escrowed

funds reach an amount sufficient to distribute as determined by OHCA.

(e) **Change in ownership.**

(1) A nursing facility participating in the supplemental payment program shall notify the OHCA of changes in ownership (CHOW) that may affect the nursing facility's continued eligibility within thirty (30) days after such change.

(2) For a nursing facility that changes ownership on or after the first day of the SoonerCare supplemental payment limit calculation period, the data used for the calculations will include data from the facility for the entire upper payment limit calculation period relating to payments for days of service provided under the prior owner, pro-rated to reflect only the number of calendar days during the calculation period that the facility is owned by the new owner.

(f) **Care Criteria.** Each facility shall be required to participate in the following care criteria components to receive UPL financial reimbursement.

(1) **Component 1 - Quality Improvement Plan.** A facility shall hold monthly Quality Improvement Plan meetings. The meetings shall be tailored to identify an improvement plan for quality enhancement focused on nursing facility safety, quality of resident life, personal rights, choice and respect. Consistent with 42 CFR 483.75. Quality indicators shall be identified during the meetings and include the following:

(A) A written plan to include but not limited to the development, implementation and evaluation of the quality enhancement indicator. The plan shall be reviewed monthly for ongoing quality indicator progress, completion of the quality indicator and/or routine updates on the sustainability of current and/or prior indicators achieved.

(B) The design and scope of the plan should include the specific system and service that will be utilized to monitor and track performance improvement, the staff included to improve the quality indicator, resident choice, subjective/objective evidence and ongoing measures taken to ensure stability and enhancement. This may include but not be limited to a written policy, a procedure manual, data collections systems, management practices, resident/staff interviews, and trainings.

(C) Outcomes shall include evidence of improvement, cost expenditures toward improvement goal, how the facility shall continue to monitor the effectiveness of its quality enhancement and how it shall have ongoing sustainability.

(D) Facility shall submit program documentation monthly. The information shall include A-D as well as OHCA required form LTC-19.

(E) The quality improvement plan shall be reviewed monthly by the OHCA quality review team. Payment shall be assessed in increments of 20 percent (20%) per month for a total of 60 percent (60%) per quarter if approved.

(2) **Component 2 - Health Improvement Plan.**

(A) A facility shall hold quarterly Health Improvement Plan meetings. The meetings shall be tailored to identify an improvement plan for the quality indicators of urinary tract infection, unintended weight loss, developing or worsening pressure ulcers, and received antipsychotic medication. Meetings include the following:

(i) A written plan to include but not limited to the development, implementation and evaluation of the quality enhancement indicator. The plan shall be reviewed quarterly for ongoing quality indicator progress, completion of the quality indicator and/or routine updates on the sustainability of current and/or prior indicators achieved.

(ii) The design and scope of the plan should include the specific system and service that shall be utilized to monitor and track performance improvement, the staff included to improve the quality indicator, resident choice, subjective/objective evidence and ongoing measures taken to ensure stability and enhancement. This may include but not be limited to a written policy, a procedure manual, data collections systems, management practices, resident/staff interviews, and trainings.

(iii) Outcomes shall include evidence of improvement, cost expenditures toward improvement, how the facility will continue to monitor the effectiveness of its quality enhancement and how it shall have ongoing sustainability.

(iv) Facility shall submit program documentation quarterly. The information will include i-iii as well as OHCA required form LTC-18.

(B) The health improvement plan shall be reviewed quarterly by the OHCA quality review team. Payment shall be assessed in increments of ten percent (10%) by achieving five percent (5%) relative improvement or by achieving the national average benchmark per each of the four (4) components quarterly for a total of forty percent (40%) per quarter if approved.

(3) **Care Criteria Evaluation and Audit.** The care criteria measures may be evaluated at the discretion of OHCA on an annual basis after each fiscal year, following implementation of the program. However, OHCA reserves the right to conduct intermittent evaluations within any given year based on the quality, care and safety of SoonerCare members. The evaluation may be conducted by an independent evaluator. In addition, care criteria metrics may be internally evaluated after each fiscal year at the discretion of OHCA. The OHCA may make adjustments to the care criteria measures based on findings and recommendations as a result of the independent or internal evaluation.

(g) **Supplemental Payments.**

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- (1) The nursing facility supplemental payments to a NSGO under this program shall not exceed Medicare payment principles pursuant to Inpatient Services: Application of Upper Payment Limits, 42 Code of Federal Regulation, Sec. 447.272. Payments are made in accordance with the following criteria:
- (A) The methodology utilized to calculate the upper payment limit is the RUGs.
  - (B) The eligible supplemental amount is the difference/gap between the SoonerCare payment and the Medicare equivalent payment as determined based on compliance with the care criteria metrics.
- (2) The amount of the eligible supplemental payment is associated with improvement of care of SoonerCare nursing facility residents as demonstrated through the care criteria. The quality components are evaluated monthly with a quarterly payout. Component 1 is assessed at twenty percent (20%) per month with a possible total achievement of sixty percent (60%) per quarter. Component 2 is assessed at ten percent (10%) per each of the four (4) components with a possible total achievement of 40 percent (40%) per quarter. Facilities will be reimbursed accordingly based on the percentage of care criteria earned.
- (g) **Change in ownership.**
- (1) A nursing facility participating in the supplemental payment program must notify the OHCA of changes in ownership (CHOW) that may affect the nursing facility's continued eligibility within thirty (30) days after such change.
  - (2) For a nursing facility that changes ownership on or after the first day of the SoonerCare supplemental payment limit calculation period, the data used for the calculations will include data from the facility for the entire upper payment limit calculation period relating to payments for days of service provided under the prior owner, pro-rated to reflect only the number of calendar days during the calculation period that the facility is owned by the new owner.
- (h) **Disbursement of payment to facilities.** Facilities must NSGOs shall secure allowable Intergovernmental Transfer funds (IGT) IGT funds from a NSGO to fund the non-federal share amount. The method is as follows:
- (1) The OHCA or its designee will notify the NSGO of the non-federal share amount to be transferred by an IGT, via a designated portal electronic communications and NPR, for purposes of seeking federal financial participation (FFP) for the UPL supplemental payment, within twenty-five (25) business days after the end of the quarter. This amount will take into account the percentage of metrics achieved under the care criteria requirement. The NSGO will have five (5) business days to sign the participant agreement and make payment of the state share in the form of an IGT either in person or via mail. In addition, the NSGO will be responsible to also remit, upon receipt of the NPR, the applicable PPMD IGT in full, pursuant to (d)(7) above. The date the NPR is sent by OHCA or its designee to the provider (NSGO) is the official date the clock starts to measure the five (5) business days. In addition, the NSGO shall also be required to remit, upon receipt of the NPR, the applicable PPMD IGT in full, pursuant to (d) (7) above.
  - (2) If the total transfer and PPMD IGT are received within five (5) business days, the UPL payment will then be disbursed to the NSGO by OHCA within ten (10) business days in accordance with established payment cycles. An IGT that is not received by the date specified by OHCA, or that is not the total indicated on the NPR shall be subject to penalty and suspension from the program. If the full IGT and the PPMD IGT are received within five (5) business days, the UPL payment will then be disbursed to the NSGO by OHCA within ten (10) business days in accordance with established payment cycles.
- (i) **Penalties/Adjustments.** Failure by an NSGO to remit the full IGT indicated on the NPR by OHCA or its designee within the defined timeframes below indicates the NSGO has voluntarily elected to withdraw participation for that current quarter and may reapply for participation in the program in subsequent quarter(s).
- (1) The total IGT must be received within five (5) business days from receipt of the NPR uploaded by OHCA or its designee in the program portal.
    - (A) Receipt of the total IGT within five (5) business days is not subject to penalty.
    - (B) The date the NPR is uploaded to the portal the official date the clock starts to measure the five (5) business days.
  - (2) Any IGT received after the fifth business day but with an OHCA date stamp or mailing postal mark on or prior to five (5) business days from the official date of the uploaded NPR in the portal will not be subject to penalty; however, payment will be disbursed during the next available OHCA payment cycle.
  - (3) Any IGT with an OHCA date stamp or mailing postal mark received with a date after five (5) business days of receipt of the NPR, but not exceeding eight (8) business days of receipt of the NPR will be deemed late and subject to a penalty in accordance with (3)(B) below.
    - (A) Any NSGO that remits payment of the total IGT under the above circumstances will receive payment during the next available OHCA payment cycle including an assessed penalty as described below.
    - (B) A five percent (5%) penalty will be assessed for total IGT payments received after five (5) business days but within eight business days of receipt of the NPR of assessed amount. The five percent (5%) penalty will be assessed on the total eligible supplemental payment for the quarter in which the IGT is late and assessed to the specific NSGO as applicable.
    - (C) The OHCA will notify the NSGO of the assessed penalty via invoice. If the provider fails to pay the OHCA the assessed penalty within the time frame noted on the invoice to the NSGO, the assessed penalty will be deducted from the nursing facility's Medicaid payment. The penalty must be paid regardless of any appeals action requested by the NSGO. Should an appeals decision result in a disallowance

of a portion or the entire assessed penalty, reimbursement to the NSGO will be made to future nursing facility Medicaid payments.

(4) If a nursing facility fails to achieve at a minimum, two (2) of the care criteria metrics for two (2) consecutive quarters, the facility will be suspended for two (2) subsequent quarters and will not be eligible to participate in the program during suspended quarters. A facility that has been suspended for a total of four (4) quarters within a two (2) year period due to non-compliance with the Care Criteria will be terminated from the program, and if the facility wishes to participate again, it will be required to reapply. Reentry into the program is at the sole discretion of the OHCA, taking into consideration input from the advisory committee and/or stakeholders. If the facility is readmitted to the program, terms of participation may include a probationary period with defined requirements as it relates to care.

**(i) Penalties.**

(1) Receipt of the total IGT(s) within five (5) business days is not subject to any penalty.

(2) Any total IGT received after the fifth (5th) business day, but with an OHCA date stamp or mailing postal mark on or prior to five (5) business days from the official date of the receipt of the NPR will not be subject to penalty.

(3) Any total IGT with an OHCA date stamp or mailing postal mark received with a date after five (5) business days of receipt of the NPR, but not exceeding eight (8) business days of receipt of the NPR shall be deemed late and subject to a penalty in accordance with (3)(A) below.

(A) A five percent (5%) penalty will be assessed for the total IGT payments received after five (5) business days, but within eight (8) business days of receipt of the NPR. The five percent (5%) penalty will be assessed on the total eligible supplemental payment for the quarter in which the IGT is late and assessed to the specific NSGO as applicable.

(B) OHCA will notify the NSGO of the assessed penalty via invoice. If the NSGO fails to pay OHCA the assessed penalty within the time frame noted on the invoice to the NSGO, the assessed penalty will be deducted from the nursing facility's Medicaid payment. The penalty shall be paid regardless of any appeals action requested by the NSGO. Should an appeals decision result in a disallowance of a portion or the entire assessed penalty, reimbursement to the NSGO will be made to future nursing facility Medicaid payments.

(C) An NSGO that remits payment of the total IGT under the circumstances listed in (i) (2) or (i) (3) above will receive payment during the next available OHCA payment cycle.

(4) The first violation by an NSGO to remit the full IGT as indicated on the NPR by OHCA or its designee within the defined timeframes shall subject the NSGO to a penalty. The second violation by an NSGO to remit the full IGT indicated on the NPR by OHCA or its designee within the defined timeframes shall subject the NSGO to

a penalty and a suspension for two (2) consecutive quarters. The NSGO will not be eligible to participate in the program during suspended quarters. A third violation by an NSGO to remit the full IGT indicated on the NPR by OHCA or its designee within the defined timeframes shall subject the NSGO to termination from the NFSPP. If the NSGO desires to participate again, it will be required to reapply. Reentry into the program is at the sole discretion of the OHCA. If the NSGO is readmitted to the program, terms of participation may include a probationary period with defined requirements.

(5) If OHCA receives a partial IGT or receives a full IGT after eight (8) business days of the receipt of the NPR, the NSGO shall be deemed to have voluntarily elected to withdraw participation in the NFSPP.

(6) If a nursing facility fails to meet the benchmarks of component 1 and/or component 2 of the care criteria for two (2) consecutive quarters, the facility shall be suspended for two (2) subsequent quarters and will not be eligible to participate in the program during suspended quarters. A facility that has been suspended for a total of four (4) quarters within a two (2) year period due to non-compliance with the Care Criteria shall be terminated from the program, and if the facility wishes to participate again, it will be required to reapply. Reentry into the program is at the sole discretion of the OHCA. If the facility is readmitted to the program, terms of participation may include a probationary period with defined requirements as it relates to care.

(j) **Appeals.** Applicant and participant appeals may be filed in accordance with grievance procedures found at OAC Oklahoma Administrative Code 317:2-1-2(b) and 317:2-1-16.

*[OAR Docket #18-175; filed 3-2-18]*

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

*[OAR Docket #18-172]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-42 [AMENDED]

(Reference APA WF # 17-15)

**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:**

February 8, 2018

**EFFECTIVE:**

Immediately upon Governor's approval

**APPROVED BY GOVERNOR:**

February 27, 2018

# Emergency Adoptions

## EXPIRATION:

Effective through September 14, 2019, unless superseded by another rule or disapproved by the Legislature

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## FINDING OF EMERGENCY:

Per Oklahoma Statute §75-253 (Emergency rules), emergency approval of these eligibility rule revisions are needed in order to protect the public health, safety or welfare and in order to avoid violation of federal law or regulation or other state law. Without this emergency rule revision, we are at risk of creating unintended barriers to the access of SoonerCare as well as being at risk of being called for an error on an eligibility determination with subsequent recoupment of federal dollars.

SoonerCare has eligibility rules for determining countable income for our aged, blind and disabled population, and under the eligibility rules we have rules on income disregards, i.e. things that you do not have to consider as income when you are determining an aged, blind and disabled person's need and eligibility for SoonerCare. Some examples of income disregards are educational grants and scholarships, the value of food stamps, or disaster relief. One of the disregards is the earned income for working students younger than 22 when they regularly attend a school, college, university or vocational training. The previous rule gave a specific amount from 2014 that the student could earn but would be disregarded (up to \$1,750 per month to a maximum of \$7,060 per year). The rule should not have referred to a specific amount because the Student Earned Income Exclusion is revised (and almost always increased) yearly by the Social Security Administration (SSA). The new rule just refers to DHS Appendix C-1, Schedule VIII.E, because DHS updates this Schedule with the new income and resource standards every year when the SSA sends them the revised and updated amounts. The new rule also defines who is considered a "student".

Without these emergency revisions DHS either has to violate what is written in policy and determine income based on the currently known SSA Student Earned Income Exclusion amounts or else they have to stick with what is in policy and potentially negatively impact (declare ineligible) an applicant because they over-counted their income by not giving them the full Student Earned Income Exclusion. So DHS and OHCA are in a catch-22, if we violate current written policy we can suffer an error and possible recoupment in our PERM (Payment Error Rate Measurement) audits and if we stick with current written policy we can suffer an appeal and legal action from an applicant who feels they are being denied access to SoonerCare.

## GIST/ANALYSIS:

These emergency revisions are necessary in order to clarify the requirements for countable income and income disregards for Aged, Blind and Disabled eligibility determinations. Additionally, the proposed revisions will clarify the definition of student status to ensure that an unintended barrier is not created for the access of SoonerCare services.

## CONTACT PERSON:

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

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

## SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

### PART 5. COUNTABLE INCOME AND RESOURCES

#### **317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled**

(a) **General.** The term income is defined as that gross gain or gross recurrent benefit which is derived from labor, business, property, retirement and other benefits, and many other forms which can be counted on as currently available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS Asset Verification System (AVS).

(1) If it appears the applicant or SoonerCare member is eligible for any type of income (excluding SSI) or resources, he/she must be notified in writing by the Agency of his/her potential eligibility. The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within 30 days from the date of the notice will result in a determination of ineligibility.

(2) If a husband and wife are living in their own home, the couple's total income and/or resource is divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) If only one spouse in a couple is eligible and the couple ceases to live together, only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month which they ceased to live together are considered.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (1 - 49 cents is rounded down, and 50 - 99 cents is rounded up). For example, an individual's weekly earnings of \$99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar ( $\$99.90 \times 4.3 = \$429.57$  rounds to \$430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify OASDI benefits.

(b) **Income disregards.** In determining need, the following are not considered as income:

(1) The value of Supplemental Nutrition Assistance Program (food stamps) received;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

- (A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.
- (B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.
- (C) Proceeds of a loan secured by an exempt asset are not an asset;
- (5) One-third of child support payments received on behalf of the disabled minor child;
- (6) Indian payments (including judgment funds or funds held in trust) distributed by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;
- (7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;
- (8) Title III benefits from State and Community Programs on Aging;
- (9) Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);
- (10) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;
- (11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the ~~national~~ National School Lunch Act;
- (12) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;
- (13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;
- (14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;
- (15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;
- (16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;
- (17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments, or utilities;
- (18) LIHEAP payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;
- (19) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (20) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (21) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations;
- (22) Income of a sponsor to the sponsored eligible alien;
- (23) Income that is set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of income excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;
- (24) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);
- (25) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;
- (26) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;
- (27) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

## Emergency Adoptions

- (28) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);
- (29) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);
- (30) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009;
- (31) Wages paid by the Census Bureau for temporary employment related to Census activities;
- (32) Income tax refunds;
- (33) Home energy assistance;
- (34) Food or shelter based on need provided by nonprofit agencies;
- (35) Money someone else spends to pay your expenses for items other than food or shelter (e.g., someone pays for your telephone or medical bills);
- (36) ~~Earnings up to \$1,750 per month to a maximum of \$7,060 per year (effective January 2014) for a student under age 22~~Earned income for working students younger than 22 years of age when they regularly attend a school, college, university or a course of vocational or technical training. Refer to Appendix C-1, Schedule VIII.E; Maximum Income, Resource and Payment Standards for the maximum monthly and yearly exclusion amounts;
- (37) The cost of impairment-related work expenses for items or services that a disabled person needs in order to work; and
- (38) The first \$2,000 of compensation received per calendar year for participating in certain clinical trials.
- (c) **Determination of income.** The member is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility.
- (1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.
- (2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of SoonerCare and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare benefit and SSP case. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware

of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.

(3) Some of the more common income sources to be considered in determining eligibility are as follows:

(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.

(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:

(I) seeing the member's award letter or warrant;

(II) obtaining a signed statement from the individual who cashed the warrant; or

(III) by using BENDEX and SDX.

(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS Form 08AX011E.

(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.

(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:

(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third party resources and do not affect the income eligibility or the vendor payment of the member.

(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.

(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to \$90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to \$90 per month. None of the \$90 may be used in computing any vendor payment or spenddown. In these instances, the nursing home resident is entitled to the \$90 reduced VA pension as well as

the regular nursing facility maintenance standard. Any vendor payment or spenddown will be computed by using other income minus the monthly nursing facility maintenance standard minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.

(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for the mentally retarded or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(C) **Lump sum payments.**

(i) Any income received in a lump sum (with the exception of SSI lump sum) covering a period of more than one month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, including SSI (with the exception of dedicated bank accounts for disabled/blind children under age 18), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, retroactive OASDI, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.

(ii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.

(iii) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.

(iv) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.

(D) **Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.

(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six months' royalty income is computed and used to determine income eligibility. When the difference between the gross and net income represents a production or severance tax (e.g., most oil royalties are reduced by this tax), the OHCA only uses the net figure when determining income eligibility. The production or severance tax is the cost of producing the income, and, therefore, is deducted from the gross income. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two months' royalty income is averaged to compute countable monthly income.

(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from rental property is treated as unearned income.

(iii) When rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.

(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission, or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.

(i) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.

(ii) Money from the sale of whole blood or blood plasma is considered as self-employment

## Emergency Adoptions

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income subject to necessary business expenses and appropriate earned income disregards.

(iii) Self-employment income is determined as follows:

(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount, as well as the allowable deductions, are the same as can be claimed under the Internal Revenue code for tax purposes.

(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.

(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work related expense deduction given in OAC 340:10-3-33(1)).

(iv) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(F) **Infrequent or irregular income.**

(i) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.

(ii) Income is considered to be irregular if the individual cannot reasonably expect to receive it.

(iii) OHCA excludes the following amount of infrequent or irregular income:

(I) the first \$30 per calendar quarter of earned income; and

(II) the first \$60 per calendar quarter of unearned income.

(iv) Infrequent or irregular income, whether earned or unearned, that exceeds these amounts is considered countable income in the month it is received.

(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two months' income, if possible, to determine income eligibility. Less than two months' income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.

(ii) **Weekly.** Income received weekly is multiplied by 4.3.

(iii) **Twice a month.** Income received twice a month is multiplied by 2.

(iv) **Biweekly.** Income received every two weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(d) **Computation of income.**

(1) **Earned income or unearned income.** The general income exclusion of \$20 per month is allowed for earned or unearned income, unless the unearned income is SSP, on the combined income of the eligible individual and eligible or ineligible spouse. See paragraph (5) of this subsection if there are ineligible minor children. After the \$20 exclusion, deduct \$65 and one-half of the remaining combined earned income. The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered.

(2) **Countable income.** The countable income is the sum of the earned income and the total gross unearned income after exclusions.

(3) **Deeming computation for disabled or blind minor child(ren).** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age 18.

(A) An intellectually disabled child living in the home who is ineligible for SSP due to the deeming process may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program as outlined in OAC 317:35-9- 5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(4) **Premature infants.** Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents' income is not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(5) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS Form 08AX001E, Schedule VII. C.) minus each child's gross countable income is deducted from the

ineligible spouse's income. Deeming of income is not done from child to parent.

(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

(6) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three broad categories:

- (A) transportation to and from work;
- (B) job performance; and
- (C) job improvement.

*[OAR Docket #18-172; filed 3-2-18]*



# 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

**1:2018-5.**

### EXECUTIVE ORDER 2018-5

To the Secretary of State, the Oklahoma Health Care Authority Board, and the Secretary of Health and Human Services:

WHEREAS, a core objective of the Medicaid program is to help low-income families and individuals attain capability for independence;

WHEREAS, work is a critical tool in attaining capability for independence;

WHEREAS, work requirements in other welfare programs have helped move individuals from welfare to work;

WHEREAS, the Centers for Medicare and Medicaid Services issued guidance in January 2018 for states seeking to further the objectives of the Medicaid program by promoting work; and

WHEREAS, the Centers for Medicare and Medicaid Services have approved two states' proposals to promote work.

THEREFORE, pursuant to the power and authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, I hereby direct the Oklahoma Health Care Authority to file any and all federal waivers and state plan amendments necessary to incorporate a work requirement in the Medicaid program.

All existing exemptions shall be applied, including but not limited to individuals under the age of 19; over the age of 64; medically certified as physically or mentally unfit for employment; pregnant; a parent or caretaker responsible for the care of a dependent child under the age of 6; a parent or caretaker personally providing the care for a dependent child with serious medical conditions or with a disability; receiving unemployment compensation and complying with work requirements that are part of the Federal-State unemployment compensation system; or participating in a drug addiction or alcoholic treatment and rehabilitation program.

The Oklahoma Health Care Authority shall submit recommendations for any state plan amendments or waivers required

under this Executive Order within six months to the Governor and the Legislature.

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, the Director of the Office of Management and Enterprise Services, the Secretary of State, the Oklahoma Health Care Authority Board, and the Secretary of Health and Human 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 5th day of March, 2018.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

*[OAR Docket #18-178; filed 3-5-18]*

**1:2018-6.**

### EXECUTIVE ORDER 2018-6

To the Secretary of State, the Director of the Office of Management and Enterprise Services, to the Secretary of Health and Human Services and to the Commissioner of Health:

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and by Section 840-4.1 of Title 74 of the Oklahoma Statutes hereby reaffirm and Order that the Oklahoma State Department of Health and the employees of the Oklahoma State Department of Health are under the Merit System of Personnel Administration for the State of Oklahoma.

Pursuant to the power and authority vested in me by Section 840-4.1(A) of Title 74 of the Oklahoma Statutes, I hereby exempt from the Merit System the following positions, to include all equivalent and successor positions and levels of the classification: Deputy and Assistant Commissioner, Chief

## Executive Orders

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Officer, Administrator or Assistant Administrator or Director or Assistant Director of a region, division, program, office, or center, Program and Project Managers, Coordinator, Budget Analyst, Business and Financial Managers, Internal Auditor, Investigator, Controller, Interpreters, Speech-Language Pathologist, Epidemiologist, Psychological Clinician, Occupational, Physical and Nutrition Therapist.

The exemption listed above is in addition to any other general exemption or exception from the Merit System of Personnel Administration codified in state law and any specific exemptions for the Oklahoma State Department of Health and the following Executive Orders: (1) the Unnumbered Executive Order dated November 6, 1959 issued by then Governor J. Howard Edmondson originally placing the Oklahoma State Department of Health under the Merit System of Personnel Administration; (2) Executive Order 85-8 originally issued by then Governor George Nigh on July 1, 1985, which amended the Executive Order issued by Governor J. Howard Edmondson; and (3) Executive Order 2017-42 issued by me, Governor Mary Fallin, exempting certain executive-level positions from the Merit System.

Copies of this Executive Order shall be distributed to the Secretary of State, the Director of the Office of Management and Enterprise Services, the Secretary of Health and Human Services and to the Commissioner of Health.

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 5th day of March, 2018.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

*[OAR Docket #18-179; filed 3-5-18]*

**1:2018-7.**

### EXECUTIVE ORDER 2018-7

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and 63 O.S. §§ 683.1 *et seq.*, hereby declare that because a regional state of emergency has been declared in the State of Arkansas due to inoperative

water pumps at the Heavener Utility Authority in Heavener, Oklahoma, it is necessary for public health and safety to assist and expedite all efforts to assist in the delivery of feed to poultry farms, the pickup of poultry from poultry farms and the transportation of meat from processing plants in the State of Oklahoma to further processing or safe storage in the State of Arkansas.

In order to accommodate this need and to provide assistance to the citizens and drivers of the State of Oklahoma in this situation, I hereby order the temporary suspension of the following as they apply to vehicles in the support efforts directly related to the transportation of feed, poultry and meat to, and from, processing locations in Haskell, LeFlore and Sequoyah Counties of the state of Oklahoma to, and from, the State of Arkansas:

1. The requirements under parts 390 through 399 pursuant to part 390.23(a)(1) of the Federal Motor Carriers Safety Administration Regulations;
2. The requirements for licensing and operating authority as required by the Oklahoma Corporation Commission;
3. The requirements for licensing and operating authority as required by the Oklahoma Tax Commission;

Nothing contained in this declaration shall be construed as an exemption from the Controlled Substances and Alcohol Use and Testing requirements (49 C.F.R. Part 382), the Commercial Driver's License Standards requirements (49 C.F.R. Part 383), the Minimum Levels of Financial Responsibility for Motor Carrier requirements (49 C.F.R. Part 387), or any other portion of the regulations not specifically identified herein. Motor carriers that have an Out-Of-Service Order in effect cannot take advantage of the relief from regulation that this declaration provides.

This Order applies only to the transportation of poultry products in Haskell, LeFlore and Sequoyah counties of the State of Oklahoma, to provide direct assistance to this emergency. No other products, are covered by the exemption and suspension under this Order.

Because of the on-going State of Emergency which has existed since March 8<sup>th</sup>, 2018, this Executive Order shall be effective until the close of business on March 25<sup>th</sup>, 2018.

This Executive Order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission, and the Department of Public Safety, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 9<sup>th</sup> day of March 2018.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA:

Mary Fallin

ATTEST:  
Dave Lopez  
Secretary of State

*[OAR Docket #18-181; filed 3-9-18*

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